

Land Title Practice Manual

(Queensland)

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Department of Natural Resources, Mines and Energy

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Note²—This part does not apply to State land.

Note³—This part does not apply to freehold land.

Introduction

The Land Title Practice Manual provides information and guidance to industry practitioners conducting business with the Titles Registry (also known as the Land Registry and the Titles Office).

Section 9A of the *Land Title Act 1994* gives statutory recognition to the Land Title Practice Manual.

The manual is divided into parts, which are generally numbered according to the relevant registry form. For example, part 18 relates to *Form 18—General consent*.

However, the following parts are not numbered according to a registry form:

- Part 2 – National Mortgage Form;
- Part 23 – Priority Notice Form, Extension of Priority Notice Form and Withdrawal of Priority Notice Form; and
- the parts numbered 45 and onwards which deal with particular subject areas which impact on a broad range of forms and titling transactions.

Each part that deals with a registry form is divided into the following sections:

- (a) general law—relevant principles of law applicable to the titling transaction(s) contemplated by the form
- (b) practice—requirements for lodgement of the form
- (c) form—general requirements for the form and attachments, an itemised guide for completion of the form and some example(s)
- (d) case law—some relevant references
- (e) fees—references to regulated fees for lodgement of the form
- (f) cross referencing and further reading.

References to statutes, rules and regulations are Queensland-specific unless stated otherwise. Statutes and regulations are those in force at the time of the manual's publication.

The examples throughout the manual are by way of illustration only, and names are fictitious. Any similarity to the name of any person (living or dead) is purely coincidental.

Introduction to the Land and Water Allocation Registries

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Introduction to the Land and Water Allocation Registries

The Land Registry

¹Early History of Titling in Queensland

[0-0000]

To establish ownership of land in Australia, it is necessary to have some form of proof of ownership which is recognised by law. The systems adopted in the past to provide evidence of ownership were based on the method known and accepted at the time.

When Australia was first settled, the English method of recording land dealings was adopted. This method was contained in the *Registration of Deeds Act 1843*. Land under this Act is referred to as 'Old System' land.

Under this system, land was granted to a subject of the Crown by issue of a deed of grant to the 'grantee'. This was the only deed ever issued for the land and it was written on long lasting parchment. When the original grantee sold the land, he/she had his/her solicitor draw up the lengthy and costly deed of conveyance necessary to legally transfer the land to the purchaser. This, together with the deed of grant, was given to the purchaser, who was required to keep them safe, as they were his/her 'title' of ownership.

No copy of the deed was maintained in a government register. It was up to the owner to prove ownership.

All land in Queensland identified as previously being under the *Registration of Deeds Act 1843* has now been brought under the *Land Title Act 1994*.

Queensland became a state in its own right in 1859 by separating from New South Wales. By the creation of the State, the Crown in the right of the State of Queensland owned all the land in the State except that which had previously been granted to individuals. Where a grant had taken place, an estate in fee simple (freehold title) was conveyed to the grantee. That is, the Crown passed outright ownership to the individual and, in legal terms, the land had been alienated from the Crown, subject to any stated reservations.

A separate title issued for each owner when the land was brought under the provisions of the *Real Property Act 1861*, now the *Land Title Act 1994*, under the Torrens System of registration.

¹What is Land?

[0-0010]

The legal definition of 'land' in the *Macquarie Dictionary* is:

'Land is any part of the earth's surface which can be owned as property, and everything annexed to it, whether by nature or by the hand of man.'

For the purposes of land ownership, 'land' can include earth, water and airspace.

Land forms the basis of most economic, social and environmental development in a region, State or country. As a precious and limited resource, it provides society with most of our

material needs such as food, water, minerals and recreation, and is administered by governments all over the world in two basic ways:

- (1) by recording ownership and interests in land; and
- (2) for future planning in land use, ie ensuring a balanced approach to development which takes into account economic, social and environmental issues.

From a titling perspective, land may be described as a particular piece or part of the surface of the earth (including what is above and below the surface), contained within defined boundaries or limits.

A home or business unit that comprises:

- part of a building, commonly known as a ‘building unit’; or
- part of a building and part of adjacent land, commonly known as a ‘group title unit’,

is also referred to as land (see ¶[0-0390] to ¶[0-0410] for further information regarding building and group title units).

How is Land Identified?

¹Location

[0-0020]

To enable equitable administration, parcels of land have always been allocated a unique description, ie no two parcels have the same description.

At the time of European settlement all land was considered vacant Crown land (now ‘unallocated State land’). Queensland was divided into parishes. Parishes were divided into portions. Portions were divided into subdivisions (‘subs’). Subdivisions were divided into resubdivisions (‘resubs’) and so on.

Therefore, a particular parcel of land could be described as, eg ‘Resub 3 of Sub 2 of Portion 1 in the Parish of Enoggera, County of Stanley’. Parcels of land in towns were sometimes described differently as ‘subs of allotments of Section ..., Town of ...’.

In 1965, because many of these descriptions had become extremely lengthy and complex, a new method of uniquely identifying land was devised. From that time on, all freehold land was identified as a lot on a survey plan, eg ‘Lot 3 on Registered Plan (RP) 102396’.

In 1985, the Lot on Plan method of identifying land was adopted for land administered by the State.

All land, except for unallocated State land that has not been surveyed, now has a Lot on Plan description.

¹Description

[0-0030]

Over the years, land has basically been described by two methods, ie by its dimensions or by the extent of the boundaries of the parcel of land.

¹The Present System – Survey Plans

[0-0040]

Boundaries of parcels of land are defined by ‘survey plans’.

A survey plan shows:

- the description of lot/s, bearings (angles measured in relation to true North), distances and area of the land described on the plan; and
- location in relation to other land boundaries.

It may also show:

- natural monuments or features, such as a lake, stream or cliff; and
- artificial monuments, such as a survey peg, fence or building.

Plans of survey enable the development of land to proceed in an orderly manner. They provide an effective base for those engaged in property related professions to accurately identify the extent, location and value of individual pieces or parcels of land.

¹Land Boundaries Prior to Survey Plans

[0-0050]

Under the ‘Old System’ (ie under the *Registration of Deeds Act* 1843, prior to the Torrens System), plans of survey did not exist. A reference to the boundaries of a property was made by a metes and bounds description (a series of compass bearings and distances from and to an identified reference point).

¹System of Plan Records

[0-0060]

The system of recording Cadastral (survey plan) details is maintained. These records enable a client to establish the legal land description and location of a parcel of land and provide references to individual plans of subdivision.

¹Who Deals With Land?

[0-0070]

Land can be dealt with by a wide variety of individuals, bodies, corporations, etc, but those who usually deal with land do so in the capacity of one of the following categories:

- natural person;
- company;
- trustee;
- personal representative;
- attorney; or
- legal representative.

¹How is Land Held?

[0-0080]

Land can be held in any one of the following ways:

- Sole tenancy – by one person or corporate body.
- Joint tenancy – by two or more persons without each having a separate or distinct title or share and there is a right of survivorship i.e. on the death of a joint tenant the interest of the deceased vests in the surviving joint tenant/s.
- Tenancy in common – by two or more people in shares determined by the tenants. On the death of any of them, their interest passes in accordance with their will or the laws of intestacy. Transfers of part shares are possible under a tenancy in common.

¹Land Tenures

[0-0090]

Land tenure is the means of identifying who has the right to use and occupy land in accordance with the varying degrees of ownership.

Security of tenure is a term which is commonly used to differentiate between the ‘value’ of certain tenures. For example, freehold is considered a more ‘secure’ and valuable tenure than State leasehold.

The following is a brief description of the various tenure types.

¹Non-Freehold Land

[0-0100]

Apart from freehold titles, the remainder of Queensland is State land administered by the Department of Environment and Resource Management under the provisions of the *Land Act* 1994. The *Land Act* 1994 is an Act consolidating all previous Acts relating to the administration, alienation, leasing and occupation of non-freehold land.

Non-freehold land is land that has not been freeholded and includes:

- (1) all land in Queensland, including land below the high-water mark (in the sense that while the *Land Act* 1994 generally applies to non-freehold land, most freehold land contains a reservation to the State for minerals); and
- (2) all other unallocated State land.

¹‘Unallocated State Land’

[0-0110]

A separate Act of Parliament in England gave Queensland letters patent and in that Act, the borders between Queensland and New South Wales, South Australia and the Northern Territory were established. Islands off the coast are generally considered part of the State.

‘Unallocated State land’ means all land in Queensland that is not:

- (a) Freehold land or land contracted to be granted in fee simple by the State.

(b) A road or reserve, including national parks, conservation parks, State forests and timber reserves. A reserve contains land required for a community purpose and includes:

- beach protection areas;
- cemeteries;
- parks;
- racecourses;
- showgrounds; and
- public amenities.

These are the more familiar public purposes and are indicative of purposes for the benefit of members of the community.

(c) Subject to a lease, licence or permit issued by the State.

Many government departments have the authority to deal with State land and, by specific Acts of Parliament, are able to deal with land by issuing a lease or licence over that land. Where a lease or licence has been issued, by the issuance of that lease or licence the land in question is then no longer unallocated State land for the purpose of the *Land Act 1994*.

Every parcel of unallocated State land has a title reference in the Automated Titles System commencing at 47000000. The details of each parcel are entered against the respective title.

Where State land is not required for public purposes, either now or in the future, the land can be offered to the public in a number of ways, by offer, auction, tender or ballot. It is necessary to establish the area and the means of making the land available. Having these choices, a tenure is decided. Tenures vary from occupation through leases for a term or in perpetuity (forever) (see ¶[0-0120]) to a freeholding tenure (see ¶[0-0130]). Some land is sold outright (see ¶[0-0140]).

¹State Leasehold

[0-0120]

Apart from the leases or licences issued by other government departments, all State land is controlled by the *Land Act 1994*, and the Department of Environment and Resource Management issues a number of types of leases and licences under that Act.

In all such tenures, the State gives the lessee exclusive use of the leased land and the lessee is able to use the land within the conditions imposed. The lessee has basically the same ability to deal with leasehold land as he/she has for freehold land, including the right to raise money by mortgage, to sell the lease, to sublease and to enter into an arrangement which can be registered as a charge over the lease, such as an easement.

¹Freeholding Tenure

[0-0130]

A freeholding tenure is a lease which has been issued by the State that will convert to freehold tenure once all conditions of the lease have been complied with and the money owing on the purchase has been paid. Following these prerequisites, a deed of grant will issue.

¹Freehold Land

[0-0140]

Outright freehold title is where the land has been alienated from the State and the ownership rests with the individual owner for an estate in fee simple. This simply means that the State has no right or claim to the land and, should the State require the land, it must acquire it from the owner either by negotiation or by resumption and payment of compensation. However, with very few exceptions, all minerals and petroleum are reserved to the State. These reservations were extended to include quarry material as from 31 December 1991.

Freehold land is held by way of an indefeasible title recorded in the Freehold Land Register (see ¶[0-0200]).

A deed of grant issues when the land is alienated from the State, the particulars of which are recorded in the Freehold Land Register to create an indefeasible title. Owners of such land may request a Certificate of Title, being a paper copy of the indefeasible title, however, if the lot is mortgaged the consent of any mortgagee is required.

¹Native Title

[0-0150]

In the 1992 *Mabo* case (*Mabo v Queensland (No. 2)* (1992) 107 ALR 1), the High Court of Australia recognised the existence of indigenous title to land. In doing so, it brought Australian law into line with the law in some other countries in this regard (eg Canada, New Zealand and the USA).

Native title is not 'land rights legislation'. It is a form of proprietary rights governed by the laws and customs of indigenous peoples. The significance of the *Mabo* decision is that native title is now legally recognised.

The High Court *Mabo* decision defines native title as follows:

'The rights and interests possessed under traditional laws acknowledged, and the traditional customs observed, by Aboriginal and Torres Strait Islander peoples.'

The details and mechanisms to establish the extent of native title and how it can be claimed became law in Queensland and the Commonwealth in December 1993 (*Native Title Act 1993* (Cth)).

¹How is Land Administered?

[0-0170]

When a parcel of land is alienated (ie, no longer held by the State), it is converted to freehold and ownership is granted in fee simple or reserved for public purposes with specified reservations to the State.

The lease or title that issues for each parcel contains the Lot on Plan description and is part of the Land Registry. It is given a title identifier reference for identification which consists of eight digits.

All transactions or dealings with the land are recorded on the relevant title.

¹Torrens Title System

[0-0180]

The Torrens Title System is the system of land administration which applies in Queensland.

The main architect of the land titling system which now bears his name was Robert Richard Torrens, who was born in Cork in 1814 and educated in Dublin. He arrived in South Australia in 1840 and was appointed Collector of Customs. In 1852, he became Registrar General and pursued, amongst others, the reform of the land title registration system.

Despite bitter opposition, the *Real Property Act* 1858 (SA) was proclaimed in South Australia. Queensland was the first State to follow the lead of South Australia in introducing the Torrens System by the proclamation of the *Real Property Act* 1861.

The Torrens System was probably based on an amalgam of concepts from the English *Merchant Shipping Act* 1854, registration systems in the Hanseatic towns (a group of towns in Northern Germany) and the report of English Royal Commissioners of 1857.

¹The Principles of the Torrens System

[0-0190]

The main concern that prompted Torrens to devise the System was the need to ensure that a person purchasing land would be able to acquire a secure title to that land in a process that facilitated land dealings for the community. The Torrens System, through the provisions of the *Land Title Act* 1994 in Queensland, ensures that the interests of registered owners, and other registered proprietors, of land are protected.

This system was implemented in Queensland with the proclamation of the *Real Property Act* 1861. Under the Torrens System, the State guarantees title to land on registration of instruments.

The Torrens System basically enables transactions over land to be recorded in a government managed register. However, it is important to note that the system is 'title by registration', and not 'registration of title'. That is, you must register your interest to have legal title.

A record of the indefeasible title is held by the Registrar of Titles in the Land Registry by way of the computerised Automated Titles System. The *Land Title Act* 1994 does not make provision for the automatic issue of a duplicate title (referred to as a certificate of title); this must be the subject of an application by the registered owner.

A register of State leasehold tenures parallels the Freehold Land Register to the degree possible. A procedure of issuing lease tenure documents was discontinued from 8 March 2000.

¹Freehold Land Register and Indefeasible Title

[0-0200]

The Registrar must record in the Freehold Land Register details of every lot and of every interest in a lot (ss 27 and 28 of the *Land Title Act* 1994). Upon the recording of particulars of a lot in the Freehold Land Register, an indefeasible title for that lot is created (s 37 of the *Land Title Act* 1994). The Registrar must register instruments which comply with the *Land Title Act* 1994 and, upon doing so, such instruments form part of the Register (ss 30 and 31 of the *Land Title Act* 1994). The indefeasible title of a lot is the current particulars for the lot within the Freehold Land Register (s 38 of the *Land Title Act* 1994).

Upon payment of the fees prescribed by regulation, any person may search and obtain a copy of:

- the indefeasible title of a lot;
 - a registered instrument;
 - a lodged instrument which has not been registered, provided the instrument has not been withdrawn on the basis that it should not have been lodged (s 159(2) of the *Land Title Act 1994*); or
 - other information kept under the *Land Title Act 1994*,
- (s 35 of the *Land Title Act 1994*).

¹Certificate of Title

[0-0210]

The *Land Title Act 1994* relies upon the particulars in the Freehold Land Register, and not the particulars on a Certificate of Title, for evidence of ownership. Therefore a Certificate of Title is not automatically created. On application by the registered owner in a Form 19 – Application for Title, the Registrar must issue a Certificate of Title. However, if the lot is subject to a registered mortgage, the consent of any mortgagee must be endorsed on the Form 19 (ss 42(1) and (2) of the *Land Title Act 1994*).

Certificates of Title are certified by the Registrar as an accurate statement of the Freehold Land Register (s 43 of the *Land Title Act 1994*). On issuing a Certificate of Title, the Registrar must make a note in the Freehold Land Register that the Certificate has been issued and may issue a second Certificate only if the first Certificate is cancelled (s 44 of the *Land Title Act 1994*). Unless the Registrar otherwise directs, a Certificate of Title deposited in the Titles Office is cancelled (s 45 of the *Land Title Act 1994*).

¹Transferring and Creating Interests

[0-0220]

It is the act of registration which transfers or creates interests in lots. Until that time, an instrument does not transfer or create an interest in a lot at law (s 181 of the *Land Title Act 1994*). Upon registration of an instrument that by its terms transfers or creates an interest in a lot, the interest is transferred or created and vests in the person identified in the instrument as the person entitled to the interest (s 182 of the *Land Title Act 1994*). Upon lodging an executed instrument and any other required documents and otherwise complying with the *Land Title Act 1994*, a person to whom an interest is to be transferred or in whom an interest has been created has a right to have the instrument registered (s 183 of the *Land Title Act 1994*).

The Registrar registers an instrument by recording its details in the Register (s 173 of the *Land Title Act 1994*). It is from then that the instrument is taken to be registered. However, the instrument forms part of the Register from the time when it was lodged (ss 174 and 175 of the *Land Title Act 1994*). Instruments have priority according to when each of them was lodged, not according to when they were executed (ss 177 and 178 of the *Land Title Act 1994*).

¹Indefeasibility

[0-0230]

Notwithstanding actual or constructive notice of an unregistered interest affecting a lot, the registered proprietor of an interest holds that interest subject only to other registered interests and free from all other non-registered interests (ss 184(1) and 184(2)(a) of the *Land Title Act 1994*). Accordingly, a registered proprietor is only liable for a proceeding for possession of the

lot or an interest in the lot if such proceeding is brought by the registered proprietor of an interest affecting the lot (s 184(2)(b) of the *Land Title Act* 1994). As a result of ss 184(1) and (2) of the *Land Title Act* 1994, a registered proprietor has indefeasibility of title.

¹Exceptions to Indefeasibility

[0-0240]

There are, however, some exceptions to indefeasibility. These exceptions can be found in ss 184(3)(b) and 185 of the *Land Title Act* 1994.

In certain circumstances where an exception to indefeasibility applies, the Registrar may correct the indefeasible title (s 186(1) of the *Land Title Act* 1994). The person affected by the correction may apply to the Supreme Court within one month after receiving notice of the correction for an order that the correction be amended or set aside (ss 186(2) and (3) of the *Land Title Act* 1994). Pursuant to s 187 of the *Land Title Act* 1994, the Supreme Court may make any orders which it considers just.

The Titles Office

A Brief History

¹1861

[0-0250]

Proclamation of the *Real Property Act* 1861 (now repealed) on 7 August 1861 marked the introduction to Queensland of the Torrens System of registering interests in land. Freehold land granted by the Crown prior to that time was dealt with under the 'Old System' of titling under the *Registration of Deeds Act* 1843. Unlike other States, all identified 'Old System land' in Queensland has now been converted to Torrens Title.

The most relevant element of the Torrens System is that purchasers and other parties acquiring interests in land 'gain their interest on registration', as opposed to simply registering an interest they have already acquired. In other words, at law, until an interest is registered by the Registrar of Titles, there is no legal interest.

¹1884

[0-0260]

Administration of the Titles Office (and associated responsibilities and authority) was moved to the Registrar of Titles by the *Registrar of Titles Act* 1884 (now repealed).

¹1887

[0-0270]

Semi-autonomous district Registries, centred at Townsville (Northern District) and Rockhampton (Central District), each under the control of a Deputy Registrar of Titles, were authorised by the *Real Property (Local Registries) Act* 1887 (now repealed). Brisbane remained as the Registry for the Southern District.

¹1988

[0-0280]

It was recognised that a freehold title Land Information System was unique and provided industry important information about a natural resource. As a result, the Titles Office changed from a sub-department of Justice to the Department of Freehold Land Titles in July of this year.

¹1990**[0-0290]**

On 7 December 1989, Cabinet decided to amalgamate portfolios with similar responsibilities. As a result of this decision, the Department of Freehold Land Titles was amalgamated with the Departments of Land Management, Geographic Information and the Valuer-General to form the Department of Lands early in 1990.

¹1994**[0-0300]**

On 24 April 1994 the *Land Title Act* 1994 was proclaimed. This Act provided for the implementation of a computerised register (the Automated Titles System (or 'ATS' as it is known) to replace the existing paper-based Register.

Another major change resulting from that Act was the abolition of the automatic issue of Certificates of Title. Owners of land may apply for a Certificate of Title (by lodging a Form 19 – Application for Title) providing the consent of any mortgagee is endorsed. All Certificates of Title (whether they existed prior to or were issued after 24 April 1994) are still valid and must be deposited for cancellation with any further dealings.

With ATS, registration of ownership of interests are recorded on the indefeasible title (ie the computer file held in ATS). ATS was first introduced in Rockhampton on 26 April 1994. Townsville and Brisbane followed soon after on 9 and 30 May 1994 respectively.

The *Land Title Act* 1994 repealed all of the previous *Real Property Acts*.

¹1995**[0-0310]**

The project of converting all current title information (from 2.6 million paper titles) to computer data in ATS was completed (in just 18 months).

¹1996**[0-0320]**

In February 1996, new departments were formed and as a result land titling became part of the Department of Natural Resources since renamed the Department of Natural Resources and Water.

¹1998**[0-0325]**

Early in 1998 the Land Registry adopted the use of imaging technology for the examination and registration of documents. The imaging of all documents lodged for registration eliminated the need for the physical movement of the paper throughout the state to the offices where registration could be affected. This has enabled a document lodged in any office to be examined and registered in any of the registration offices. It has also assisted in reducing the time taken for a document to be registered.

Historical Land Register**[0-0330]**

Parcels of land that were not unallocated State land had a title on which ownership and other detail were contained. A search of an historical title is available by obtaining a print of the digital image.

Titles were produced in original form (Titles Office copy of the Register) and in duplicate (the client's copy), and are held over:

- freehold land (deed of grant or Certificate of Title);
- State leasehold (leases, licences and permits); and
- other tenures, such as Queensland Housing Commission leases.

Over time, these titles have been produced in a variety of ways.

Freehold titles (D/G or C/T) were either in a bound book format or a loose leaf format.

Registrations made on titles stored in bound book format were endorsements made by affixing a stamp and hand writing the details. Registrations appeared in chronological order.

Registrations on titles stored in loose leaf format were made by typing the latest details and ruling through superseded endorsements.

Deeds of grant and Certificates of Title provide the following information:

- reference to the title or deed by Volume and Folio;
- estate or interest held (eg fee simple, life estate, estate in remainder);
- the legal description of the land (identified by a Lot on Plan description and including location by County and Parish);
- chronological record of ownership based on time of lodgement of instruments (names and tenancy of registered proprietor/s); and
- chronological record of various transactions affecting the land, based on time of lodgement of instruments (eg mortgages and easements).

Further to these details:

- deeds of grant contain details of Crown rights, such as mineral rights; and
- State leases include details of lease conditions.

The Automated Titles System

[0-0340]

The Automated Titles System (ATS) is the electronic registries for:

- freehold land;
- State land under the *Land Act* 1994;
- water allocations; and
- powers of attorney.

It also hold records for land that was formerly in registers held by other authorities and includes:

- land leased from the Department of Housing;
- land owned by Queensland Rail;
- land known as National Park, Conservation Park, Forest Reserve and State Forest, Timber Reserve;
- land owned by the Port of Brisbane Authority, Townsville Port Authority, Cairns Port Authority and Ports Corporation of Queensland;
- land identified as industrial land;
- land owned by the Commonwealth;
- land owned by Sunwater; and
- access rights under the *Sugar Industry Act 1999*.

ATS not only creates legal electronic registers, but automates, through computerisation, the registration process, which provides significant benefits for the community and the real property industry.

ATS provides the capability for searching the registers from a client's own office environment and allows registration service times and resource efficiencies superior to a manual environment.

ATS enables all titling functions to be provided from any location using one register for the entire State.

ATS provides a level of security that is not possible in a paper based environment. The registers are fully backed up to electronic media and stored offsite for recovery purposes in the event of a disaster. Data recovery can occur within a short time frame, which would minimise the impact on the business if such an event occurred.

¹Conversion of Title References in the Automated Titles System

[0-0350]

The method of converting an existing Volume and Folio reference to an ATS title identifier is as follows:

- (1) prefix the four Volume digits with the code digit:
 - 1 for Brisbane;
 - 2 for Townsville; and
 - 3 for Rockhampton;
- (2) combine (1) with the Folio digits (must be three digits, if not, prefix with 0); ie:

code digit + 4 digits VOL + 3 digits FOL = 8 DIGITS

eg:

VOL 1234 FOL 56 = 11234056

VOL N1234 FOL 56 = 21234056

VOL C1234 FOL 56 = 31234056

¹Conveyancing in Queensland

[0-0370]

The conveyancing industry prepares and lodges the necessary documentation in the Land Registry to record real property transactions. When all legislative and practice requirements have been satisfied, the interest is registered. Registration updates the register by including the details of the transactions and guarantees title under the *Land Title Act 1994*.

When a house property or a home site is bought, the purchaser owns everything within the boundaries of the property. However, when a unit is bought the purchaser owns the dwelling area itself, but only shares ownership of the common areas like corridors, stairways, gardens, driveways and car parking areas. The commonly owned property is administered, managed and controlled by the body corporate (a body made up of registered owners). This also applies to group titles, which can include land outside buildings.

Later Developments

¹Home Units

[0-0380]

The post-war growth in demand for accommodation posed a new problem for the real property industry. At that time it was not possible to obtain a separate Certificate of Title for a home unit, and developers of these buildings could only give a purchaser a long term lease. This created difficulties for intending purchasers obtaining finance for purchase.

¹Building Units

[0-0390]

In 1965, Queensland adopted legislation, the *Building Units Titles Act 1965*, which provided for a multi-storied building to be subdivided floor by floor and further subdivided within those floors, and for Certificates of Title to issue for the lots created. The Certificates of Title had exactly the same standing as those for other land, and dealings with them are registered in the same way.

¹Group Titles

[0-0400]

The *Group Titles Act 1973* allowed an area of land to be subdivided and occupied as a group project. That is, all the areas within the boundaries of the subdivision are privately owned including roads, footpaths, parks, playground or other recreation or service areas. Areas used by all owners are referred to as 'common property'. The owners of individual lots within the group subdivision share both ownership in the common area as tenants in common and the maintenance obligations.

¹Combination of Building Units and Group Titles Legislation

[0-0410]

The *Building Units and Group Titles Act 1980* amalgamated the *Building Units Titles Act 1965* and the *Group Titles Act 1973* into one piece of legislation. Interests in building units titles and

group titles follow the Torrens System of registration and may be dealt with in the same manner as 'traditional' land (that is, they may be transferred, leased or mortgaged).

¹Body Corporate and Community Management Act 1997

[0-0411]

The *Body Corporate and Community Management Act 1997* supersedes the *Building Units and Group Titles Act 1980* and provides flexible and contemporary arrangements for community title schemes over freehold land. The Act provides for the creation of a community titles scheme and incorporates a comprehensive management and dispute resolution structure.

The Water Allocation Registry

Establishment of the Water Allocation Register

[0-0500]

The *Water Act 2000* among things, provided for the creation of a new right called a 'water allocation' and for their administration through the establishment of the Water Allocation Register (WAR). The WAR is maintained in the Automated Title System (ATS) and allows central recording of ownership, and interests and dealings in, water allocations. It is modelled on, but maintained separately from the Land Registry. A Registrar of Water Allocations is appointed to administer the WAR.

What is a Water Allocation?

[0-0510]

The *Water Act 2000* provides the legislative framework for a comprehensive planning process which better defines the availability and security of water. As part of this process, an existing entitlement may continue or be converted to a water allocation.

Water allocations are an entitlement created under the *Water Act 2000*. Water allocations once created and recorded in WAR are assets that are owned separately to land. They may be owned by non-landholders and traded. This is in contrast to both water licences and interim water allocations that generally attach to land and are not recorded in WAR.

It is important to note that the water allocation title is not indefeasible. It is also of particular relevance to legal practitioners that a water allocation is personal property, not real property, thus affecting the formulation of a Last Will & Testament, and subsequently the preparation of a Transmission by Death.

Comparison of the Land Registry and the Water Allocation Registry

[0-0520]

The *Water Act 2000*, with the exception of those dealings and interests referred to in s 150(1)(e) of the *Water Act 2000*, allows for an interest or dealing that may be registered under the *Land Title Act 1994*, to be registered for a water allocation. As such, interests in water allocations may be dealt with in the same manner as 'traditional' land (that is, they may be transferred, leased or mortgaged etc).

Most dealings to be registered under the *Water Act 2000* are dealt with similarly to instruments under the *Land Title Act 1994*, in that they are lodged, attract similar fees, and are registered in ATS.

All dealings under the *Water Act 2000* require a title reference at lodgement.

Water allocations are dealt with by any individual or entity that can deal with land (see ¶[0-0070]).

Tenancies used to describe ownership of land apply to water allocations (see ¶[0-0080]).

Some dealings (other than mortgages and related dealings) with water allocations require the deposit of a 'Dealing Certificate' or a 'Notice to the Registrar' to signify compliance with requirements relating to the 'resource related elements' of the water allocation.

A subdivision of a water allocation does not involve a Survey Plan, rather it is a request to create two or more smaller water allocations, the sum of which equals the total of the previous water allocation. Dealings affecting the new water allocations cannot be lodged before the subdivision has registered.

For further information see part 49 – Water Allocations.

How is a Water Allocation identified?

[0-0530]

To enable a water allocation to be given a unique lot/plan identifier it was necessary to provide water allocations with a plan number. As it is not possible to physically survey a water allocation it was determined that with the implementation of each new water scheme all the allocations within that scheme would be allocated a common administrative plan number. The associated water allocations become 'lots' on that plan.

The plan prefix for an administrative plan is always 'AP'. As an example, for the Fitzroy scheme the plan number is AP6829, for all allocations (or 'lots'). Therefore, water allocation 40 in the Fitzroy Scheme would be described as Lot 40 on AP6829 (or 'WA on Plan' or 'Water Allocation on Plan'). A water allocation does not have a county or parish as a part of the description.

Although a water allocation is described in the same manner as a lot of land, the plan is an administrative plan as mentioned earlier, and does not represent a defined physical location, or show any dimensions. Maps of the various scheme areas have been captured in ATS as the relevant administrative plan.

To facilitate the management of the 'resource related elements' of the water allocation by the Department of Environment and Resource Management, water allocations also bear additional identifiers (where applicable) of:

- the 'zone' where the water is actually drawn from,
- the name of the 'scheme area', and
- an identifier of the Resource Operations area and/or Licensee.

Allocation Types

[0-0540]

There are two types of water allocation, which differ in the way the Department manages the 'resource related elements':

- Resource Operations Licence or ROL (including Private ROL or Water Agreement)
- Non Resource Operations Licence or NRL.

Resource Operations Licence or ROL (including Private ROL or Water Agreement)

[0-0550]

A water catchment or water supply area that has been the subject of a Water Management Plan (WAMP) becomes an area that is the subject of a Resource Operations Licence.

The Licence holder is responsible for managing the day to day supply, or taking, of water to or by holders of water allocations. The ability to manage supply is assured by the requirement for transfers of a water allocation (and some other dealings) to be accompanied by a Notice to the Registrar of the Existence of a Water Supply Contract (ROP 13).

Non Resource Operations Licence or NRL

[0-0560]

A water allocation in these schemes is not subject to the same control by a Resource Operations Licence holder, and so has additional requirements relating to the circumstances under which water may be taken.

An example of these additional requirements is a condition specified in the water allocation that water is not taken unless the river is flowing at a specified rate, at the time and place where the water is to be taken.

There may also be a requirement for equipment used to take such water to have a sealed meter installed, which could be subject to inspection by authorised officers of Water Management and Use area of the Department of Environment and Resource Management.

Transfers of these water allocations (and some other dealings) are to be accompanied by a Dealing Certificate issued by Water Management and Use area.

How is the Water Registry administered?

[0-0570]

The management of 'resource related elements' and issue of either Dealing Certificates or Notices to the Registrar are dealt with by the Water Management and Use area of the Department of Environment and Resource Management. All matters relating to lodgement and registration of instruments are dealt with by Titles Lodgement and Titles Registration staff under the authority of the Registrar of Water Allocations, a position that is currently held by the Registrar of Titles.

¶[0-0800] deleted

Legislation

[0-8000]

The Acts or parts of Acts administered in the titling function are:

- the *Land Title Act 1994*
- the *Land Act 1994*

- the *Building Units and Group Titles Act* 1980
- the *Body Corporate and Community Management Act* 1997
- the *Foreign Ownership of Land Register Act* 1988
- the *Aboriginal Land Act* 1991
- the *Torres Strait Islander Land Act* 1991.

Registration of all dealings with freehold and State tenure titles is in accordance with these Acts and other legislation which impacts.

Some of the other Acts which impact on the titling function are as follows:

- the *Trusts Act* 1973
- the *Property Law Act* 1974
- the *Surveyors Act* 2003
- the *Public Trustee Act* 1978
- the *Coastal Protection and Management Act* 1995
- the *Survey and Mapping Infrastructure Act* 2003
- the *Integrated Planning Act* 1997
- the *Water Act* 2000.

Cross References and Further Reading

[0-9000]

Nil.

Notes in text

[0-9050]

Note ¹ – This numbered section is not applicable to water allocations or the Water Allocations Register.

Part 1 – Transfer

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Part 1–Transfer

General Law

[1-0000]

A transfer is the passage of a right from one person or corporation to another by virtue of an act done by the transferor with that intention, as in the case of a conveyance or an assignment by way of sale or gift or by operation of law.

^{1, 2}The transfer of an interest in land effected under the *Land Title Act 1994* has the result that the person or corporation registered as the owner of that interest has title to it and the title has the protection of indefeasibility given under the Land Title Act.

^{2, 3}The registration of a transfer for an interest in a water allocation to the extent provided for in s. 173 (1)(e) of the *Water Act 2000* has the same effect as a transfer of an interest in a lot under s. 62 of the Land Title Act. However, on registration of the transfer there are no provisions for the protection of indefeasibility of title.

^{1, 3}A lease, licence or sublease may be transferred under s. 322 of the *Land Act 1994* only to a person if the person is eligible and only if the Minister has given written approval to the transfer. However, on registration of the transfer there are no provisions for the protection of indefeasibility of title.

^{1, 3}Under s. 142 of the Land Act, a minor may not apply for, buy or hold land.

Legislation

[1-1000]

^{2, 3}Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1, 3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

Transfer of Fee Simple, a State Lease or Licence, or a Water Allocation

General

[1-2000]

The following is a general guide to completing a Form 1 – Transfer under the *Land Title Act 1994*, *Land Act 1994* and *Water Act 2000* to enable the transfer of fee simple, a State lease or licence, or a water allocation. However, there are situations where this guide will not be applicable. Those situations, where some aspect of the transfer is required to be completed differently, are set out at ¶[1-2100] to ¶[1-2630].

Item 1 The Interest being Transferred

[1-2010]

Generally, the interest being transferred is the fee simple, a State lease or licence, or a water allocation. Different interests may be transferred using a single form. However, the details relevant to each interest, e.g. the consideration must be clearly set out in the transfer.

Item 2 Lot on Plan Description

[1-2020]

^{1, 2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

e.g. Lot on Plan Description	Title reference
Lot 27 on RP 204939	11223078

^{2, 3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

e.g. Lot on Plan Description	Title reference
WA 27 on AP 7900	46012345

^{1, 3}State Tenure Description

The description of the relevant State lease or licence should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for a crown plan).

e.g. Lot on Plan Description	Title reference
Lot 27 on CP LIV1234	40567123

Item 3 Transferor

[1-2030]

The full name of the transferor/s must be inserted.

If the transferors are two or more individuals as joint tenants or tenants in common, the tenancy should **not** be shown.

If the transferor is a body corporate constituted under the *Body Corporate and Community Management Act 1997*, then the following words are inserted ‘Body Corporate for [name of scheme] community titles scheme [scheme number] e.g. ‘Body corporate for Seaview community titles scheme 1234’.

If a transferor holds the property as trustee or personal representative, then this must be stated, e.g. '[name of transferor] as Trustee' or '[name of transferor] as personal representative'.

If a registered owner or holder of an interest holding with another, either as joint tenants or as tenants in common, appears to transfer his/her interest to the other, it will be accepted that the transferee and the remaining tenant in common or joint tenant (as the case may be) are one and the same person. This will be assumed unless a declaration or solicitor's letter identifies the transferee as a different person. The substance of the transferee's statutory declaration or solicitor's letter should be along the following lines:

Declaration

'I, John Anthony Smith, of [address] do solemnly and sincerely declare as follows:

- (1) I am the transferee from Patricia Mary Smith of a half share in [full description] contained in title reference 16543002.
- (2) I am the son of John Anthony Smith, the remaining [registered owner, or holder of an interest e.g. lessee] of the above [lot or other interest e.g. State lease] and I am not one and the same person as he.'

Solicitor's Letter

'I am the solicitor for John Anthony Smith, the transferee from Patricia Mary Smith of a half share in [full description] contained in title reference 16543002. My client is the son of John Anthony Smith, the remaining [registered owner or holder of an interest e.g. lessee] of the above [lot or other interest e.g. State lease], not one and the same person as him. Please register both names on the title as [registered owners or holders of an interest e.g. lessee].'

If a transferor is registered as an owner of a lot or holder of an interest in a name that has subsequently been changed either by marriage, deed poll, change of name (e.g. change of name issued by the Registrar of Births Deaths and Marriages) or change of name of a company then the name should be shown as [changed name] formerly [registered name]. Relevant documentary evidence e.g. a copy of the marriage certificate issued from the registry of births, deaths and marriages in the relevant jurisdiction or search from Australian Securities & Investments Commission National Names Index showing the previous names must be deposited with the Form 1. See part [60-1030] for more information about depositing supporting documentation. In the case of a natural person, a statutory declaration setting out the facts of the change of name must also be deposited. However, this practice must not be used where the transfer is for the purpose of s. 358 of the Land Act. **Note:** If the transferor is only transferring part of the interest held and are to remain on title as a registered owner or holder of an interest, a Form 14 – Request to Change Name should be deposited prior to registration of the Form 1 – Transfer.

Item 4 Consideration

[1-2040]

The consideration is the full amount paid or the terms agreed by the transferee and the transferor for the transfer of the interest. The consideration must be shown inclusive of the amount of any Goods and Services Tax (GST) payable. Where a sale price comprises an adjustment due to a rebate, discount or cash back on settlement the amount shown in this item must be the net amount after adjustment.

Monetary consideration must be shown in Australian dollars and can be expressed in words or figures.

^{1, 2}For a transfer of the fee simple, other than to the Commonwealth of Australia, an additional fee is payable if the monetary consideration exceeds the amount specified in the Schedule of Fees (see the Land Title Regulation 2015 – Schedule 2).

If the basis of the transfer is other than monetary, this should be fully expressed, e.g. ‘pursuant to the terms of will dated [date] deposited with instrument No [number] or document No [number]’ or ‘pursuant to deed of retirement and appointment dated [date]’.

The consideration may be expressed in part as being, e.g. ‘pursuant to an agreement dated [date]’ or ‘pursuant to the terms of a contract of sale dated [date]’ however, the consideration must be fully set out by including the monetary amount or other value exchanged.

^{1, 2}Where the consideration in a transfer of the fee simple makes reference to the terms of an agreement, deed etc, a copy of the agreement or deed must be deposited to assess any additional lodgement fees based on the consideration.

For information about options for the deposit of evidence, refer to [60-1030].

Where a transfer is pursuant to a gift or a nominal consideration, words which express the nature of the transaction must appear in Item 4, for example:

- ‘By way of gift’; or
- ‘The natural love and affection borne by the transferor for the transferee’.

If the basis of the transfer appears to be in the nature of a gift, and the transfer is executed under an enduring power of attorney, and that power of attorney does not authorise the attorney to make a gift, the attorney may only make a gift of value and in circumstances which satisfy s. 88(1) of the *Powers of Attorney Act 1998*. For the transfer to be registered, a statutory declaration by the attorney stating the facts which satisfy s. 88(1) and appropriate evidence to support the declaration must be deposited.

In general terms, an interest in land, which is to be **effective at law, must be created in writing**. Exceptions to this requirement appear in s. 10(2) of the *Property Law Act 1974*. A transfer may be executed pursuant to an oral agreement; however, the transfer is then the contract in writing signed by the parties and is also the document that transfers the interest in the land (s. 11 of the *Property Law Act*). Such a transfer is acceptable for registration without further evidence provided the full terms of the oral agreement are set out, e.g. ‘pursuant to an oral agreement which includes the payment of \$...’ or ‘pursuant to an oral agreement to exchange the within land for Lot 123 on Registered Plan 456789’.

Item 5 Transferee

[1-2050]

The full name/s of the transferee/s must be inserted. While full names must be inserted, if a person’s legal name is described, e.g. as John J. Brown, where the ‘J’ does not represent a given name, then that is acceptable, upon written confirmation from a solicitor acting for the person or the person concerned that this is the case.

²If the transferee is a minor their date of birth must be shown.

If there are two or more transferees, the tenancy pursuant to which those transferees hold their interest must be stated. The transferees will be either joint tenants or tenants in common or trustees. If they are tenants in common, the interests held by the transferees must be specified in fractions, e.g. $\frac{1}{4}$ and $\frac{3}{4}$ if the whole of the fee simple is being transferred or $\frac{1}{4}$ and $\frac{1}{4}$ if a half interest in the fee simple is being transferred.

²Section 56(2) of the Land Title Act provides direction for the Registrar to register transferees as tenants in common, where a transfer to co-owners does not show whether the co-owners are to hold as tenants in common or as joint tenants. However, this provision will be relied upon only after written confirmation has been received from the transferees or the solicitor for the transferees stating the tenancy was intentionally not shown with the expectation the transferees were to be registered as tenants in common.

The Registrar will not record in a register a transferee who is deceased, except where:

- the words ‘since deceased’ are included after the name of the transferee; and
- the transfer is accompanied by either a transmission application in that deceased transferee’s estate or, if a joint tenant, a request to record death.

If the transferee is a corporation registered by the Australian Securities and Investment Commission, either the Australian Company Number, Australian Registered Body Number or the Australian Business Number must be shown in Item 5. Foreign corporations not registered as such in Australia must establish the jurisdiction of their incorporation by production of suitable evidence from the jurisdiction, e.g. copy of certificate of incorporation together with a qualified translation (if required). For information about options for the deposit of supporting documentation see [60-1030].

A corporation may hold property as joint tenants with an individual or another corporation (s. 34(1) of the Property Law Act). However trustee/s of a trust cannot be joint tenants with another entity.

If the transferee is an incorporated association under the *Associations Incorporation Act 1981*, a certified copy of the certificate of incorporation must be deposited with the transfer. See [51-0370] for additional information relating to incorporated associations. For information about options for the deposit of supporting documentation see [60-1030].

Example of Item 5 where the transferees hold as joint tenants:

5.	Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)
		Terrence James	BROWN	
		Maureen Frances	BROWN	as joint tenants

In the example below, the first two parties are holding as tenants in common with the other parties but between themselves are holding their interest as joint tenants.

5.	Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)
		Terrence James	BROWN and	
		Maureen Frances	BROWN	as joint tenants inter se
		Michael Andrew	BROWN	
		Peter John	BROWN	
		Bernard Edward	BROWN	as tenants in common in the interests of 3/9, 2/9, 2/9 and 2/9 respectively

If the transferee is a body corporate constituted under the Body Corporate and Community Management Act, then the following words must be inserted: ‘Body Corporate for [name of the Body Corporate] community titles scheme [scheme number]’ e.g. ‘Body corporate for Seaview community titles scheme 1234’.

A transfer to the State does not attract a lodgement fee. Refer to the current Land Title Regulation, Land Regulation or Water Regulation for further information.

Item 6 Execution

[1-2060]

The transferor and transferee sign the transfer at Item 6 where indicated on the Form 1. Separate executions are required for each transferor and transferee, in the presence of a qualified witness as defined under Schedule 1 of the Land Title Act or s. 46 of the Land Regulation. Form 1 requires the completion of a separate witnessing provision for each signature which is required to be witnessed, even though signatures were made in front of the same witness. (For further information, see part 60, esp. ¶[60-0360], ¶[60-0390] and ¶[60-0900]).

A Form 1 – Transfer must be signed by:

- the transferor, the transferor’s registered attorney or another suitably authorised officer or person;
- the transferee, the transferee’s registered attorney, the transferee’s lawyer or another suitably authorised officer or person.

²There is no authority for a minor (a person who has not yet reached 18 years of age) to execute a transfer. Accordingly, a transfer by a minor, either as a sole transferor or as one of several transferors is not acceptable unless a Court Order authorises a person to execute the transfer on behalf of the minor (s. 136 of the Land Title Act).

²The execution for a minor as transferee must be by his/her legal guardian or the solicitor for the legal guardian, e.g. ‘AB, father and legal guardian of DE’ or ‘XY, solicitor for AB, father and legal guardian of DE’. The normal witnessing requirements for an individual or a solicitor apply to this type of execution.

For further information about executions see part 60, esp. ¶[60-0900].

Item 6 (Electronic Form) – The requirements for the execution and certification are contained in the Participation Rules (Queensland) for electronic conveyancing.

Lodgement of Transfer

[1-2070]

The following should be deposited with the Form 1 – Transfer:

^{1, 2}For a fee simple title:

- (1) the Certificate of Title, where one is currently issued;
- (2) a Form 24 – Property Information (Transfer); and
- (3) a Form 25 – Foreign Ownership Information (if applicable).

^{2, 3}For a water allocation title:

- (1) a Form 24 – Property Information (Transfer); and
- (2) a Form W2F152 – Notice to registrar of water allocations of existence of supply contract (for water allocations managed under a Resource Operations Licence); or
- (3) a Water Allocation Dealing Certificate for Notice of Proposed Transfer of Unsupplemented Water Allocation – (for water allocations not managed under a Resource Operations Licence).

^{1, 3}For a State Lease or licence:

- (1) the Minister's written approval and any additional documentation or requirements mentioned in the written approval e.g. declarations, rental clearance certificates or a copy of the contract (must be lodged within 6 months of approval);
- (2) a Form 24 – Property Information (Transfer); and
- (3) a Form 25 – Foreign Ownership Information (if applicable).

Property Information (Transfer)

[1-2080]

A transfer of fee simple, transfer of a lease under the *South Bank Corporation Act 1989*, transfer of a State lease or licence or a transfer of a water allocation must be accompanied by a completed Form 24 – Property Information (Transfer).

For further information relating to Form 24, see part 24.

Foreign Ownership Information

[1-2090]

If the transferee/purchaser is a foreign person or foreign company as defined in the *Foreign Ownership of Land Register Act 1988*, then a Form 25 must be completed and attached to the Form 24.

For further information relating to Form 25, see part 25.

¹Transfer of Freehold or Non Freehold Land with the Benefit of a Road Licence

[1-2095]

Section 104(c)(i) of the *Land Act 1994* requires that, if the person holding a road licence transfers the land with the benefit of the road licence, the person must also transfer the road licence to the new registered owner of the land or to the new lessee of a State lease. Alternatively, s. 104(c) (ii) of the *Land Act* allows the person selling the land to surrender the road licence at the time the sale is settled. The Ministerial approval to the transfer of the road licence, and any additional documentation or requirements mentioned in the Ministerial approval, e.g. declarations, rental clearance certificates or a copy of the contract must be deposited with the transfer of the road licence.

Under section 322(2) of the *Land Act*, Ministerial approval is not required in relation to the transfer of a road licence over a temporarily closed road where:

- The Transferor is transferring freehold land and a road licence (over a temporarily closed road) that are both the subject of a covenant binding them in the same ownership under s. 373A(5)(c) of the *Land Act*; and
- Both the road licence and the freehold land are being transferred to the same transferee; and
- Where the transferee is an individual – the transferee is an adult.

However, the following must be deposited with the Transfer of the road licence:

- a Rental Position Report showing that all charges owing to the State on the road licence have been paid before the transfer is lodged; and
- a declaration by the Transferee stating that the Transferee is aware of the conditions of the road licence.

²Transfer to Mortgagee

[1-2100]

If a mortgagee of a lot becomes the registered owner of that lot, s. 63(2) of the *Land Title Act 1994* requires that the mortgagee be recorded as the registered owner free from the mortgage. The mortgage is then cancelled as the interests are merged upon registration of the transfer.

However, under s. 63(3) of the Land Title Act, the Registrar will not cancel the mortgage if requested by the mortgagee by way of:

- including in Item 5 of the Form 1 the statement: ‘do not cancel Mortgage No. [number] (s. 63(3) of the Land Title Act)’; or
- a letter from the mortgagee or solicitor for the mortgagee deposited with the transfer asking that the mortgage not be cancelled.

Transfer Pursuant to Part 19 of the *Property Law Act 1974*

[1-2105]

A de facto couple may settle ownership of property pursuant to part 19 of the Property Law Act. Under part 19 they may enter a recognised agreement or apply to the Court for an order to be made.

Where a transfer is made pursuant to part 19 of the Property Law Act a copy of the agreement or Court order must be deposited. For information about options for deposit of supporting evidence see [60-1030].

Item 4 of the transfer must be completed to indicate that the transfer is pursuant to part 19 of the Property Law Act and include details that clearly identify the agreement or order e.g. the date the agreement or order was made.

A duty notation is required and lodgement fees are applicable.

Transfer Pursuant to an Order under the *Family Law Act 1975* (Cth)

[1-2110]

Where a transfer is pursuant to terms of an order made under the Family Law Act (Cth) (the Act) this must be stated clearly in Item 4 including when the order is made, for example:

Pursuant to an order dated [date] made under the provisions of the Family Law Act 1975.

The transfer is registrable without deposit of the order provided the transferee is one of the registered owners or holders of the interest, and both registered owners or holders sign the transfer.

In cases where the transfer is in favour of the female spouse and her surname as the transferee differs from that shown on the title, her execution, as one of the transferors and the transferee (if applicable), must be in her legal name at the date of execution. A statutory declaration setting out the circumstances and evidence to establish her identity must be deposited with the transfer, e.g. a copy of her former marriage certificate if she has adopted her maiden name and/or her current marriage certificate if she has remarried. A marriage certificate must be issued from the appropriate registry of births, deaths and marriages in the state or territory in Australia or overseas jurisdiction.

However, if the transferee named in Item 5 is:

- a party other than one of the transferors; or
- one of the transferors and another party;

a copy of the sealed order must be produced to establish that it allows the lot or interest to be transferred to the persons shown. If the transfer does not comply with the terms of the court order, it must be amended accordingly.

If one of the transferors has signed the transfer and the other refuses, the Registrar of the Court may sign the transfer on behalf of the other person under seal, with the designation ‘Registrar’ printed below the signature or a full attestation identifying the signatory and the authority to sign. A copy of the sealed order must be deposited with the transfer.

Under s. 90(1)(a) of the Act, a dealing lodged for the purposes of or in accordance with an order made under the provisions of the Act does not attract registry fees. If the court order also directs that other instruments be registered and the lodger seeks exemption from lodgement fees, a copy of the sealed court order must be deposited to authenticate that the instruments or documents were included in the Court’s order.

For information about options for the deposit of supporting documentation see [60-1030].

Transfer Pursuant to Part VIIIA or VIIIAB of the *Family Law Act 1975* (Cth)

[1-2115]

Part VIIIA of the Family Law Act (the Act) provides for parties to enter into a financial agreement before marriage, during marriage or after dissolution of a marriage. Part VIIIAB of the Act provides for de facto parties to enter into a financial agreement before, during or after breakdown of a de facto relationship.

Where a transfer is pursuant to a financial agreement made under the provisions of Parts VIIIA or VIIIAB of the Act, Item 4 of the Form 1 must clearly state this and show the date of the agreement. The transfer or any other instrument (e.g. release of mortgage) executed by a person for the purpose of, or in accordance with a financial agreement, are exempt from the payment of registry lodgement fees (s. 90L or s. 90WA of the Act). The transfer must have a Queensland duty notation.

A complete copy of the signed agreement must be deposited with the instrument. If the lot or interest the subject of the transfer is not identified in the agreement by a real property description, supporting evidence, by way of a statutory declaration that identifies the lot or interest, must also be deposited.

For information about options for deposit of supporting evidence see [60-1030].

Transfer from the Returned & Services League of Australia (Queensland Branch)

[1-2120]

When land or an interest is sold by the ‘Trustees of the Returned & Services League of Australia (Queensland Branch) [name of district branch/sub-branch, as the case may be] District Branch/Sub-Branch [as the case may be]’, a certificate from the League’s State Secretary under seal, giving the full names of the current trustees of the district branch or sub-branch is required.

The transfer need only be signed by a majority of the trustees (s. 5 of the *Returned & Services League of Australia (Queensland Branch) Act 1956*).

¶[1-2130] deleted

Transfer to or from Masonic Lodge

[1-2140]

Section 4 of the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* provides that upon the passing of a resolution by any lodge adopting the Act, all land or interests held by the lodge vest in the ‘Trustees of the [name of the lodge] Lodge of Antient Free and Accepted Masons of Queensland’, who have been appointed by such lodge.

Section 8 provides that an authorised representative of the grand lodge must maintain, in duplicate, a register of current trustees. Section 12 states that a certificate as to present trustees given by an authorised representative or acting authorised representative under the seal of the grand lodge is sufficient evidence.

Section 6 provides that execution by the majority of the current trustees is sufficient to pass a legal estate.

Amendments to the Act in 1967 inserted s. 3A, which makes provision for the vesting of property of the grand lodge held for charitable purposes in the ‘Board of Benevolence and of Aged Masons, Widows and Orphans’ Fund’. Such vesting does not prejudice the rights of any existing encumbrance. No lodgement fee is payable on any instrument which evidences vesting in the Board.

¶[1-2150] deleted

Definitions

‘*the Board*’ means the Board of Benevolence and of Aged Masons, Widows and Orphans’ Fund.

‘*the Trustees*’ means the trustees of the United Grand Lodge of Antient and Accepted Masons of Queensland.

^{1, 2}Transfer by the Queensland Housing Commission

[1-2160]

The Queensland Housing Commission has a practice of lodging a transfer only on completion of the contract of sale. In such a situation, there may be one or more assignments of the contract. Where there is an assignment, the deed of assignment and the contract of sale are lodged with the transfer as evidence of the assignment.

The following procedures are to be adopted when a contract of sale has been completed:

- (a) The lodgement of a Form 1 – Transfer in favour of the purchaser, with the original contract and any assignments.
- (b) Where a contract of sale has been entered into and one of the purchasers dies before completion of the contract, then upon completion, a Form 1 – Transfer to the surviving purchaser should be lodged for registration. This should be accompanied by the original contract and any assignment and the appropriate evidence supporting recording of the death.
- (c) Where a contract of sale has been entered into and both purchasers die before completion and the contract is completed by the personal representative, a Form 1 – Transfer to Trustees (personal representative/s) should be lodged for registration. Item 4 of the Transfer should refer to ‘the trusts contained in the will of [name of deceased] deceased’. This must be accompanied by the original contract and any assignments and the appropriate evidence supporting recording of the death.

^{1, 2}Transfer by Westpac Banking Corporation (in connection with certain mortgages formerly held by the Defence Service Homes Corporation)

[1-2170]

Certain assets of the Defence Service Homes Corporation, including mortgages, were vested in Westpac Banking Corporation on 28 February 1989 pursuant to the *Defence Service Homes Act 1918* (Cth).

As a result of this vesting, Westpac Banking Corporation may lodge a transfer only on completion of the contract of sale. In such a situation, there may be one or more assignments of the contract. Where there is an assignment, the deed of assignment and the contract of sale are lodged with the transfer as evidence of the assignment.

The following procedures are to be adopted where a contract has been completed:

Prior to 28 February 1989**[1-2180]**

- (a) The lodgement of a Form 1 – Transfer in favour of the purchaser, with the original contract and any assignments.
- (b) Where a contract of sale has been entered into and one of the purchasers dies before completion of the contract, then, upon completion, a Form 1 – Transfer to the surviving purchaser should be lodged for registration. This should be accompanied by the original contract and any assignment and the appropriate evidence supporting the recording of the death.
- (c) Where a contract of sale has been entered into and both the purchasers die before completion of the contract and the contract is completed by the personal representative, a Form 1 – Transfer to Trustees (personal representative/s) should be lodged for registration. Item 4 of the Transfer should refer to ‘the trusts contained in the will of [name of deceased] deceased’. This must be accompanied by the original contract and any assignments and the appropriate evidence supporting the recording of the death.

After 28 February 1989**[1-2190]**

- (a) The lodgement of a Form 1 – Transfer in favour of the purchaser, accompanied by the original contract.
- (b) Where a contract of sale has been entered into and:
 - (i) one of the purchasers has died after that date and the death has not been recorded by Westpac Banking Corporation (the Bank not having the capacity to record the death), a Form 1 – Transfer to all the purchasers under the contract, accompanied by the original contract and a Form 4 – Request to Record Death should be lodged for registration;
 - (ii) both of the purchasers have died after that date and the deaths have not been recorded by Westpac Banking Corporation (the Bank not having the capacity to record the death), a Form 1 – Transfer to all the purchasers under the contract, accompanied by the original contract, a Form 4 – Request to Record Death of the first deceased and a Form 5, 5A or 6 – Transmission Application (to the personal representative or devisee/legatee of the second deceased) should be lodged for registration.

The following items should be completed as below where there is a transfer by Westpac Banking Corporation.

Item 3 Transfer

‘Westpac Banking Corporation, successor to Defence Service Homes Corporation by virtue of s. 6B of the Defence Service Homes Act 1918.’

¶[1-2200] to ¶[1-2220] deleted

^{1, 2}Transfer of Part of the Land**[1-2230]**

A transfer of one of the lots in a title will operate to create separate indefeasible titles, e.g. where two lots with separate surveyed areas are contained on one indefeasible title, and one lot is sold. Item 2 must be completed to indicate that only part of the indefeasible title is being transferred. See example below. The registered owner may execute a transfer of that lot to a purchaser. The regulated fee for the creation of an indefeasible title is payable on the transfer. An internal dealing is used to create indefeasible titles for the subject lot and each remaining lot in the title (s. 41 of the *Land Title Act 1994*).

2. Lot on Plan Description	Title reference
Lot 13 in SP114549	Part of 11234067

The following applies where one of the lots is being transferred:

- the local government consent may be required if the plan for the lots being separated contains any conditions requiring both lots to be contained in a single indefeasible title;
- any registered local government agreements requiring lots to be held in the same ownership must be dealt with;
- the lot being dealt with must not be part of more than one indefeasible title in different ownerships; and
- the lot being dealt with must have a separate surveyed area.

²Transfer Involving Tenants in Common

[1-2240]

A separate title may be created for each tenant in common if the regulated fee is paid when the transfer is lodged

¶[1-2250] and [1-2260] deleted

Transfer of a Share or Part of an Interest in a Lot or State Tenure

[1-2270]

Such transfers are completed as set out in ¶[1-2000] to ¶[1-2090] with the variations set out below.

Where part of the interest is being transferred, the part of the interest must be disclosed as a fraction. This is not to be confused with the transfer of a part of a lot or State tenure. Transfer of part of the interest in a lot or State tenure can occur in many circumstances, e.g. where one person owns the whole interest and transfers a quarter of it to another. The transferees will then hold as tenants in common with $\frac{3}{4}$ and $\frac{1}{4}$ shares respectively.

It should be noted that such a transfer operates to transfer the share of the interest shown in item 1, in the lot shown in item 2, to the transferee/s shown in item 5. To clarify, the share to be transferred to the transferee **must be expressed as a fraction of the whole** and not as a fraction of the share held by the transferor.

Note: Joint tenants wishing to transfer to a lesser or greater number of joint tenants, should always do so by a Form 1 – Transfer in which all join in, e.g. if A, B and C are joint tenants and C wishes to transfer his or her interest to A and B, a transfer is required from A, B and C to A and B pursuant to the consideration paid to C by A and B.

Note: If a sole proprietor wishes to transfer half of the fee simple (their share) to another party and be recorded as **joint tenants**, the transfer when prepared must be of the whole of the fee simple from the existing sole proprietor as transferor to the transferees as joint tenants, one of whom will be the current sole proprietor.

Note: If an existing tenant in common wishes to transfer their share to another party who is to hold the interest with the other current tenant in common as **joint tenants**, the transfer when prepared must be of the whole of the fee simple from both of the existing tenants in common as transferors to the transferees as joint tenants one of whom will be a current tenant in common.

Item 1 Interest Being Transferred**[1-2280]**

For example:

1. Interest being transferred

‘¼ interest in fee simple’

Item 2 Lot on Plan Description**[1-2290]**

The description of the lot or State tenure is completed in the same manner as a transfer of the whole of an interest. For example:

2. Lot on Plan Description	Title reference
Lot 13 in BUP4549	11234067

Severing a Joint Tenancy under s 59 of the *Land Title Act 1994* and s. 322A of the *Land Act 1994***[1-2300]**

Under the provisions of s 59 of the Land Title Act and s. 322A of the Land Act a joint tenant of a freehold lot, a State tenure (lease, licence or sublease) or a water allocation may **unilaterally** sever the joint tenancy **so far as relates to their interest**, by lodging for registration a transfer in favour of himself/herself and satisfying the Registrar of Titles that the registered owner has given, or made a reasonable attempt to give each other joint tenant the following:

- a) a copy of the transfer. A Form 20 – declaration must be deposited with the transfer by the severing joint tenant or their solicitor declaring that a copy of the transfer has been given to the other joint tenant by hand, mail, courier or other reliable means, or detailing the attempts made to give a copy; or
- b) if the transfer is an electronic conveyancing document—written notice of the registered owner’s intention to sever the joint tenancy.

On registration of the transfer, **that** registered owner or holder of an interest in a State tenure or water allocation becomes entitled as tenant in common with the other registered owners or holders (s 59(3) the Land Title Act or s. 322A(5) of the Land Act) in a share proportionate to the number of joint tenants before severance.

That is, s 59 of the Land Title Act or s. 322A of the Land Act provides a mechanism for a joint registered owner or holder to terminate the right of survivorship of other registered owners or holders while still retaining their interest in the property. Section 59(1) of the Land Title Act or s. 322A(2) of the Land Act is not applicable where all registered owners or holders execute the transfer or where one of the registered owners or holders transfers their interest to a third party.

A transfer pursuant to s. 59 of the Land Title Act or s. 322A of the Land Act must be prepared in favour of the severing joint tenant only. Item 4 must state that the transfer is ‘a severance of the joint tenancy under the provisions of s. 59 of the Land Title Act 1994’ or ‘a severance of the joint tenancy under the provisions of s. 322A of the Land Act 1994’.

The share being transferred must be proportionate to the total number of joint tenants i.e. the share in Item 1 would be:

$$\frac{\text{number of severing joint tenants}}{\text{total number of registered joint owners}}$$

(e.g. where A and B are joint tenants and A intends to sever the joint tenancy, the share would be ½. Where A, B and C are joint tenants and A severs the joint tenancy with B and C, the share being transferred would be ⅓).

Where there are more than two joint tenants and only one severing tenant, the interest held by the others would be retained jointly. If more than one joint tenant is severing, those severing may choose to hold their shares as joint tenants *inter se*.

^{1, 2}Separate indefeasible titles will only be created when new title fees are paid on the transfer or a request for separate indefeasible titles is lodged and fees paid.

^{1, 2}Section 154 of the Land Title Act provides that an instrument may be registered for a lot only if any Certificate of Title is returned for cancellation. Where the Certificate of Title is not able to be deposited by the severing joint tenant/s (e.g. because it is being held by an uncooperative registered owner), the declaration by the severing joint tenant/s as to the giving of notice and copies of the transfer must also state:

- (a) that the other joint tenant/s is/are in possession of the Certificate of Title; and
- (b) that a request has been made to the other joint tenant/s to deposit the Certificate of Title with the Registrar for cancellation; and
- (c) that that request has been refused; and
- (d) the name/s and address/es of the other joint tenant/s for service of notice.

^{1, 2}The Registrar will then forward a notice to the other joint tenant/s requiring the Certificate of Title to be deposited for cancellation within seven days from the receipt of the notice in accordance with s. 160 of the Land Title Act.

^{1, 2}If the Certificate of Title is not deposited within fourteen days (allowing seven days for delivery of the notice) the Registrar will:

- 1 prepare a Request to Dispense of the duplicate certificate of title in accordance with s. 154(2)(h) of the Land Title Act; and
- 2 register the Transfer and the Request to Dispense and cancel the owner's copy of the certificate of title.

Severing a Joint Tenancy under Principles of Common Law

[1-2305]

Alienation

A registered proprietor of fee simple, water allocation or a holder of an interest in a State tenure may at common law, sever a joint tenancy by alienation of their interest i.e. transferring their interest to a third party. There is no requirement for the severing joint tenant to give notice of the transfer to the other joint tenants.

^{1, 2}Separate indefeasible titles will only be created when new title fees are paid on the transfer or a request for separate indefeasible titles is lodged and fees paid.

Transfer to a third party

On registration of a transfer that alienates a joint tenant's interest to a third party, the transferee becomes entitled to an interest as tenant in common of a share proportionate to the number of joint tenants prior to severance, e.g. where A and B are joint tenants and A transfers their interest to X, the joint tenancy is terminated and B and X will become entitled as tenants in common in equal shares.

Where there are two or more remaining joint tenants, the remaining joint tenants would hold their interest as joint tenants *inter se*, e.g. where A, B and C are joint tenants and A transfers

their interest to X, the result will be that X will hold a one third share as tenant in common with B and C who will continue to hold the other two thirds share as joint tenants inter se.

Transfer to a co-owner

A transfer to sever a joint tenancy need not be to a ‘stranger’ to the joint tenancy. Where there are more than two joint tenants, one joint tenant may, at common law, sever the joint tenancy by transferring their interest to a co-owner. The transferee would be entitled to a share as tenant in common of a share proportionate to the number of joint tenants prior to severance while still holding as a joint tenant inter se with the remaining joint tenants.

For example, where A, B and C are joint tenants and A transfers their interest to B, the transfer will effect a severance with regard to A’s interest. B will take that one-third interest as a separate share. B will continue to hold the other two third share jointly with C because the transfer by A has not affected that two-third share.

Mutual Agreement

All joint tenants may mutually agree to sever a joint tenancy. Once all tenants have mutually agreed to sever a joint tenancy, each will be entitled to an equal share of the original jointly held interest.

For example, where A and B are joint tenants and both agree to sever the joint tenancy, A and B will be entitled to hold as tenants in common in equal shares.

To record a mutually agreed severance, all joint tenants must enter into a transfer to themselves as tenants in common in equal shares and state clearly in the consideration that the transfer was either:

- pursuant to a mutually agreed severance; or
- pursuant to a desire by all the parties to change the tenancy to tenants in common.

Transfer by Way of Gift or for a Nominal Consideration

[1-2310]

See [1-2040]

²Transfer with an Intermediate Purchaser

[1-2320]

A transfer with an intermediate purchaser occurs when the purchaser under the contract of sale sells their interest to another, the final purchaser. On completion of the contract, the final purchaser is entitled to receive a transfer executed by the registered owner. In this situation, there will not be two transfer documents, one from the registered owner to the intermediate purchaser and one from the intermediate purchaser to the final purchaser; there will only be one transfer, from the registered owner to the final purchaser. In the absence of special conditions, a purchaser cannot be compelled to receive two transfer documents (*Daamen v W & T Investments Pty Ltd (No. 2)* [1974] Qd R 400).

On completion, a transfer will be lodged which names the registered owner as transferor and the final purchaser as transferee. The existence of the intermediate purchaser is noted at Item 4, the consideration panel. The intermediate purchaser is not a transferor (*Re Pellick’s Transfer* [1986] Q Conv R 54-226).

Example Form 1 – Intermediate Purchaser

[1-2330]

Item 3 Transferor

First Home Estates Pty Ltd ACN 445 667 221

Item 4 Consideration

The sum of \$350,000 paid to First Home Estates Pty Ltd by John East and Eileen May East and the sum of \$500,000 paid to John East and Eileen May East by Michael James Smith and Jacqueline Theresa Smith.

Item 6 Execution

Witnessing Officer	Execution Date	Transferor's Signature
	23/10/93	A Ham (Director) Common Seal L Bacon (Secretary)
Witnessing Officer	Execution Date	Transferee's Signature
IA Lee Ian Alistair Lee Lawyer	23/10/93	Michael James Smith and Jacqueline Theresa Smith

The example above states the consideration paid by the intermediate purchasers, the Easts, to the registered owner and the consideration paid by the final purchasers, the Smiths, to the intermediate purchasers.

The consent of the intermediate purchasers to the transfer is **not** required.

^{1, 2}Only the last amount of consideration is taken into account for the purpose of assessing additional fees.

Duty must be noted for each consideration shown in Item 4. The Office of State Revenue preferred method is to complete a single stamp with the details of duty for the second consideration and add only the transaction number of the first consideration. The Registrar will also accept a stamp for each transaction provided all information in the stamps is clear and other information on the form is not obliterated.

The maximum number of intermediate purchaser transactions allowable is two.

Transfer by Equitable Mortgagee Pursuant to s. 99(7) of the *Property Law Act 1974* [1-2335]

The following are the requirements to give effect to a court order, made under the provisions of s. 99(7) of the Property Law Act, which creates and vests a legal estate in an equitable mortgagee to enable the mortgagee to carry out a sale as if the mortgage was a legal mortgage:

A transfer completed as set out in ¶[1-2000] to ¶[1-2090] with the following variation at Item 3:

Item 3 Transferor

‘[name of equitable mortgagee/chargee] in accordance with Court Order dated [date] pursuant to s. 99(7) of the Property Law Act 1974’

The following must be deposited with the transfer:

- ^{1, 2}(1) the Certificate of Title, if issued; and
- (2) a copy of the court order (see [60-1030]).

In this section equitable mortgagee includes equitable chargee.

Transfer by Mortgagee Exercising Power of Sale

General

[1-2340]

A transfer by a mortgagee exercising a power of sale occurs where the mortgagor has defaulted under the mortgage, e.g. by failing to repay principal and interest as specified in the mortgage. The mortgagee is entitled to sell the lot or State tenure to recover the debt.

A mortgagee exercising power of sale cannot sell to themselves.

A Form 3 – Release must not be lodged to discharge the mortgage which provides the authority for the power of sale.

The transfer is completed as set out in ¶[1-2000] to ¶[1-2090] with the following variation at Item 3:

Item 3 Transferor

Big Bank of Australia Ltd A.C.N. 987654321 exercising power of sale under Mortgage No [number]

The following must be deposited with the transfer:

²Freehold and Water Allocation

[1-2350]

- ¹(1) Certificate of Title, if issued;
- (2) a Form 20 – Declaration (statutory) by the mortgagee as to the facts of the default and the service of any notice of such default upon the mortgagor as required and in the manner provided under ss. 84 and 347 of the *Property Law Act 1974*; and
- (3) a copy of the notice served upon the mortgagor.

A person authorised by the mortgagee may make the statutory declaration that default has occurred and the notice of demand was served. The declaration must be made under the *Oaths Act 1867* or the equivalent legislation of the state or country where it is made and should specify:

- a property description that corresponds with the transfer and title;
- the authority of the declarant to make the declaration;
- that default has occurred and has continued for the period of 30 days from the service of notice;
- that notice of demand has been served in accordance with the provisions of the *Property Law Act*;
- the method and date of the service of notice of demand; and
- that default has continued to the date of the sale or up to the date of the transfer.

Section 347 of the *Property Law Act* does not apply:

- to notices served in proceedings in court;
- where the person serving the notice prevents its receipt by the person on whom the notice is intended to be served; or

- if a contrary method of service of a notice is provided in the instrument or agreement or by the Property Law Act.

Separate declarations by the mortgagee as to the facts of the default and by the person who served the notice of demand as to the facts of the service of the notice may be deposited with the transfer.

Where a mortgagee exercising a power of sale sells to a trustee, a Form 1 – Transfer to Trustees should be used (see ¶[1-2380], ¶[1-2390] and ¶[1-2430]).

If the mortgage is over several parcels of land that the mortgagee sells by separate transfers, a declaration of default and a copy of the notice of demand must be deposited with the first transfer lodged for registration. Each subsequent transfer then only requires a declaration as to continuing default to be deposited and the reference to the dealing number that the evidence of default was deposited with included in item 3 of the transfer, e.g. ‘evidence of default deposited with instrument [number]’.

^{1,3}State Lease

[1-2355]

A mortgagee is entitled to sell a State lease in terms of s. 345 of the *Land Act 1994* if the lessee is in default under a registered mortgage.

The transferee must be a person qualified to hold a lease under the Land Act.

Ministerial approval to the transfer and any additional documentation or declarations required as a condition of the consent must be deposited with the transfer, e.g. declarations, rental clearance certificates or a copy of the contract of sale (must be lodged within 6 months of approval). (Note – The declarations by the mortgagee as to the facts of the default and by the person who served the notice of demand as to the facts of the service of the notice are not required to be deposited with the transfer.

More than One Mortgagee

[1-2360]

If power of sale is being exercised under a mortgage with more than one mortgagee, declarations of default are required from all mortgagees.

If the lot or State lease is subject to two mortgages and a power of sale is exercised under the second mortgage, a release of the first mortgage is required if the purchasers are not taking their interest subject to the first mortgage.

Where Mortgagor is Deceased

[1-2370]

If the mortgagor is deceased at or before the time of default under the mortgage, the mortgagee can still exercise the power of sale without transmission of the estate of the mortgagor being entered on the register.

Section 347(2A) of the *Property Law Act 1974* requires the mortgagee to serve the relevant notices under the Act on the personal representative of the deceased. If there is no personal representative, service must be in the manner:

- provided in the mortgage (s. 347(6) of the Property Law Act); or
- directed by a court order (s. 347(3) of the Property Law Act).

Similarly, if two joint tenants are mortgagors and one dies at or before the time of default, the notices are served on the surviving joint tenant. The mortgagee exercising power of sale must

produce with the transfer evidence of the death of the other joint tenant. It is not necessary that the death of the joint tenant be recorded in the register first.

^{1,2}Power of Sale by Defence Service Homes Corporation

[1-2375]

Under the *Defence Service Homes Act 1918* (Cth), if a mortgagor or the mortgagor's spouse (if they are joint owners and borrowers) becomes bankrupt or incurs a judgment debt, the Secretary to the department administering the Defence Service Homes Corporation may approve the exercise by Westpac Banking Corporation of its power of sale in relation to the estate or interest of both of them.

There are three requirements for such a transfer to be registrable:

- (1) The description of the transferor on the Form 1 – Transfer (Item 3) must be ‘Westpac Banking Corporation ACN 007 457 141 as mortgagee exercising power of sale under Mortgage No. [number] pursuant to the provisions of s. 45A of the Defence Service Homes Act 1918’.
- (2) The interest being transferred (Item 1) must be an estate in fee simple or water allocation.
- (3) A statutory declaration must be lodged by an officer of Westpac Banking Corporation, annexing a copy of the sequestration order and identifying the person named therein as being the registered proprietor of the land. If the land is owned by joint tenants, the declaration must also state that the other registered proprietor is the bankrupt's spouse.

^{1,2}Transfer by Resource Operations Licence Holder Exercising Power of Sale

[1-2377]

Sections 166(1)(b) and 166(2) of the *Water Act 2000* authorises a holder of a resource operations licence (ROL), despite any registered interest, to exercise power of sale over a water allocation, if the supply contract gives the ROL holder power to sell the water allocation.

Section 166(2) of the Water Act provides that the holder of a ROL may only exercise a power of sale in accordance with the supply contract.

The transfer is completed as set out in ¶[1-2000] to ¶[1-2090] with the following variation at Item 3:

Item 3 Transferor

[name of resource operations licence holder] as resource operations licence holder exercising power of sale under a supply contract dated [date of contract] pursuant to s. 166(1) (b) of the Water Act 2000.

The following must be deposited with the transfer:

- (1) a Statutory Declaration by an authorised officer of the resource operations licence holder stating:
 - (a) the facts of the default; and
 - (b) the exercise of power of sale was in accordance with clause/s [relevant clause/s number/s] of the supply contract; and
 - (c) all persons with a registered interest in the water allocation were given not less than 30 business days notice of the proposed exercise of the power.

- (2) a copy of the supply contract; and
- (3) a copy of the notice/s served on the holder/s of registered interests.

The purchaser of the allocation under the above section takes the allocation free of all interests.

Transfer by a Receiver Appointed by a Mortgagee for the Property of an Individual [1-2379]

Where a receiver or receiver and manager is appointed by the mortgagee to sell the property as an agent for the mortgagor who is an individual, the transfer is completed as set out in ¶[1-2000] to ¶[1-2090] with the following variation at Item 3:

Item 3 Transferor

[name of registered owner(s)] [Receiver or Receiver and Manager] appointed to sell the property pursuant to clause [clause number in the mortgage (and the deed of appointment if this is where the receiver's power is stated to sell the property)]

Copies of the relevant document(s) evidencing the appointment must be deposited with the transfer. For information about depositing supporting documentation see [60-1030].

Evidence of default is not required to be deposited.

The execution of the receiver or receiver and manager must be completed as set out in [60-0900].

Where a transfer executed by a receiver (or receiver and manager) is lodged to effect the sale of a lot or an interest, the mortgage under which the receiver is acting is not cancelled. The mortgage may only be removed by a release, which must be lodged to follow the transfer. Any other mortgages are not cancelled on registration of the transfer and can only be removed by the registration of releases.

For information about a receiver appointed for the property of a corporation see [50-2030].

Transfer to Trustee with Schedule of Trusts [1-2380]

Form 1 is used to record a transfer to a trustee. The transfer is completed as set out in ¶[1-2000] to ¶[1-2090] and the words 'as trustee' must be inserted after the transferee's name in Item 5.

For example:

5.	Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)
		Mary	SMITH	as trustee

A schedule of trusts in Form 20 must be annexed to the transfer. No further reference should be made to identify the trust on the transfer by name and date, except when the same trustee is acquiring shares in the lot or interest under more than one trust.

For further information see part 51 – Trusts.

Transfer to Trustee with Trust Document Deposited [1-2390]

Form 1 is used to record a transfer to a trustee. The transfer is completed as set out in ¶[1-2000] to ¶[1-2090] and the words 'as trustee' must be inserted after the transferee's name in Item 5. All document(s) that specify the details of or create the trust including any variation (for example, deed of retirement and appointment, deed of removal and appointment or variation of trust etc) must be deposited with the transfer. Alternatively, in Item 5, **all dealings with which**

the document(s) were *deposited* must be referred to. The words ‘under instrument’ are misleading and must not be used. Rather the words must refer to the prior *deposit* of all relevant trust documents with other dealings (either example 1 or 2 may be used).

Example 1.

5. Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)	
	Mary	SMITH		Deed of trust deposited with 712223335 and deed of retirement and appointment deposited with 721114444
	John	SMITH	as trustee	

Example 2.

5. Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)	
	Mary	SMITH		Trust documents deposited with 712223335 and 721114444
	John	SMITH	as trustee	

Where a transfer to trustee or recording new trustee is registered on title, the endorsement will identify, for each interest or share, the dealing number where the trust was first registered on the title for that interest or share.

For more information see part [51-2022], [51-2043] and [51-2050].

Recording New Trustees

[1-2400]

Form 1 is used to record a transfer from a trustee to a new trustee under the same trust, for example pursuant to a deed of retirement and appointment, (whether or not the first trustee is recorded on the register as holding the property in trust).

Death of Sole Trustee

[1-2410]

On the death of a sole trustee, whether or not the trust is recorded on the title, the trust property vests in the Public Trustee. The trust property remains vested in the Public Trustee unless new trustees are appointed and the Public Trustee is notified (s. 16(2)(a) of the *Trusts Act 1973*).

If the sole trustee has died and the Public Trustee is not appointed as the new trustee or the Public Trustee makes the appointment of new trustees, the following documentation is required to be deposited:

- (a) either the original will or grant of representation (Note – An original will deposited with a transfer is not retained in the registry. For further information (see [5-2130] and ¶[60-1030]); and
- (b) a copy of the notice to the Public Trustee.

For further information see part 51 – Trusts.

Appointment of New Trustees

[1-2420]

Subject to the *Land Title Act 1994* and the *Land Act 1994*, trust property vests in new trustees immediately they are appointed (s. 15(1) of the *Trusts Act 1973*). This may occur on the retirement, discharge or death of a registered trustee. It may also occur on the death of a sole trustee, however, notification of his/her appointment must also be given to the Public Trustee (s. 16(2) (a) of the *Trusts Act*).

New trustees may execute and lodge a Form 1 – Transfer with the Registrar to have their appointment recorded in the register (s. 15(3) of the Trusts Act).

In instances where a retiring, discharged or deceased trustee is unwilling or unable to act, the continuing trustee or trustees and the new trustee or trustees (acting under s. 12(6) of the Trusts Act) may execute the transfer as the transferor and the new trustee or trustees must execute the transfer as the transferee. To record their appointment as trustees, in instances where the trust is not disclosed on the title, new trustees must simultaneously declare the existence of the trust.

For further information see part 51 – Trusts

Instrument Required

[1-2430]

The transfer must show:

- (1) The retired/discharged/deceased trustee and any continuing trustees (as applicable) as transferor in Item 3.
- (2) Words to the effect of ‘As a consequence of the retirement/discharge/death of [name of registered trustee] who held the lot or interest in trust and the appointment of [names of new trustees] in accordance with the Trusts Act 1973’ in Item 4. If the trust is not already recorded on title and it is intended that the trust be disclosed, Item 4 should also include words to the effect of ‘and to declare the trust in accordance with s. 109 of the Land Title Act 1994’ or ‘and to declare the trust in accordance with s. 374A of the Land Act 1994’.
- (3) ‘[names of new trustee] as trustee’ in Item 5. This will include any continuing trustee, as applicable.

Documentation to be deposited with the Form 1 – Transfer to record new trustee is:

- (a) evidence of the retirement/discharge/death (e.g. a deed of retirement/ discharge or the certificate of death or grant of representation) of the registered proprietor/holder/trustee;
- (b) a copy of the original instrument of appointment of new trustees (not required if the new trustee is the Public Trustee);
- (c) a copy of the original trust instrument (not required if the trust is already recorded on title) or partnership evidence; and
- ^{1, 2}(d) if issued, the Certificate of Title or a Form 17 – Request to Dispense with Production of Instrument if unavailable due to loss, etc.

A duty notation is required.

For information about depositing supporting documentation see [60-1030].

^{1, 2}Transfer of Life Interest

[1-2440]

The transfer of a life interest is completed as set out in ¶[1-2000] to ¶[1-2090] with the variations as set out in the following example:

Item 1 Interest being transferred

Life estate

Under the *Trusts Act 1973*, a life tenancy is regarded as ‘trust property’. The creation of a separate indefeasible title for an interest for life is not permitted.

The life estate is recorded by way of a transfer to the life tenant stated in Item 5 without reference to the trust.

The land remains in the name of the registered owner and reference to the creation of the life estate by the transfer will appear in the Easements, Encumbrances and Interests section of the title.

Transfer by Personal Representative

[1-2450]

A transfer by a personal representative is completed as set out in ¶[1-2000] to ¶[1-2090] with variations as set out in the following example:

Item 1 Interest being transferred

For example, Fee simple/State lease/Water allocation/Mortgage No [number]/Lease No [number]/Profit a Prendre No [number] [whichever is applicable]

Item 3 Transferor

The transferor is specified as being the personal representative, for example:

‘William Alexander Doe as personal representative’.

Item 4 Consideration

The consideration may be one of the following:

- (1) ‘the terms of the will of [name of deceased] deceased’; or
- (2) ‘pursuant to the rules of intestacy’; or
- (3) a monetary consideration, in which case the amount of consideration must be specified.

Transfer in Terms of Will

[1-2460]

In view of the provisions of s. 15 of the *Succession Act 1981*, in the case of deaths occurring on or after 1 January 1982 and prior to 1 April 2006, a supplementary statutory declaration by a deceased’s husband/wife that the marriage between the deceased and the husband/wife has not been dissolved or annulled, is to be lodged with the transfer. This applies only where the transfer is pursuant to a disposition in a will or a codicil in favour of the deceased’s husband/wife. If the divorce or annulment occurred on or after 1 April 2006 and the will contained a contrary intention to s. 15(1) of the Succession Act, the divorce or annulment would not affect the disposition in the will.

Section 33B of the Succession Act does not allow for the beneficial disposition of property unless the beneficiary survives the testator for 30 days, unless there is contrary provision in the will. In view of this section a transfer pursuant to a will should not be executed within that time.

For deaths prior to 1 April 2006, under s. 15 of the Succession Act as in force at the date of death, dispositions (gifts) of property (other than a charge or direction for the payments of debts or remuneration) to a witness to the execution of the will, their spouse or persons claiming under the witness or spouse are null and void. Therefore, a statutory declaration is required from the beneficiary/transferee stating that neither they nor a spouse of theirs was a witness to the will, if such be the case.

Section 11 of the Succession Act applies to deaths on or after 1 April 2006. This section does not void the beneficial disposition to the spouse of a witness. It does void a beneficial disposition to a witness in circumstances other than mentioned in s. 11(3) of the Succession Act.

Therefore a statutory declaration is required from the beneficiary/transferee stating that they were not a witness to the will, if such be the case.

For deaths on or after 1 April 2006, where a beneficial disposition has been made to a witness and one of the circumstances referred to in s. 11(3) of the Succession Act applies, the Registrar would require evidence of the particular circumstance.

²In the case of a transfer by a personal representative under a will which makes provision for a life estate, the following conditions apply:

- Under the *Trusts Act 1973*, a life tenancy is regarded as ‘trust property’. The creation of a separate indefeasible title for an interest for life is not permitted.
- An interest for life created by a devise in a will which is the subject of a Form 5 or 5A – Transmission Application will be registered in the name of the applicant as personal representative.
- If the personal representative intends to transfer the lot for a monetary consideration to a third party, the personal representative must take account of the life estate.
- If the transfer is made pursuant to the terms of the will to the devisee, then evidence is required that the life tenant has died, or relinquishes all rights, or that the life estate has been terminated by a provision of the will (e.g. marriage).
- In such cases one of the following must be deposited with the transfer:
 - (a) a copy of the death certificate; or
 - (b) a declaration setting out the details of the relinquishment with the original document attached; or
 - (c) a declaration referring to the provisions in the will and attaching evidence.

If the will makes reference to a trust, partnership or contract of sale, the personal representative (once recorded on the title by a transmission by death without any limitation as to the other equity referred to in the will (see ¶[5-2190]), should resolve these issues by the appropriate Form 1 – Transfer.

The court has the power to appoint a statutory trustee for the purpose of selling property pursuant to s. 38 of the *Property Law Act 1974* (see further part 51 – Trusts, esp. ¶[51-0170]).

Where property of the deceased was owned in common with others under a partnership, any transfer by a personal representative must also be executed by the surviving partners.

If a will does not clearly indicate the tenancy of the beneficiaries, the beneficiaries will take the estate as either joint tenants or tenants in common depending on circumstances (see part 5 – Transmission Application ¶[5-2160]).

Transfer Pursuant to the Rules of Intestacy

[1-2465]

Where a sole owner or tenant in common has died intestate and the lot or interest is required to be transferred to those entitled to the estate, the lot or interest must first be transmitted to the deceased’s personal representative (see part 5 – Transmission Application, esp. ¶[5-2060] and ¶[5-2110]).

A transfer pursuant to the Rules of Intestacy to those entitled to the deceased’s estate is then lodged for registration.

Sections 35, 36, 36A and 37 together with schedule 2 of the Succession Act set out who would be entitled to a share of the deceased's estate.

The personal representative of the intestate's estate is to deposit a statutory declaration with the transfer setting out all persons who would be entitled to a share of the estate and their relationship to the deceased.

Where the death occurs on or after 1 May 1998 and part 1 of Schedule 2 of the Succession Act applies, the personal representative should include, in the personal representative's declaration, the basis upon which the entitlement to the lot or interest in question was arrived at.

For example:

One spouse and two children survived the deceased and the residuary estate did not exceed \$150,000. In this case the spouse alone is entitled to the lot or interest in question as transferee.

NB – For deaths between 1 May 1998 and 31 March 2003:

The existence or non-existence of a de-facto spouse as defined by s 5 of the Succession Act, as in force at the date of death of the deceased, must also be included in the declaration by the personal representative.

NB – For deaths on or after 1 April 2003:

The existence or non-existence of one or more spouses as defined by s 5AA of the Succession Act must also be included in the declaration by the personal representative.

^{1, 2}**Transfer to the State**

[1-2470]

These actions were previously referred to as transfers or surrenders to 'the Crown'. Current legislation relevant to these actions (i.e. the *Land Title Act 1994* and the *Land Act 1994*) no longer refer to 'the Crown'. 'The State' has been substituted for 'the Crown'. Section 36 of the *Acts Interpretation Act 1954* states that; when used in an Act, 'the State' means the State of Queensland. 'The State' or 'the State of Queensland' is now the appropriate terminology. In addition, land that was previously referred to as 'vacant Crown land' is now 'unallocated State land'.

Section 48 of the Land Title Act states that 'the State may, under this Act, acquire, hold and deal with lots'.

Transfers of freehold lots to 'the State' (i.e. the State of Queensland) can be for any of three types of action. The three types of transfer and their effects are as follows:

- (1) 'The State' acquires the fee simple title to the land (i.e. the land remains as freehold). In these cases, the title remains in the Freehold Land Register and the State is registered in the Freehold Land Register as owner.

Such transfers are acquisitions in accordance with s. 48 of the Land Title Act and reflect a change of ownership of the indefeasible title (the freehold) **to the State**. The land can then be dealt with by the State under s. 48.

- (2) The owner temporarily surrenders the land to 'the State' to allow action under s. 358 of the Land Act. The existing title is cancelled in the Freehold Land Register. A new indefeasible title will be created when a deed of grant issues on completion of the s. 358 action.

A Form 24 – Property Information (Transfer) is not required to be deposited with a transfer pursuant to s. 358 of the Land Act.

- (3) The owner totally surrenders the land to ‘the State’. On registration of the transfer, the land becomes ‘unallocated State land’. The title is fully cancelled by the transfer as the land is no longer freehold.

A transfer of absolute surrender to the State does not require the deposit of a Form 24 – Property Information (Transfer).

On registration of an absolute surrender to the State under s. 55 or s. 327 of the Land Act, all interests are extinguished from the day the surrender is registered (s. 331(2) of the Land Act). However, a public utility easement may still continue over the resulting unallocated State land with the Minister’s written approval (s. 372(2) of the Land Act).

Transfers referred to in (2) and (3) above either partially or fully cancel the existing indefeasible title and the subject land is no longer a part of the Freehold Land Register until or unless a deed of grant over it is issued in the future. If an existing title is only partially cancelled, an indefeasible title for the balance must be created (see s. 41 of the Land Title Act).

Under s. 426 of the *Duties Act 2001* the State is not liable to pay duty, however all transfers to the State must be properly stamped. In effect the transfer must bear a notation by either the Office of State Revenue or an authorised registered self-assessor.

All transfers to the State are exempt from lodgement fees (see the current Land Title Regulation).

Recording the State on Title

An interest transferred to the State will be recorded in a register as:

- The State of Queensland followed by the name of the department representing the State in brackets; or
- The State of Queensland followed by the name of the department representing the State in brackets and a reference to the relevant Act under which the department administers the interest.

‘The State of Queensland (represented by [name of department])’ or ‘The State of Queensland (represented by [name of department] — [name of Act])’. This information should be provided in the transfer or other form.

An example of the State recorded on an ATS title follows:

REGISTERED OWNER
THE STATE OF QUEENSLAND
(REPRESENTED BY DEPARTMENT OF HEALTH)

For information about dealing with or disposing of an interest held by the State see [60-1040].

Transfer of a Lease

[1-2480]

General

An assignment of lease may be registered by lodging a Form 1 – Transfer. The whole of the leased area for the residue of the term must be transferred. However, given the nature of a lease, when a transfer of a lease is lodged, the Registrar will not enquire as to whether all the lots in

the registered lease are included in the transfer. Even though the lessor and lessee may covenant that no transfer of the lease can be made without the consent of the lessor, the Registrar is not obliged to and will not examine the covenants in the lease.

A lessee cannot transfer their interest in part of the leased lot or interest to another, even if the lease is of several lots or interests and the lessee desires to transfer their interest in only some of them. A sublease is appropriate.

A transfer of a lease must have a duty notation and lodgement fees are applicable. A transfer of a lease other than one under the *South Bank Corporation Act 1989* does not attract any additional fees in respect of the consideration.

²If the term of a lease is to expire on the death of the lessee, the lessor must consent to any transfer of the lease, as the term of the lease will be affected by the transfer.

A transfer of a lease executed after the initial term of the lease has expired cannot be registered unless the term is first extended by a Form 13 – Amendment of Lease. This will allow the transfer to proceed. Without it the document should be fully withdrawn. Alternatively, a new lease may be lodged to evidence the exercise of the option and a transfer of the new lease lodged.

²A transfer of lease may be capable of registration even if lodged after the initial term has expired. For further information see ¶[7-2190].

A Form 25 – Foreign Ownership Information will be required where the lessee is a foreign person, as defined, under the *Foreign Ownership of Land Register Act 1988*, where the term of the lease and the further term/s available under any option/s total 25 years or more.

A transfer of a lease is completed as set out in ¶[1-2000] to ¶[1-2090] with the following variations:

Item 1 Interest being transferred

The lease number must be specified, for example:

Lease No. [number]

Item 6 Transfer/Execution

Delete the second, third and fourth sentences set out in Item 6 of the Form 1 – Transfer.

^{1, 2}Transfer of Lease of Freehold

There is no requirement for the Certificate of Title (if it exists) to be deposited with the transfer, unless the lessor consents to the transfer (s. 154(2) (a) of the *Land Title Act 1994*).

However, if the lessor does consent to a transfer of freehold lease, by signing a Form 18 – General Consent, the Certificate of Title (if issued) is required as, by consenting, the lessor becomes a party to the transfer.

If an existing Certificate of Title for a lot subject to a mortgage is deposited with the transaction for cancellation, the mortgagee of the fee simple will be deemed to have consented to the transfer of the lease.

Prior to the Land Title Act, the lessee's instrument of title was his/her registered copy of the lease and any dealings with the lessee's interest (e.g. transfers, mortgages, etc.) were registered on presentation of a copy of the lease alone. These transactions were marked on an original

registered lease held in the register and not on the indefeasible title to the lot. Again, it is prudent to search both the indefeasible title and the registered original lease if it was registered before the commencement of the Land Title Act, for any notations of dealings in respect of a lease.

^{2, 3}Transfer of Lease of Water Allocation

A consent where given by the lessor in order to register a transfer of a lease of a water allocation, may be only given by the deposit of a Form 18 – General Consent.

^{1, 3}Transfer of a Sublease of a State Lease

A transfer of a Sublease of a State Lease is subject to the same requirements as a transfer of a State Lease, being Ministerial approval to the transfer, and any additional documentation or requirements mentioned in the Ministerial approval, e.g. declarations, a rental clearance certificate and a copy of the contract of sale.

^{1, 3}Transfer of a Trustee Lease

Section 58 of the *Land Act 1994* allows for the transfer of a trustee lease if it is accompanied by the written approval of the Minister and the trustee. A Form 18 – General Consent is the appropriate form for the written approval. The Minister's approval is not required if the trustee has a written authority under section 64 of the Land Act or the lease is a trustee lease (State or statutory body) (section 58 (2) of the Land Act). Where the Minister has dispensed with the need to obtain the Minister's approval under section 64 (1) of the Land Act a copy of the written authority must be deposited.

Transfer of Mortgage

[1-2490]

A transfer of mortgage may occur where a mortgagee elects to transfer its interest in the mortgage to another mortgagee. Given the nature of a mortgage, when a transfer of mortgage is lodged the Registrar will not enquire as to whether all the mortgage lots or interests are included in the transfer. The transfer is completed as set out in ¶[1-2000] to ¶[1-2090] with the following variations:

Item 1 Interest being transferred

Mortgage No. [number]

More than one mortgage may be included in a transfer of mortgage, provided the parties are the same. However, a lodgement fee is payable for each mortgage being transferred.

Item 4 Consideration

If the consideration is monetary, it must be expressed in Australian currency, but does not attract an additional fee.

Item 6 Transfer/Execution

Delete the second, third and fourth sentences set out in Item 6 of the Form 1 – Transfer.

^{1, 2}The Certificate of Title must be lodged if issued.

Confirmation of Identity of Mortgagor by Mortgage Transferee

[1-2495]

Section 11B of the *Land Title Act 1994* and s. 288B of the *Land Act 1994* place an onus on **all** mortgage transferees to confirm the identity of mortgagors prior to lodging a transfer of mortgage for registration.

For any transfer of mortgage lodged for registration, a mortgage transferee must first verify the identity of the mortgagor in the same way an original mortgagee is required to identify a mortgagor under the practice guidelines for s. 11A of the *Land Title Act* and s. 288A of the *Land Act*. A mortgage transferee also has the same record keeping obligations as an original mortgagee. Relevant practice guidelines are set out in Part 2 – Mortgage (National Mortgage Form), esp. ¶[2-2005].

Alternatively, if the original mortgagee has complied with s. 11A of the *Land Title Act* or s. 288A of the *Land Act* and transfers to the mortgage transferee copies of identification documents or the record kept under s. 11A(4) of the *Land Title Act* or s. 288A(4) of the *Land Act* regarding the steps taken to identify the mortgagor, this satisfies the practice guidelines for confirmation of identity under ss. 11B(2) and (3) of the *Land Title Act* or ss. 288B(2) and (3) of the *Land Act*. In some cases, such as where a large number of mortgages are to be transferred, the mortgage transferee may, by written submission to the Registrar, request guidance regarding the ‘reasonable steps’ proposed to be taken by the mortgage transferee.

Section 94 of the *Property Law Act 1974*

[1-2500]

Another way in which a mortgage may be transferred is in accordance with s. 94(1) of the *Property Law Act*. This enables a mortgagor to require the mortgagee, instead of discharging the mortgage, to transfer the mortgage to any third person that the mortgagor directs. A Form 1 – Transfer is the applicable form and the consideration should be worded along the lines of ‘in consideration of a request by the mortgagor made under s. 94(1) of the *Property Law Act 1974*’.

¶[1-2510] deleted

¹Transfer by a Local Government under Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012*

[1-2520]

A transfer of a lot, or a lease under the *Land Act 1994* by a local government is completed as set out in ¶[1-2000] to ¶[1-2090] with the following variations:

Item 3 Transferor

The words ‘pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012*’ must follow the name of the local government. For example:

‘[name of the local government] pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012*’.

Item 4 Consideration

Insert the amount paid.

Alternatively, the following may be adopted:

Item 3 Transferor

State the name of the local government.

Item 4 Consideration

Insert the amount paid and refer to the authorising statutory provision. For example:

‘[amount paid] and pursuant to Chapter 4 Part 12 Division 3 of the Local Government Regulation 2012’.

²The Certificate of Title is not required to be deposited (s. 145(5) of the Local Government Regulation 2012.

Lodgement fees are payable and a duty notation is required.

²If there is only one indefeasible title for the lot or lots being transferred, no new indefeasible title will be created. However, if the lot or lots being transferred are owned by tenants in common with separate titles, or do not constitute all lots in an existing indefeasible title, a new indefeasible title must be requested and applicable fees paid.

See also [60-0920] and [60-0970].

Transfer under Writ or Warrant of Execution

[1-2530]

A transfer under a writ or a warrant of execution is completed as set out in ¶[1-2000] to ¶[1-2090] with the variation that the writ of execution number must be inserted, for example:

Item 3 Transferor

Sheriff exercising power of sale under Writ of Execution No [number].

or

The Sheriff or other officer of the applicable court.

A transfer under a writ of execution occurs where a writ of execution has been registered and the enforcement debtor has not satisfied the debt. The Sheriff, Registrar or other authorised officer of the court may then sell the lot or interest.

These transfers must be made under a registered writ of execution, and must be executed under the seal of the court and the designation of the signatory shown. They require a duty notation and lodgement fees are payable.

^{1, 2}The Certificate of Title, if issued, must be deposited for cancellation. However, experience has shown that in almost all cases the enforcement debtor will refuse to make the Certificate of Title available. In such a case, the Certificate of Title is dispensed with through lodgement of a Form 17 – Request to Dispense with Production, on the grounds that the Certificate of Title was not able to be exchanged at settlement and no advertising is required.

If the interest being sold is the interest of a joint tenant, the joint tenancy is severed and a tenancy in common is created. ²However, a separate indefeasible title is not created unless it is required as evidenced by payment of the relevant fee by the transferee.

The transfer is registered subject to registered encumbrances, liens and interests notified on the register.

²In the case of freehold land and water allocations the transfer is also registered subject to all equitable mortgages and liens notified by any caveat lodged prior to registration of the writ of execution (s. 120(2) of the *Land Title Act 1994*).

If a lot or an interest sold by the Sheriff is subject to a mortgage and the purchaser pays out the mortgagee, the correct order of lodgement is:

- (1) the transfer under the writ of execution (subject to the mortgage); and
- (2) the Form 3 – Release of Mortgage.

^{1,2}However, a lot that is subject to a mortgage pursuant to the *Defence Service Homes Act 1918* (Cth) may not be sold in satisfaction of an unsecured judgement debt without the approval of the Secretary of the Department of Veterans' Affairs (s. 45A of the *Defence Service Homes Act* (Cth)). The approval of the Secretary of the Department of Veterans' Affairs must be deposited with the Form 1 – Transfer executed by an authorised Court Officer.

Priorities

[1-2540]

A writ of execution has a currency of six months from lodgement and binds the lot or lease under the *Land Act 1994* when executed and put into force (s. 117(b) of the *Land Title Act* and s. 387(b) of the *Land Act*). This six month binding period can be extended by an order of the court and must be notified to the Registrar by way of a Form 14 – General Request (s. 117(b) of the *Land Title Act* and s. 387(b) of the *Land Act*).

A registered writ of execution binds purchasers, lessees, mortgagees and creditors of the lot or lease under the *Land Act* if the writ is executed (i.e. the lot or lease under the *Land Act* is seized and sold by the appropriate court officer) during the binding period of six months from its lodgement or any extension allowed by the court and notified to the Registrar.

Any instrument or document other than those by purchasers, mortgagees, lessees and creditors that are lodged after the writ and during the binding period of six months from lodgement and any extended time allowed by the court and notified to the Registrar may be registered.

If a lot or lease under the *Land Act* is sold by a court officer under a registered writ or warrant, the authorised officer is empowered to execute a transfer to the purchaser in Form 1 under the seal of the court, provided the official designation is shown adjacent to the officer's signature.

If a transfer to a purchaser from the court is lodged subsequent to a transfer by the debtor in the above circumstances, registration in the name of the purchaser from the court will proceed.

The binding effect of a writ that is not executed (i.e. the lot or lease under the *Land Act* is not seized and sold by the appropriate court officer) during the binding period ceases immediately on expiration of the six months or extended period. Any person, including purchasers, lessees, mortgagees and equitable mortgagees may request the cancellation of the writ in a Form 14 – Request to Cancel a Writ or Warrant of Execution, provided evidence that the writ was not executed is deposited. The evidence may be a certificate of search issued by the relevant court registry stating that the writ was not executed. This applies even if the writ is again lodged on the day after the binding period expired (*Hoy v AAA Home Loans Pty Ltd* [1985] VR 281).

A transfer executed and lodged by the Sheriff after the expiration of the six month binding period will be registered if there is no competing instrument or document, on the assumption that the time was extended. No further investigation will be made, as failure to notify the Registrar does not invalidate the transfer.

²A sale by a Sheriff of land registered under the Torrens System is not invalid merely because it takes place before the writ of execution was entered in the register (*Ex parte Bank of Australasia; Re Registrar General and Master of Titles* [1865] 1 QSCR 126).

If a transfer of a lot or lease under the *Land Act* from the enforcement debtor is lodged but unregistered at the date of lodgement of the writ of execution, the transfer is entitled to registration. The writ of execution will be requisitioned to be withdrawn as the enforcement debtor no longer has an interest capable of being transferred under the writ of execution.

A writ of execution must not be registered if it is lodged after:

- (a) 12 months from the date of issue of the writ of execution by the court; or
- (b) 12 months and any extension of the period allowed by the court and established by production of the court order.

1, ²**Transfer of Crown Reservation**

[1-2550]

Transfers of crown reservations fall into two categories:

- (1) Land which at the time of vesting in, or acquisition by, the Commonwealth of Australia by compulsory process was not subject to the *Land Title Act 1994*. In this situation:
 - (a) Where a transfer of the fee simple is to the State of Queensland from the Commonwealth, it is effected by a surrender and Form 1 – Transfer of the whole of the estate or interest of the Commonwealth. There is no need for a further transfer of the reservations. Such a transfer is not liable to transfer duty or lodgement fees.
 - (b) Where such land is transferred to a person or corporation, a Form 1 – Transfer of the fee simple to the transferee is required in which the reservations are reserved to the Commonwealth. These would be recited after the operative clause (in Item 4) and would entail the use of a Form 20 – Enlarged Panel for this purpose. In Item 4 would then appear ‘See Annexure A’, and the Form 20 would be identified as that annexure. At some later date these reservations would be transferred to the State by a Form 14 – General Request. No transfer duty is payable on this request, nor is the Certificate of Title required to be produced.
- (2) Land which at the time of vesting in, or acquisition by, the Commonwealth of Australia by compulsory process, was subject to the Land Title Act and is being transferred:
 - (a) To the State of Queensland in fee simple. This requires a Form 1 – Transfer followed by an Indenture, lodged with a Form 14 – General Request, between the Commonwealth and the State in which the Commonwealth transfers those reservations to the State. Note that the reservations are not recited in the transfer as in the example in 1(b) above. No transfer duty is payable.
 - (b) To a person or corporation. This is achieved through a Form 1 – Transfer. The reservations are reserved to the Commonwealth by the use of a Form 20 – Enlarged Panel, followed by an Indenture, lodged with a Form 14 – General Request, between the Commonwealth and the State whereby the reservations are transferred to the State.

¶[1-2560] deleted

²**Transfer to a Local Government – s. 116 of the *Trusts Act 1973***

[1-2570]

Any transfer in favour of a local government for a public, charitable, recreation or other leisure-time purpose must be in trust.

The transfer is effected by a Form 1 – Transfer to Trustees, accompanied by a Form 24 – Property Transfer Information.

The completion of the Form 1 – Transfer to Trustees requires the following information:

- an appropriate consideration that reflects the circumstances must appear in Item 4 (¹however, the consideration must make no reference to a condition of approval of a plan of subdivision);
- the local government as trustee must be shown in Item 5;
- the local government as transferee must execute in Item 6;
- a Form 20 – Schedule of Trusts may be incorporated in the Transfer or a trust document must be deposited (see ¶[51-2043]).

^{1, 2}A transfer of a lot that appears to be an access restriction strip on a plan of subdivision approved under the *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009* or the *Planning Act 2016* requires the lodgement of a statutory declaration by the registered owner to the effect that the transfer of the lot to the local government as trustee for access restriction purposes was not a condition of the relevant development approval and that the consideration shown in the transfer is a negotiated purchase price (s. 3.5.32 and Chapter 5 Part 5 of the *Integrated Planning Act* or s. 347 of the *Sustainable Planning Act* or s. 66 of the *Planning Act*). To clarify, the consideration must not refer to an access restriction strip.

If the land is affected by a mortgage or lease, documentation should be lodged to precede the Form 1 – Transfer to remove them to the extent they relate to the parcel of land in the transfer.

¹However, land transferred to a local government as trustee may be subject to easements, and these need not be surrendered.

A duty notation and lodgement fees are applicable.

^{1, 2}Transfer to a Local Government – s. 117 of the *Trusts Act 1973* [1-2580]

If a lot is transferred to a local government other than as trustee, s. 117 of the *Trusts Act* requires the transferor to provide a statutory declaration that the land is not being transferred to the local government as sole trustee.

The Registrar will not register any plan of subdivision where the local government has included a transfer of land as a condition to its approval of the plan.

The Form 1 – Transfer must be accompanied by a Form 20 – Declaration and a Form 24 – Property Information (Transfer). The statutory declaration must be made on the following terms:

When

- there is only one transferor
- there are two or more transferors
- the requirement that the statutory declaration being lodged cannot be complied with due to death or incapacity of the transferor (or **all** of them)
- the requirement that the statutory declaration be lodged cannot be complied with due to death or incapacity of **any** of the transferors

By

- the transferor

- each transferor
- the delegate of the transferee
- the other transferor or each of the other transferors, if available and competent, or the delegate of the transferee

The completion of the Form 1 – Transfer requires that Item 4 Consideration be expanded to include the true details of the consideration.

The consideration must not be expressed as ‘a condition of approval for subdivision’ or ‘an approved condition on the plan’.

If the lot is to be public use land, the following procedure must be followed:

- (a) the subject lot must be identified by describing the nature of the use (i.e., ‘park’) on the face of the plan (see ¶[21-2280]); and
- (b) the Form 1 – Transfer must be withdrawn.

Lodgement fees are payable and a duty notation is required.

1, 2Transfer of a Lot Outside the Scheme to the Body Corporate for Additional Common Property in a Community Titles Scheme

[1-2590]

When a lot outside of a Community Titles Scheme is to be added to the Community Titles Scheme and then converted to common property for that scheme the following documents may be required to be lodged for registration in the order listed:

- (a) a transfer of the lot to the body corporate;
- (b) a new CMS to bring the lot into the scheme;
- (c) a survey plan, signed by the body corporate, converting the lot into common property;
- (d) a new CMS incorporating the additional common property.

Alternatively, it is acceptable to achieve this outcome by only lodging one new CMS for registration. In this instance Item 6 of the Request (Form 14) to accompany the new CMS must include a detailed explanation of addition of the subject lot to the scheme and its subsequent conversion to additional common property for the scheme. (See [45-2540] for additional information).

1, 2Transfer of the whole of a Lot Within the Scheme to the Body Corporate for Additional Common Property in a Community Titles Scheme

[1-2600]

If a lot in a scheme is to become additional common property of the scheme the following documents may be required to be lodged for registration in the order listed:

- (a) a transfer of the lot to the body corporate;
- (b) a survey plan, signed by the body corporate, converting the lot into common property;
- (c) a new CMS incorporating the additional common property. (See [45-2540] for additional information).

1, 2^{Transfer of part of the Common Property in a Subsidiary Scheme to a Higher Scheme in a Layered Arrangement}

[1-2610]

If additional common property is to be created for a higher scheme from the common property of a subsidiary scheme the following documents are required to be lodged for registration in the order listed:

- (a) a survey plan subdividing the area of common property of the subsidiary scheme that is to become common property of the principal scheme into a lot;
- (b) a transfer of the subject lot to the body corporate for the principal scheme. A certificate under the relevant Regulation Module is also required from the body corporate for the subsidiary scheme;
- (c) a new CMS for the subsidiary scheme excising the lot from the subsidiary scheme;
- (d) a new CMS for the principal scheme adding the lot to the principal scheme;
- (e) a survey plan, signed by the body corporate for the principal scheme, converting the lot into common property;
- (f) a new CMS for the principal scheme incorporating the lot as additional common property.

Alternatively, it is acceptable to achieve this outcome by one new CMS for the principal scheme together with the plans and transfer and new CMS for the subsidiary scheme. In these instances Item 6 of the Request (Form 14) to accompany the new CMS for the principal scheme must include a detailed explanation of adding the subject lot to the scheme and its conversion into additional common property.

1, 2^{Transfer of a Lot Created from Common Property in a Community Titles Scheme}

[1-2620]

If additional lot/s are to be created from common property in a community titles scheme and transferred from the Body Corporate to new owner/s the following documents are to be lodged for registration in the order listed:

- (a) a survey plan, signed by the body corporate, subdividing the common property and defining the new lot/s;
- (b) a transfer from the body corporate to the intended owner(s) of the lot/s. A certificate under the relevant Regulation Module is also required;
- (c) a new CMS for the scheme.

In addition, a statement, under the Body Corporate seal, is required confirming that the provisions of s. 96 of the *Body Corporate and Community Management Act 1997* have not been contravened.

1, 2^{Transfer of a Lot in a Subsidiary Scheme for Common Property of a Higher Scheme in a Layered Arrangement}

[1-2630]

If a lot in a subsidiary scheme is to become additional common property for the principal scheme in a layered arrangement the following documents are required to be lodged in the order listed:

- (a) a transfer of the subject lot to the body corporate for the principal scheme;
- (b) a new CMS for the subsidiary scheme excising the lot from the subsidiary scheme;
- (c) a new CMS for the principal scheme adding the lot to the principal scheme;
- (d) a survey plan, signed by the body corporate for the principal scheme, converting the lot into common property;
- (e) a new CMS for the principal scheme incorporating the lot as additional common property.

Alternatively, it is acceptable to achieve this outcome by one new CMS for the principal scheme together with the plan and transfer and new CMS for the subsidiary scheme. In these instances Item 6 of the Request (Form 14) to accompany the new CMS for the principal scheme must include a detailed explanation of the inclusion of the subject lot into the scheme and its subsequent conversion into additional common property.

Forms

General Guide to Completion of Forms

[1-4000]

For general requirements for completion of forms see part 59 – Forms.

A document that is lodged as an electronic conveyancing document must be accompanied by a set of lodgement instructions identifying the nominated Responsible Subscriber and the order in which the documents are to be lodged. The lodgement instructions must be digitally signed by all subscribers to the transaction.

Dealing Number

Duty Imprint



OFFICE USE ONLY

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Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

Print one-sided only

1. Interest being transferred (if shares show as a fraction)

FEE SIMPLE

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

Lodger (Name, address, E-mail & phone number)

SMYTHE & CO. SOLICITORS
45 ADELAIDE STREET
BRISBANE QLD 4000
mail@smytheco.com.au
(07) 3227 9850

Lodger

Code
490

2. Lot on Plan Description

LOT 16 ON RP323361

Title Reference

15432099

3. Transferor

JOHN ANTHONY SMITH and PATRICIA MARY SMITH

4. Consideration

\$400,000.00

5. Transferee

Given names

Surname/Company name and number

(include tenancy if more than one)

TERENCE JAMES
MAUREEN

BROWN
BROWN

AS JOINT TENANTS

6. Transfer/Execution The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6(h) on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6(h) on the Form 24 is based on information supplied by the Transferee.

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

N I South

NELLIE ISABELLA SOUTH

JUSTICE OF THE PEACE (QUALIFIED) #23456.....

Witnessing Officer (signature, full name & qualification)

15/10/2017

Execution Date

J A Smith

Transferor's Signature

N I South

NELLIE ISABELLA SOUTH

JUSTICE OF THE PEACE (QUALIFIED) #23456.....

Witnessing Officer (signature, full name & qualification)

15/10/2017

Execution Date

P M Smith

Transferor's Signature

I M Law

IAN MAURICE LAW

Witnessing Officer (signature, full name & qualification)

11/11/2017

Execution Date

* **Transferee's or Solicitor's Signature**

Witnessing Officer (signature, full name & qualification)

Execution Date

* **Transferee's or Solicitor's Signature**

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

Guide to Completion of Form 1

[1-4010]

See ¶[1-2000] *ff* for a full guide to the completion of Form 1.

¶[1-6000] deleted

¶[1-7010] to [1-7050] deleted

Fees

[1-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1, 2}Land Title Regulation;
- ^{1, 3}Land Regulation; and
- ^{2, 3}Water Regulation.

Cross References and Further Reading

[1-9000]

Part 2 – Mortgage (National Mortgage Form)

Part 5, 5A, 6 – Transmission Applications

Part 12 – Request to Register Writ or Warrant of Execution

Part 45 –Community Title Schemes

Part 51 – Trusts

Part 48 – State Land

Part 49 – Water Allocations

Duncan and Vann, *Property Law and Practice*, Law Book Co Ltd (loose-leaf service)

Queensland Conveyancing Law and Practice, CCH Australia Ltd (loose-leaf service)

Croft, C, 'Rights and Obligations of Mortgagees in Possession' (1992) 66/122 *Law Institute Journal* pp 76-78

Notes in text

[1-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 2 – Mortgage (National Mortgage Form)

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Part 2 – Mortgage (National Mortgage Form)

General Law

Mortgage

[2-0000]

A lot or an interest may be mortgaged by registering a mortgage for the lot or interest s. 72(1) of the *Land Title Act 1994*. ²However, a mortgage is not an interest that can be mortgaged (s. 72(2) of the Land Title Act).

A mortgage under the Land Title Act, *Land Act 1994* and *Water Act 2000* does not operate to transfer the lot or interest to the mortgagee, but rather the mortgagee acquires a charge over the lot or interest which is coupled with certain powers, e.g. the powers of foreclosure and sale on default by the mortgagor.

²Section 4 of the Land Title Act defines a mortgage to include ‘a charge on a lot or an interest in a lot for securing money or money’s worth’.

The National Mortgage Form is the appropriate form for registration of a mortgage, however there is a transition period until 2 March 2018 during which mortgages can be executed using the Form 2 – Mortgage.

^{2,3}A notice recorded under s. 73(1)(c) of the Water Act is taken to be a mortgage under the Land Title Act. It is recorded on the water allocation title as a mortgage under s. 73(1)(c) of the Water Act. Form – W2F147 Notice of Consent to Encumber a Water Allocation is the appropriate form for a notice under s. 73(1)(c) of the Water Act (see part 49, esp ¶[49-2060]).

Mortgagor

[2-0010]

The mortgagor is the person who executes the mortgage, charging their interest in the lot or State tenure in favour of the mortgagee, and who undertakes to perform certain obligations.

A person cannot mortgage to themselves alone.

Mortgagee

[2-0020]

The mortgagee is the person who accepts the mortgage over the mortgagor’s lot or interest as security for certain obligations.

Capacity of Mortgagor

Individual

[2-0030]

A mortgagor must be a person capable of accepting legal responsibility for the execution of the mortgage. Therefore, generally minors or people who lack legal capacity cannot be mortgagors.

Corporation

[2-0040]

A company incorporated under the *Corporations Act 2001* (Cth) (or its predecessors) has the same capacity as a natural person, including the power to borrow money and give mortgages (s. 124(1) of the Corporations Act). This is subject to any specific exclusion of these powers in the company’s constitution (see part 50 – Corporations and Companies).

Trustee**[2-0050]**

If a registered owner or holder of an interest is recorded as trustee on title, the Capacity Field of the *Mortgagor Panel* of the NMF must specify that the mortgagor is holding the interest in a trustee capacity, for example:

Mortgagor	
Name	ABC CORPORATION PTY LTD
ACN / ARBN	123 123 123
Capacity	TRUSTEE

Tenant in Common**[2-0060]**

A tenant in common can execute a mortgage over their undivided part or share in the lot or interest in favour of the other tenant/s in common or any other person.

Joint Tenant**[2-0070]**

A mortgage by a joint tenant over their interest is registrable without severing the joint tenancy. However, it would appear that upon the death of a mortgagor who is a natural person, such a mortgage is cancelled.

Capacity of Mortgagee**Individual****[2-0080]**

A minor or a person who lacks legal capacity cannot be a mortgagee.

Corporation**[2-0090]**

A company incorporated under the *Corporations Act 2001* (Cth) has the same capacity as a natural person, including the power to borrow money and give mortgages (s. 124 of the *Corporations Act*). This is subject to any specific exclusion of these powers in the company's constitution (see part 50 – Corporations and Companies).

Trustee**[2-0100]**

Where the mortgagee is a trustee, the Registrar will not make any enquires about the authority of the trustee to enter into the mortgage, as s. 21 of the *Trusts Act 1973* allows a trustee to invest trust funds in any form of investment unless expressly forbidden by the instrument creating the trust.

Under s. 28(1)(b) of the *Land Title Act 1994* or s. 278(a) of the *Land Act 1994* the particulars necessary to identify every interest registered in a register must be recorded in that register.

If a Mortgagee is to be recorded as registered owner in a trustee capacity, the *Capacity Field* of the *Mortgagee Panel* of the NMF must specify that the mortgagee is holding the interest in a trustee capacity.

Example:

Mortgagee	
Given Name(s)	JOHN
Family Name	CITIZEN
Capacity	TRUSTEE

There is no longer a requirement to provide details of the trust instrument when lodging a mortgage to a trustee mortgagee (e.g. by depositing a certified copy of the trust deed or referring to a previous dealing where the trust deed was deposited).

For the specific requirements in relation to the transfer of a mortgage interest to a trustee mortgagee using a Form 1 – Transfer – see Part 1, esp ¶[1-2390].

Where a mortgagee holds as trustee and wishes to appoint a new trustee, this should be done by using a Form 1 – Transfer (see part 1, esp ¶[1-2400] to ¶[1-2430]).

Personal Representative

[2-0110]

Where a personal representative advances money from a deceased estate and wishes to register a mortgage over the property, the following applies:

- a personal representative who is a mortgagee will only be recorded on title as a trustee;
- The *Capacity Field* of the *Mortgagee Panel* of the NMF for the relevant mortgagee must be completed as ‘TRUSTEE’, and NOT as ‘PERSONAL REPRESENTATIVE’ nor as ‘EXECUTOR OF THE WILL OF...’
- the following must be deposited with the mortgage:
 - a declaration by the personal representative stating that all executorial duties have been completed; and
 - either:
 - the original will (it will be returned to the lodger after registration in this case); or
 - a copy of a grant of representation (or a reseal in Queensland).

For information about deposit of supporting documentation see paragraph ¶[60-1030].

Joint Account and Tenants in Common

[2-0120]

There may be multiple mortgagees who may hold an interest jointly or severally. A corporation and a natural person, two corporations and a natural person, or any such combination may take a mortgage as tenants in common or on joint account (s. 34(1) of the *Property Law Act 1974*).

The tenancy in which the mortgagees hold the interests must be set out in the *Tenancy (inc. share) Field* of the *Mortgagee Panel* of the National Mortgage Form (NMF). For example:

Mortgagee	
Given Name(s)	JOHN
Family Name	CITIZEN
Tenancy (inc. share)	JOINT TENANTS INTER-SE 3/5
Given Name(s)	JOAN
Family Name	CITIZEN
Name	BIG BANK LIMITED
ACN	986384755
Australian Credit Licence	659726
Tenancy (inc. share)	TENANTS IN COMMON 2/5

An NMF that fails to state a tenancy (where it is required) will be requisitioned, requiring the Tenancy (inc. share) Field of the Mortgagee Panel to be completed.

Whilst it is usual for the shares of the money advanced by each mortgagee to be shown, in mortgages where the amount of money advanced may be a fluctuating amount not definable at the time of execution of the mortgage, it is permissible for this item to show 'Not Applicable'. It is the responsibility of the remaining mortgagees, on the death (or dissolution, if a corporation) of one of the mortgagees to provide evidence of the share of the deceased or dissolved mortgagee.

Mortgagees who are tenants in common may create a joint tenancy by way of transfer. Similarly, mortgagees who are joint tenants may become tenants in common by way of transfer.

Creation of Subsequent Mortgages

^{1, 2}Certificate of Title

[2-0130]

If a Certificate of Title has issued, then the Certificate of Title must be produced to allow the registration of the first or a subsequent mortgage. However, the Certificate of Title will then be cancelled (s. 154 of the *Land Title Act 1994*). Section 80(2) of the *Property Law Act 1974* includes a mechanism by which the mortgagor can require the person holding the Certificate of Title to produce it to the Registrar to enable a following mortgage to be registered.

Consent of Prior Mortgagee

[2-0140]

Under s. 80(4) of the *Property Law Act 1974*, a subsequent mortgage may be created without the consent of a prior mortgagee, notwithstanding any provision in the prior mortgage to the contrary.

However, when a mortgage is registered in favour of the Queensland Housing Commission and was executed prior to the commencement of the *Housing Act 2003* (1 January 2004), consent by the Queensland Housing Commission to a subsequent mortgage is required (cl. 21(1)(a) of the Schedule to the *State Housing Act 1945*). The consent should be in a Form 18 – General Consent.

²Equitable Mortgage

[2-0150]

¹Section 75(1) of the *Land Title Act 1994* provides that an equitable mortgage may be created by depositing the Certificate of Title with the mortgagee. This section does not affect the other ways in which an equitable mortgage may be created (s. 75(2) of the *Land Title Act*). For example, an equitable mortgage may be created by an agreement to grant a mortgage.

The *Land Title Act* governs the right of an equitable mortgagee to lodge a lapsing caveat (s. 122(2) of the *Land Title Act*) (see part 11 – Caveat).

²Mortgage of Lease of Freehold Land or Water Allocation

[2-0160]

A lessee can mortgage an interest in a lease as security for certain obligations. A mortgage of a registered lease is created in the same manner as a mortgage of another interest (s. 72 of the *Land Title Act 1994*).

The lessor's consent to a mortgage of a lease is not required for registration.

However, if the consent is given, the Certificate of Title (if issued) must be deposited.

Section 121(1) of the *Property Law Act 1974* provides that the lessor's consent cannot be unreasonably withheld.

A mortgage of a lease may be capable of registration even if it is lodged after the initial term of the lease has expired. For further information see ¶[7-2190].

1, ³Mortgage of a State Lease

[2-0170]

Under the provisions of s. 340 of the *Land Act 1994*, a State lease or sublease may be mortgaged by registering a mortgage.

1, ³Mortgage of a Trustee Lease of a Reserve

[2-0180]

The following must be deposited with a mortgage of a trustee lease:

- the written approval of the trustee of the reserve (s. 58(1) of the *Land Act 1994*) by way of a Form 18 – General Consent; and
- the written approval of the Minister (s. 58(1) of the *Land Act*) by way of a letter, or a Form 18 – General Consent. The approval of the Minister is not required if the trustee has a written authority under s. 64 of the *Land Act* or the lease is a trustee lease granted by the State or Statutory body (s. 58(2) of the *Land Act*).

1, ³Mortgage of a Deed of Grant in Trust

[2-0190]

A deed of grant in trust, issued before the commencement of the *Land Act 1994*, may be mortgaged by the trustee. A deed of grant in trust issued after the commencement of this Act may be mortgaged by the trustee if the deed of grant in trust was issued because of a surrender under s. 358 of the *Land Act*, and the deed being surrendered was issued under s. 493 of the *Land Act*. The written approval (by way of letter or a Form 18 – General Consent) of the Minister is required to be deposited with the mortgage.

1, ³Tenures under the *Land Act 1994* that must not be Mortgaged

[2-0200]

A mortgage must not be registered over the following tenures:

- (a) a road licence or an occupational licence (no provision under the *Land Act*);
- (b) a reserve, by the trustee (prohibited by s. 67(1) of the *Land Act*); or
- (c) a permit to occupy (prohibited by s. 177(6) of the *Land Act*).

¹Conversion of State Land to Freehold Land

[2-0210]

A lessee of a State lease may, depending on the type of lease, apply to have the land freeholded. If approved, a deed of grant issues and an indefeasible title is created. If there is a mortgage over the State lease, the mortgage continues to apply to the deed of grant (s. 331(1) of the *Land Act 1994*).

Default

[2-0220]

²A mortgagee will usually have certain rights under its mortgage in the event of default by the mortgagor. In addition to the other powers exercisable by the mortgagee, s. 78(1) of the *Land Title Act 1994* provides that a mortgagee is to have the powers and liabilities of a mortgagee

under Part 7 of the *Property Law Act 1974*. Section 78(2) of the Land Title Act provides that the mortgagee also has the following remedies in the event of default by the mortgagor:

- to enter into possession of the property subject to the mortgage;
- to receive the rents and profits from the property (if any); and
- to commence proceedings in a court of competent jurisdiction to obtain possession, an order of foreclosure or an order for the sale of the property.

^{1, 3}The mortgagee of a lease is entitled to sell the interest if the lessee defaults under a mortgage, and the mortgagee has entered into possession of the mortgaged interest, or is exercising a power of sale under the mortgage (s. 345 of the *Land Act 1994*).

^{1, 3}If the trustee of a deed of grant in trust defaults under the mortgage, the mortgagee is entitled to sell the interest if they have complied with s. 68 of the Land Act.

Power of Sale

[2-0230]

If the mortgagor defaults in the performance of its obligations (e.g. by failing to pay the principal and/or interest), the mortgagee will be entitled to sell the lot or interest to recover its debt. This right is usually set out in the mortgage instrument, but it is also a right implied by s. 83(1)(a) of the *Property Law Act 1974*.

²The mortgagee cannot exercise the power of sale until it has first served a notice advising the mortgagor of any default under the mortgage and allowing the mortgagor 30 days to remedy the default (s. 84 of the *Property Law Act*). The notice of default may be in Form 4 of the forms approved under s. 350 of the *Property Law Act*.

²The *Land Title Act 1994* ensures that the mortgagee exercising a power of sale is able to sell free from any liability in respect of subsequent mortgages and equitable mortgagee's caveats. Therefore, it is not necessary to obtain releases of subsequent mortgages or equitable mortgagee's caveats (ss. 79 and 124(2)(c) of the *Land Title Act*).

^{1, 3}The *Land Act 1994* ensures that the mortgagee exercising a power of sale is able to sell free from any liability in respect of subsequent mortgages. Therefore, it is not necessary to obtain releases of subsequent mortgages (s. 350 of the *Land Act*).

Legislation

[2-1000]

^{2, 3}**Application of the *Land Title Act 1994* to the *Water Act 2000***

Under the provisions of the *Water Act*, the *Land Title Act* applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the *Land Title Act* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and

- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1, 3}**Reference to the Chief Executive in the *Land Act 1994***

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

Requirements of Mortgage

[2-2000]

²Pursuant to s. 73 of the *Land Title Act 1994*, a mortgage must be validly executed and include a description of the lot or interest to be mortgaged and the debt or liability secured by the mortgage.

^{1, 3}Pursuant to s. 288 of the Land Act, a mortgage of a lease or sublease must be signed by:

- (a) the mortgagor; and
- (b) the mortgagee or by a lawyer authorised by the mortgagee.

Confirmation of Identity of Mortgagor by Mortgagee

[2-2005]

Section 11A of the *Land Title Act 1994* and s. 288A of the *Land Act 1994* place an onus on **ALL** mortgagees to adopt appropriate *due diligence* practices prior to lodging any mortgage for registration. The provisions under s. 11A of the Land Title Act and s. 288A of the Land Act apply to **ALL** mortgages lodged for registration in Queensland, whether or not the mortgagee has any other business relationship with the mortgagor.

A mortgagee intending to take a mortgage over freehold land, a water allocation or an interest in a State tenure as security for a debt or liability, must, prior to lodging a mortgage for registration, take 'reasonable steps' to ensure that the person who executed the mortgage as mortgagor is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged.

Under s. 11A(3) of the Land Title Act and s. 288A(3) of the Land Act, a mortgagee takes 'reasonable steps' if they comply with the practices included in this Manual.

One way in which a mortgagee will take 'reasonable steps' is if they identify the person who is the mortgagor under the instrument (**Person Being Identified**) using the Verification of Identity Standard outlined in Part 60 [60-2000] and ensure the Person Being Identified is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged.

Accordingly for the purposes of complying with s. 11A(2) of the Land Title Act and s. 288A(2) of the Land Act a mortgagee can either:

- (a) identify the person who is the mortgagor under the instrument (**Person Being Identified**) using the Verification of Identity Standard outlined in Part 60 [60-2000] and ensure the Person Being Identified is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged.

- (b) ensure that the person who is the mortgagor under the instrument is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged, in some other way that constitutes the taking of reasonable steps.

Prudent lending practice – further checks

It is considered that in most cases, compliance with the Verification of Identity Standard would satisfy the ‘reasonable steps’ requirement under s. 11A(2) of the *Land Title Act 1994* or s. 288A(2) of the *Land Act 1994* provided that, from the steps taken, a prudent lender would be satisfied that the person who is the mortgagor under the instrument is, or is about to become, the registered owner or holder of the interest to be mortgaged.

However, it is important to note that mere mechanical compliance with the Verification of Identity Standard, without attention to detail, is not sufficient. Accordingly, paragraph 9 of the Verification of Identity standard requires a mortgagee to undertake further steps to verify the identity of the Person Being Identified where they ought reasonably know that:

- (a) any identity Document produced by the Person Being Identified is not genuine; or
- (b) any photograph on an identity Document produced by the Person Being Identified is not a reasonable likeness of the Person Being Identified; or
- (c) the Person Being Identified does not appear to be the Person to which the identity Document(s) relate;

or it would otherwise be reasonable to do so.

Specific circumstances where it may otherwise be considered reasonable to undertake further steps, may include the following–

- the Person Being Identified, has in any document or record relied on to identify that person, a name that is not exactly the same as the name of the current registered owner or holder of the interest, or transferee on a transfer to be lodged prior to the mortgage; or
- the Person Being Identified appears not to be of the same gender as the current registered owner or holder of the relevant interest, as indicated by the name of the registered owner or holder of the interest or by any other information reasonably available to the mortgagee; or
- the Person Being Identified appears to be younger than the current registered owner or holder of the interest, as indicated by the date that the person became registered on title or by any other information reasonably available to the mortgagee;
- the mortgage is executed under a power of attorney. Where the mortgage is executed under a power of attorney the mortgagee should take reasonable steps to ensure the power of attorney is genuine.

Record keeping – approved form

Under s. 11A(4) of the *Land Title Act 1994* and s. 288A(4) of the *Land Act 1994* a mortgagee must keep the following for 7 years after the instrument is registered:

- (a) in the approved form, a written record of the steps taken under s. 11A(2) of the *Land Title Act* or s. 288A(2) of the *Land Act*; or
- (b) originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgagee in complying with s. 11A(2) of the *Land Title Act* and s. 288A(2) of the *Land Act*.

The term ‘approved form’ in s. 11A(4)(a) of the Land Title Act and s. 288A(4)(a) of the Land Act, means a record kept that properly identifies the mortgage transaction and clearly details the steps taken by the mortgagee under s. 11A of the Land Title Act or s. 288A of the Land Act. The record does not form part of, and must not accompany, an instrument or document lodged for registration.

Section 11A(6) of the Land Title Act and s. 288A(6) of the Land Act authorises the production of the records, which may contain personal information, only when such a request is made by the Registrar. It is anticipated that production of records would be required in, but not limited to, circumstances where the Registrar is investigating a particular allegation or other matter.

Interest being Mortgaged

[2-2010]

A registered owner or holder of different interests may mortgage all those interests in the one mortgage provided the interests are all of a primary nature or all of a secondary nature. See ¶[59-2020] for further information. A natural person or a corporation who are also a trustee may not enter into the same mortgage in both capacities.

Description of Debt or Liability

[2-2020]

A description of the debt or liability secured by a mortgage must be detailed in the Operative words and Terms and Conditions of this Mortgage Panel under the heading *Terms and Conditions of this Mortgage* using one of the three methods detailed in ¶[2-4080].

The description of the debt or liability may include the following:

Consideration

[2-2030]

That is, the amount of money advanced by the mortgagee to the mortgagor. Any amount of money must be shown in Australian currency. The amount of the advance may not be fixed and therefore the consideration may be simply all money that may be provided or secured by the mortgage.

Rate of Interest

[2-2040]

The mortgage usually secures payment to the mortgagee of interest payable on money secured by the mortgage. The applicable rate of interest can be shown.

Repayment of Debt

[2-2050]

The term of the time frame for repayment of the debt can be shown.

Covenants

[2-2060]

These are the terms and conditions of the mortgage.

The mortgage may include terms and conditions using a Standard Terms Document in full (without amendment) or in part (with specific clauses deleted and/or substituted by new clauses). Refer to ¶[2-4080] in the guide to completion for instructions.

Some statutes imply certain covenants and obligations into a mortgage transaction. For example, in the *Property Law Act 1974*:

- Section 78 implies in certain cases an obligation on the mortgagor to repay the principal and interest and keep the buildings (if any) in repair.

- Section 83(1)(b) confers a number of powers on the mortgagee, e.g. the power to insure against fire damage, storm and tempest, in which case the premiums paid are a charge on the mortgaged land in addition to the principal sum at the same rate as for interest.
- Section 80 gives the mortgagor the right to inspect any documents of title or other documents relating to the mortgaged property and the right to have the title documents produced at the relevant office to allow registration of an ‘authorised dealing’ or to record subsequent mortgages.
- Section 94 gives the mortgagor the right in certain circumstances to have the mortgage transferred to a third person.

Other powers upon default are also implied (see ¶[2-0220]). These implied powers may be negated or varied in any mortgage (s. 49(2) of the Property Law Act).

Amendment of Mortgage and Priority

[2-2070]

Section 76 of the *Land Title Act 1994* and s. 343 of the *Land Act 1994* regulate the registration of amendments of mortgage.

Section 77 of the *Land Title Act* and s. 344 of the *Land Act* enable the amendment of the priority of registered mortgages by way of a Form 30 – Mortgage Priority.

See part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a Prendre, Building Management Statement or Carbon Abatement Interest or part 30 – Mortgage Priority.

²Collateral Mortgages

[2-2080]

A collateral mortgage is one which is in addition to the original mortgage and is to better secure the debt which the original mortgage secures. This enables the mortgagee to fully exercise its rights under the original mortgage.

The Registrar requires a collateral mortgage to be lodged when a plan of survey joins two or more lots together into one lot, and where one or more of the original lots is not covered by an existing mortgage. The collateral mortgage must cover all of the land in the new lot created by the plan. Failure to lodge a collateral mortgage would result in the mortgagee only having a security over part of the new lot thus preventing it from exercising its rights should the mortgagor default.

³In the case of an amalgamation of water allocations it is not possible to lodge a collateral mortgage at the same time as an amalgamation request, as the lot number and title reference will not be known until the amalgamation request is registered.

In view of this, mortgagees have two options:

- (a) ensure that all lots that are to be amalgamated are mortgaged to the same mortgagee prior to the lodgement of the amalgamation request; or
- (b) provide written advice to the Registrar stating that:
 - the mortgagee is aware that the whole of the new lot will not be subject to a mortgage; and
 - there is a need to register a collateral mortgage over the whole of the new lot; and

- the mortgagee intends to lodge a collateral mortgage upon the registration of the amalgamation.

Collateral mortgages are **not** required when the same mortgagee holds separate mortgages over several lots to be amalgamated.

Power of Sale

[2-2090]

See Part 1 – Transfer, ¶[1-2340] to ¶[1-2375].

²Foreclosure

[2-2100]

This is the right of the mortgagee on default by the mortgagor to take the land in satisfaction of the debt. For further information see part 14, ¶[14-2310].

^{1, 2}Power of Sale by Defence Service Homes Corporation

[2-2110]

See Part 1 – Transfer, ¶[1-2375].

Lease by Mortgagee in Possession

[2-2120]

See part 7 – Lease, ¶[7-2070].

(For receivers and managers see part 50 – Corporations and Companies.)

Receiver Appointed by a Mortgagee

[2-2130]

For information about a receiver of property of a mortgagor appointed under the terms of a registered mortgage see ¶[1-2379], [50-2030] and ¶[60-0900].

²Merger of Mortgage

[2-2140]

Unless the mortgagee asks the Registrar not to, if a mortgagee of a lot becomes the registered owner of that lot, the Registrar must register the mortgagee as registered owner free of the mortgage (ss. 63(2) and (3) of the *Land Title Act 1994*).

The request of a mortgagee in these circumstances may be included in Item 5 of the Form 1 – Transfer by the insertion of the words ‘do not cancel Mortgage No [number]’.

Mortgage Duty

[2-2150]

A mortgage signed before 1 July 2008 must have a duty notation.

The *Bank Integration Act 1991* (Cth)

[2-2160]

This Act has the general effect of amalgamating savings banks with their parent banks.

The Act provides for the vesting of the assets from the savings bank in the parent bank (‘the Bank’). The day on which the property vests is the ‘succession day’. The Registrar is notified of the succession day by virtue of the certificate issued by an authorised person (ss. 23 and 24 of the Bank Integration Act).

Dealings which are currently registered do not require amendment. However, where the Bank wishes to have the new name entered onto the Register, a Form 14 – Request to Change Name (see part 14, esp ¶[14-2000] and ¶[14-2020]) must be lodged.

Where an amendment of mortgage is lodged, a Form 14 – Request to Change Name must be lodged prior to the amendment. The succession day will vary for each Bank. A certificate issued under s. 23 of the Bank Integration Act must be provided to the Registrar, by stating the earlier dealing number where the certificate was deposited and may be referred to in subsequent dealings.

Mortgages executed on or after succession day must be under the Bank's new name and executed accordingly.

Dealings associated with the vesting of savings bank assets in the parent bank are exempt from fees.

Where a dealing is to be registered which will involve the mortgagee going off the title, the name of the mortgagee is to include its former name, e.g. 'Big City Bank Limited formerly Big City Savings Bank Limited'.

Forms

Electronic Conveyancing Documents

[2-4000]

Documents that are lodged as electronic conveyancing documents must be accompanied by a set of lodgement instructions identifying the nominated Responsible Subscriber and the order in which the documents are to be lodged. The lodgement instructions must be digitally signed by all subscribers to the transaction.

General Guide to Completion of Forms

[2-4010]

For general requirements for completion of forms see part 59 – Forms.

Webform

The National Mortgage Form webform can be completed online and printed or downloaded as a completed form in portable document format (pdf). The webform cannot be downloaded for local use. However, the data entered via the National Mortgage webform can be saved and re-loaded at a later time for completion and printing.

The webform and user guide can be accessed at: <http://lrforms.arnec.gov.au/lrforms/>

The panels of the NMF will expand to include any additional Fields and data required. The use of a *Form 20 – Enlarged Panel* or *Form 20 - Schedule* to include Fields or data that can be inserted into the panels of the NMF is only permitted for:

- the *Operative words and Terms and Conditions of this Mortgage Panel* (using a *Form 20 – Schedule*); and
- the *Mortgagor Execution Panel* and *Mortgagee Execution Panel* when a marksman clause (see ¶[60-0900]) is required (using a *Form 20 – Enlarged Panel*).

Microsoft Word Template Form

A Microsoft Word Template National Mortgage Form is also available for download from the Titles Registry forms web page at:

<https://www.business.qld.gov.au/industries/building-property-development/titles-property-surveying/titles-property/titles-registry-forms>

However, please note that the completion of the NMF in the correct format may require an intermediate knowledge of the use of Microsoft Word. The Titles Registry recommends the use of the Webform as the easiest method of completing the NMF.

A basic guide to completion which includes instructions on how to unprotect the form to make any necessary changes is also available on the Titles Registry forms web page. Further information in relation to the completion of the NMF is also provided below.

The panels of the NMF will expand to include any additional Fields and data required. The use of a *Form 20 – Enlarged Panel* or *Form 20 - Schedule* to include Fields or data that can be inserted into the panels of the NMF is only permitted for:

- the *Operative words and Terms and Conditions of this Mortgage Panel* (using a *Form 20 – Schedule*); and
- the *Mortgagor Execution Panel* and *Mortgagee Execution Panel* when a marksman clause (see ¶[60-0900]) is required (using a *Form 20 – Enlarged Panel*).

Lodger Details

Lodger Code
Name BIG CITY SOLICITORS
Address 123 QUEEN ST BRISBANE
Lodger Box 123
Phone (07) 3222 3333
Email mail@bigcitysolicitors.com.au
Reference SMITH:ABC

For Office Use Only

THE BACK OF THIS FORM
MUST NOT BE USED

MORTGAGE

Jurisdiction QUEENSLAND

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or interest being mortgaged

FEE SIMPLE

Land Title Reference	Part Land Affected?	Land Description
12348019		LOT 1 ON RP 118983

Mortgagor

Given Name(s)	ROBERT JOHN
Family Name	SMITH
Given Name(s)	MARY ANNE
Family Name	SMITH

Mortgagee

Name	ABC BANK LIMITED
ACN	123456789

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference	709123465
(b) Additional terms and conditions	NIL

Mortgagor Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of ROBERT JOHN SMITH

Signer Name ROBERT JOHN SMITH

Full Name of Witness ALFRED HENRY PATTERSON

Signature R J Smith

Witness Signature A Patterson

Execution Date 21 / 07 / 2017

Witness Qualifications SOLICITOR

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of MARY ANNE SMITH

Signer Name MARY ANNE SMITH

Full Name of Witness ALFRED HENRY PATTERSON

Signature M A Smith

Witness Signature A Patterson

Execution Date 27 / 07 / 2017

Witness Qualifications SOLICITOR

Mortgagee Execution

Executed on behalf of ABC BANK LIMITED
under power of attorney number 712345612

Signer Name EMILY JANE JONES

Signer Organisation ABC BANK LIMITED

Signer Role TIER 2 ATTORNEY

Signature E J Jones

Execution Date 28 / 07 / 2017

Guide to Completion of National Mortgage Form

Lodger Details Panel

[2-4020]

The standard Fields of the *Lodger Details Panel* are as follows:

Lodger Details

Lodger Code
Name
Address
Lodger Box
Phone
Email
Reference

None of the Fields are individually mandatory, however the combination of details must suitably identify the lodger.

If the Lodger Code Field is completed, there is no need to complete the Name Field, Address Field, Lodger Box Field, Phone Field or Email Field.

If the Lodger Code Field is not completed, the following fields should be completed:

1. The Name Field with the name of the lodger;
2. The Address Field with the postal address of the lodger;
3. The Lodger Box Field with the lodger box reference (if applicable);
4. The Phone Field with the telephone number of the lodger;
5. The Email Field with the email address of the lodger.

The Reference Field can be completed with the lodger's internal reference for the matter. This data is not required or used by the Titles Registry.

Jurisdiction Panel

[2-4030]

The Jurisdiction Field in the *Jurisdiction Panel* must state QUEENSLAND.

Example:

Jurisdiction	QUEENSLAND
---------------------	------------

Estate and/or interest being mortgaged Panel

[2-4040]

Insert FEE SIMPLE, WATER ALLOCATION, LEASE, or type of State tenure e.g. (STATE LEASE), whichever is applicable. If the mortgage only relates to the interest of one Tenant in Common Registered Owner, that Registered Owner's share fraction share (as numerator/denominator) should be included.

Example: mortgage of an interest in a lease:

Estate and/or interest being mortgaged
LEASE NO. 703303243

Example: mortgage of the fee simple interest of a Tenant in Common who owns a half share:

Estate and/or interest being mortgaged

1/2 FEE SIMPLE

Land Title Reference/Part Land Affected?/Land Description Panel [2-4050]

The standard Fields of the Land Title Reference/Part Land Affected?/Land Description Panel are as follows:

Land Title Reference	Part Land Affected?	Land Description
----------------------	---------------------	------------------

Please note that the panel will expand to include the necessary Fields and data. The use of a *Form 20 – Enlarged Panel* to include Fields and data for this panel is not permitted.

^{1, 2}Freehold Land Description

Land Title Reference Field: complete with the 8 digit Land Title Reference for the lot.

Part Land Affected? Field: insert “Y” if the mortgage relates to only one or some of the lots on an indefeasible title (Land Title Reference) which has multiple lots, otherwise leave blank.

Land Description Field: The description should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

Example of a mortgage of 2 titles, each with 2 lots:

Land Title Reference	Part Land Affected?	Land Description
51564528		LOT 51 ON RP 300124
51564528		LOT 54 ON RP 300124
52387245		LOT 3 ON SP 222599
52387245		LOT 4 ON SP 222599

Example of a mortgage of one lot on an indefeasible title which has more than one lot (Part Land Affected):

Land Title Reference	Part Land Affected?	Land Description
51564528	Y	LOT 51 ON RP 300124

^{2, 3}Water Allocation Description

Land Title Reference Field: complete with the 8 digit Land Title Reference for the Water Allocation.

Part Land Affected? Field: This field is not applicable to Water Allocations and must be left blank.

Land Description Field: A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

Example:

Land Title Reference	Part Land Affected?	Land Description
46012345		WA 27 ON AP7900

^{1, 3}State Tenure Description

Land Title Reference Field: complete with the 8 digit Land Title Reference for the State tenure.

Part Land Affected? Field: insert “Y” if the mortgage relates to only one or some of the lots on an indefeasible title (Land Title Reference) which has multiple lots, otherwise leave blank.

Land Description Field: The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for a crown plan).

Example:

Land Title Reference	Part Land Affected?	Land Description
40567123		LOT 27 ON CP LIV1234

Mortgagor Panel**[2-4060]**

The standard Fields of the *Mortgagor Panel* are as follows:

Mortgagor

Given Name(s)	<i>[For an individual]</i>
Family Name	
Capacity	
Name	<i>[For an organisation eg. a company]</i>
ACN	
ARBN	
Capacity	

Individual Mortgagor

For each mortgagor that is an individual, the following fields are applicable:

Given Name(s): When combined with the Family Name field, this must correspond with the name of the registered owner or holder of the interest as shown on a current title search.

Family Name: When combined with the Given Name(s) field, this must correspond with the name of the registered owner or holder of an interest as shown on a current title search.

Capacity: This field is used to supply the capacity in which the mortgagor holds the land (e.g. TRUSTEE – see ¶[2-0050]). If there is no capacity for the mortgagor, this Field can be left blank or omitted.

Please note that the panel will expand to include the necessary Fields and data. The use of a *Form 20 – Enlarged Panel* to include Fields and data for this panel is not permitted.

Example for 2 individual mortgagors:

Mortgagor

Given Name(s)	JOHN
Family Name	CITIZEN
Given Name(s)	JOAN
Family Name	CITIZEN

Example for 2 individual mortgagors holding the property as trustees:

Mortgagor	
Given Name(s)	JOHN
Family Name	CITIZEN
Capacity	TRUSTEE
Given Name(s)	JOAN
Family Name	CITIZEN
Capacity	TRUSTEE

Organisation Mortgagor

For each mortgagor that is an organisation (e.g. a company), the following Fields are applicable:

Name: this Field should contain the full legal name of the organisation and must correspond with the name of the registered owner or holder of the interest as shown on a current title search.

ACN If the Mortgagor has an ACN, the 9 digit ACN must be entered. If there is no ACN or this Field can be left blank or omitted.

ARBN: If the Mortgagor has an ARBN, the 9 digit ARBN must be entered. If there is no ARBN this Field can be left blank or omitted.

Capacity: This field is used to supply the capacity in which the mortgagor holds the land (e.g. TRUSTEE – see ¶[2-0050]). If there is no capacity for the mortgagor, this Field can be left blank or omitted.

Please note that the panel will expand to include the necessary Fields and data. The use of a *Form 20 – Enlarged Panel* to include Fields and data for this panel is not permitted.

Example for a corporate mortgagor:

Mortgagor	
Name	DEF COMPANY LTD
ARBN	987651265

Example for a corporate mortgagor holding the property as trustee:

Mortgagor	
Name	ABC COMPANY PTY LTD
ACN	986384755
Capacity	TRUSTEE

Mortgagee Panel

[2-4070]

The standard Fields of the *Mortgagee Panel* are as follows:

Mortgagee	
Given Name(s)	[For an individual]
Family Name	
Capacity	
Tenancy (inc. share)	

Name	<i>[For an organisation e.g. a company]</i>
ACN	
ARBN	
Australian Credit Licence	
Capacity	
Tenancy (inc. share)	

Individual Mortgagee

For each mortgagee that is an individual, the following fields are applicable:

- Given Name(s):** When combined with the Family Name Field, this must correspond with the full legal name of the individual.
- Family Name:** When combined with the Given Name(s) Field, this must correspond with the full legal name of the individual.
- Capacity:** This field is used to supply the capacity in which the mortgagee will hold the mortgage on title (e.g. TRUSTEE – see ¶[2-0100]). If there is no capacity to be recorded, this Field can be left blank or omitted.
- Tenancy (inc. share):** If there is only one mortgagee this Field can be left blank or omitted.
See ¶[2-4075] in relation to completion of this Field where there is more than one mortgagee.

Please note that the panel will expand to include the necessary Fields and data. The use of a *Form 20 – Enlarged Panel* to include Fields and data for this panel is not permitted.

Example for an individual mortgagee:

Mortgagee	
Given Name(s)	JOHN
Family Name	CITIZEN

Example for an individual mortgagee holding as trustee:

Mortgagee	
Given Name(s)	JOHN
Family Name	CITIZEN
Capacity	TRUSTEE

Organisation Mortgagee

For each mortgagee that is an organisation (e.g. a company), the following Fields are applicable:

- Name:** this Field must contain the full legal entity name of the organisation.
- ACN** If the Mortgagee has an ACN, the 9 digit ACN must be entered. If there is no ACN or this Field can be left blank or omitted.
- ARBN:** If the Mortgagee has an ARBN, the 9 digit ARBN must be entered. If there is no ARBN this Field can be left blank or omitted.
- Australian Credit Licence:** This is an optional field. If the mortgagee has no Australian Credit Licence this Field can be left blank or omitted.

Capacity: This field is used to supply the capacity in which the mortgagee will hold the mortgage on title (e.g. TRUSTEE – see ¶[2-0100]). If there is no capacity to be recorded, this Field can be left blank or omitted.

Tenancy (inc. share): If there is only one mortgagee this Field can be left blank or omitted.
See ¶[2-4075] in relation to completion of this Field where there is more than one mortgagee.

Please note that the panel will expand to include the necessary Fields and data. The use of a *Form 20 – Enlarged Panel* to include Fields and data for this panel is not permitted.

Example for an Australian Company Mortgagee:

Mortgagee	
Name	BIG BANK LIMITED
ACN	986384755
Australian Credit Licence	659726

Completion of the Tenancy (inc. share) Field for multiple Mortgagees

[2-4075]

Joint Tenants

If multiple mortgagees hold as joint tenants, the words “Joint Tenants” should be added to the Tenancy (inc. share) Field for the first joint tenant.

Example of two organisation mortgagees holding as joint tenants:

Mortgagee	
Name	ALPHA BANK LIMITED
ACN	123123123
Australian Credit Licence	659800
Tenancy (inc. share):	JOINT TENANTS
Name	BRAVO BANK LIMITED
ACN	321321321

Example of an individual and an organisation holding as joint tenants:

Mortgagee	
Given Name(s)	JOHN
Family Name	CITIZEN
Tenancy (inc. share):	JOINT TENANTS
Name	BRAVO BANK LIMITED
ACN	321321321

Tenants in Common

If multiple mortgagees hold as tenants in common, every mortgagee must have the words “Tenants in Common” and the share fraction (as numerator/denominator) added to the Tenancy (inc. share) Field for each mortgagee. The total shares must add to 1.

Example of 2 organisation mortgagees holding as tenants in common:

Mortgagee	
Name	ALPHA BANK LIMITED
ACN	123123123
Tenancy (inc. share)	TENANTS IN COMMON 1/3
Name	BRAVO BANK LIMITED
ACN	321321321
Tenancy (inc. share)	TENANTS IN COMMON 2/3

Example of an individual trustee mortgagee and organisation trustee mortgagee (trust instruments or documents deposited with mortgage) holding as tenants in common:

Mortgagee	
Given Name(s)	JOHN
Family Name	CITIZEN
Capacity	TRUSTEE
Tenancy (inc. share)	TENANTS IN COMMON 2/5
Name	BRAVO BANK LIMITED
ACN	321321321
Capacity	TRUSTEE
Tenancy (inc. share)	TENANTS IN COMMON 3/5

Mixed Tenancies (Joint Tenants inter-se holding as Tenants in Common with other mortgagees)

If some of the mortgagees hold as joint tenants, and they hold as tenants in common with one or more other mortgagees, the words “JOINT TENANTS INTER-SE” and the share fraction (as numerator/ denominator) that group of mortgagees hold is added to the *Tenancy (inc. share) Field* for the first mortgagee in the group of joint tenants and the words “TENANTS IN COMMON” and the share fraction (as numerator/ denominator) are added to the *Tenancy (inc. share) Field* of every other mortgagee. The total shares must add to 1.

Example:

Alpha Bank Limited and Bravo Bank Limited hold half a share as joint tenants inter-se, holding as tenants in common with Charlie Bank Limited, who hold the other half share. This would be shown as:

Mortgagee	
Name	ALPHA BANK LIMITED
ACN	123123123
Tenancy (inc. share)	JOINT TENANTS INTER-SE 1/2
Name	BRAVO BANK LIMITED
ACN	321321321
Name	CHARLIE BANK LIMITED
ACN	987987987
Tenancy (inc. share)	TENANTS IN COMMON 1/2

Example of two individual mortgagees holding as joint tenants inter-se, holding as tenants in common with a corporation:

Mortgagee

Given Name(s)	JOHN
Family Name	CITIZEN
Tenancy (inc. share)	JOINT TENANTS INTER-SE 3/5
Given Name(s)	JOAN
Family Name	CITIZEN
Name	BIG BANK LIMITED
ACN	987987987
Australian Credit Licence	659726
Tenancy (inc. share)	TENANTS IN COMMON 2/5

Operative words and Terms and Conditions of this Mortgage Panel

[2-4080]

The standard fields of the *Operative words and Terms and Conditions of this Mortgage Panel* are as follows:

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference

(b) Additional terms and conditions

A description of the debt or liability secured by the mortgage (see ¶[2-2020]) must be detailed under the heading *Terms and Conditions of this Mortgage* by utilising one of the following three methods:

- using a Standard Terms Document without:
 - amendment (e.g. deleting or substituting clauses); and
 - any other description of the debt or liability being entered; or
- using a Standard Terms Document with:
 - amendments (e.g. deleting or substituting clauses); and/or
 - additional terms and conditions or another description of the debt or liability; or
- not using a Standard Terms Document and entering the terms and conditions or other description of the debt or liability.

Instructions on how to complete the NMF using the above three methods are provided under the relevant headings below.

Using a Standard Terms Document

Using a Standard Terms Document without amendment or other description of the debt or liability

If a Standard Terms Document is being used without amendment or any additional terms and conditions or other description of the debt or liability (see ¶[2-2020]):

- the dealing number of the Standard Terms Document should be inserted in (a) *Document Reference*; and

- NIL should be inserted in (b) *Additional terms and conditions*.

Example:

Terms and Conditions of this Mortgage	
(a) Document Reference	71234567
(b) Additional terms and conditions	NIL

Using a Standard Terms Document with amendments or with an additional description of the debt or liability

If a Standard Terms Document is being used with amendments or any additional terms and conditions or other description of the debt or liability (see ¶[2-2020]):

- the dealing number of the Standard Terms Document should be inserted in (a) *Document Reference*; and
- Any changes to the Standard Terms Document (e.g. deleting or substituting clauses) or any additional terms and conditions or other description of the debt or liability should be inserted in (b) *Additional terms and conditions*.

The use of a *Form 20 – Schedule* is permitted to include data for (b) *Additional terms and conditions* (see part 20, esp ¶[20-2010]).

Please note that the data that can be inserted for (b) *Additional terms and conditions* in the Webform is limited to 4000 characters. There is no limit to the data that can be inserted for (b) *Additional terms and conditions* in the Microsoft Word Template Form as the panel will expand to include all required data.

Example:

Terms and Conditions of this Mortgage	
(a) Document Reference	71234567
(b) Additional terms and conditions	[Detail amendments to the Standard Terms Document (e.g. deleting or substituting clauses) and/or any additional terms and conditions or other description of the debt or liability]

Example using a *Form 20 – Schedule*:

Terms and Conditions of this Mortgage	
(a) Document Reference	71234567
(b) Additional terms and conditions	See attached Schedule.

QUEENSLAND TITLES REGISTRY
 Land Title Act 1994, Land Act 1994
 and Water Act 2000

SCHEDULE

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{

Title Reference [12348019]

}

Operative words and Terms and Conditions of this Mortgage Panel

Terms and Conditions of this Mortgage

(b) Additional terms and conditions

[Detail amendments to the Standard Terms Document (e.g. deleting or substituting clauses) and/or any additional terms and conditions or other description of the debt or liability]

Not using a Standard Terms Document

If no Standard Terms Document is being used:

- NIL should be inserted in (a) *Document Reference*; and
- The terms and conditions or other description of the debt or liability (see ¶[2-2020]) should be inserted in (b) *Additional terms and conditions*.

The use of a *Form 20 – Schedule* is permitted to include data for (b) *Additional terms and conditions* (see part 20, esp ¶[20-2010]).

Please note that the data that can be inserted for (b) *Additional terms and conditions* in the Webform is limited to 4000 characters. There is no limit to the data that can be inserted for (b) *Additional terms and conditions* in the Microsoft Word Template Form as the panel will expand to include all required data.

Example:

Terms and Conditions of this Mortgage

(a) Document Reference NIL

(b) Additional terms and conditions

[Detail the terms and conditions or other description of the debt or liability]

Example using a *Form 20 - Schedule*:

Terms and Conditions of this Mortgage

(a) Document Reference NIL

(b) Additional terms and conditions

See attached Schedule.

QUEENSLAND TITLES REGISTRY Land Title Act 1994, Land Act 1994 and Water Act 2000	SCHEDULE	FORM 20 Version 2 Page 3 of 3
<div style="display: flex; justify-content: space-between;"> <div style="border-top: 1px solid black; width: 40%;"></div> <div style="border-top: 1px solid black; width: 40%;"></div> </div> <p style="margin: 10px 0;">Title Reference [12348019]</p> <p style="margin: 10px 0;">Operative words and Terms and Conditions of this Mortgage Panel</p> <p style="margin: 10px 0;">Terms and Conditions of this Mortgage</p> <p style="margin: 10px 0;">(b) Additional terms and conditions</p> <p style="margin: 10px 0; background-color: #f0f0f0;">[Detail the terms and conditions or other description of the debt or liability]</p>		

Mortgagor and Mortgagee executions Panel

[2-4090]

For each Mortgagor and Mortgagee the following standard Fields are applicable:

Mortgagor Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of

Signer Name

Signer Organisation

Signer Role

Full Name of Witness

Witness Signature

Witness Qualifications

Signature

Execution Date

Mortgagee Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of

Signer Name

Signer Organisation

Signer Role

Full Name of Witness

Witness Signature

Witness Qualifications

Signature

Execution Date

Complete the applicable fields for each individual or entity executing the NMF. Any Fields that are not applicable can be left blank or omitted. Some examples have been provided further below.

Please note that the panel will expand to include the necessary Fields and data. The use of a *Form 20 – Enlarged Panel* to include Fields and data for this panel is not permitted except when a marksman clause is required (see ¶[16-2140]).

The NMF requires the completion of a separate witnessing provision for each signature which is required to be witnessed, even if signatures are made in front of the same witness.

For the requirements when executing see part 60 – Miscellaneous, esp ¶[60-0360], ¶[60-0390] and ¶[60-0900].

For a company executing the NMF, the ACN or ARBN does not need to be included in the company name in the relevant Execution Panel if it has been included in the Mortgagor Panel or Mortgagee Panel.

Where a legal practitioner signs a NMF on behalf of a mortgagee the legal practitioner's full name must be printed underneath the signature along with the words, solicitor, barrister or Australian legal practitioner as appropriate. The legal practitioner's signature need not be witnessed. Refer to the example below.

Electronic Form – The requirements for the execution and certification for the Mortgagee are contained in the Participation Rules (Queensland) for electronic conveyancing.

Execution under a registered Power of Attorney

The following requirements apply for an execution carried out by an attorney under a registered power of attorney:

1. The second line of the Mortgagor Signature Details Field or Mortgagee Signature Details Field must include the statement “under power of attorney [DEALING NUMBER]” stating the dealing number of the registered Power of Attorney (underneath “Executed on behalf of [NAME]”); and
2. For a registered Power of Attorney which specifically names the attorneys:
 - a. the Signer Name Field must be the same as the name of the attorney listed in the Power of Attorney; and
 - b. the Signer Role Field should state “ATTORNEY”; and
3. For a registered Power of Attorney which defines attorneys using a position or role in an organisation (e.g. Mortgage Officer or Tier 2 Attorney in a Bank, Partner in a law firm):
 - a. The Signer Organisation Field must match the name of the organisation listed in the Power of Attorney; and
 - b. the Signer Role Field must contain the relevant position or role contained in the Power of Attorney.

Example – Execution carried out by a named attorney under a registered power of attorney

Mortgagor Execution			
NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.		Executed on behalf of	JOAN CITIZEN
		under power of attorney	762873635
Full Name of Witness	<u>ALFRED WITNESS</u>	Signer Name	<u>ELAINE ATKINS</u>
Witness Signature	<u>A Witness</u>	Signer Role	<u>ATTORNEY</u>
Witness Qualifications	<u>SOLICITOR</u>	Signature	<u>E Atkins</u>
		Execution Date	<u>27 / 07 / 2017</u>

Example – Execution carried out by an attorney with a position/role defined in a registered power of attorney

Mortgagee Execution			
		Executed on behalf of	BIG BANK LTD
		under power of attorney	762873635
		Signer Name	<u>ALAN ATKINS</u>
		Signer Organisation	<u>BIG BANK LTD</u>
		Signer Role	<u>MORTGAGE OFFICER</u>
		Signature	<u>A Atkins</u>
		Execution Date	<u>27 / 07 / 2017</u>

Example – Execution for an Individual carried out by the Individual**Mortgagor Execution**

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Full Name of Witness ALFRED WITNESS

Witness Signature A Witness

Witness Qualifications SOLICITOR

Executed on behalf of JOHN CITIZEN

Signer Name JOHN CITIZEN

Signature J Citizen

Execution Date 27 / 07 / 2017

Example – Execution by a legal practitioner on behalf of a mortgagee**Mortgagee Execution**

Executed on behalf of BIG BANK LIMITED

Signer Name LAURENCE LAIDLEY

Signer Organisation LARRY'S LAW
AUSTRALIAN LEGAL
PRACTITIONER

Signer Role L Laidley

Signature L Laidley

Execution Date 29 / 01 / 2018

Example – Execution by Organisation (Australian Company) executed (without seal) by a director and secretary in accordance with s. 127 of the *Corporations Act 2001* (Cth)***Mortgagor Execution**

Executed on behalf of XYZ LIMITED

Signer Name DANIEL DEAKIN

Signer Organisation XYZ LIMITED

Signer Role DIRECTOR

Signature D Deakin

Execution Date 27 / 07 / 2017

Executed on behalf of XYZ LIMITED

Signer Name SEAN SEACOMBE

Signer Organisation XYZ LIMITED

Signer Role SECRETARY

Signature S Seacombe

Execution Date 27 / 07 / 2017

*Please note that for an execution by a corporation under s. 127 of the *Corporations Act 2001* (Cth) or s. 46 of the *Property Law Act 1975* where there is more than one signatory, if the date the last signer executes the NMF is inserted in the second Execution Date Field, the first Execution Date Field can be left blank or deleted. For example:

Mortgagor Execution

Executed on behalf of	XYZ LIMITED
Signer Name	DANIEL DEAKIN
Signer Organisation	XYZ LIMITED
Signer Role	DIRECTOR
Signature	<i>D Deakin</i>
Executed on behalf of	XYZ LIMITED
Signer Name	SEAN SEACOMBE
Signer Organisation	XYZ LIMITED
Signer Role	SECRETARY
Signature	<i>S Seacombe</i>
Execution Date	27 / 07 / 2017

Fees

[2-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1, 2}Land Title Regulation
- ^{1, 3}Land Regulation
- ^{2, 3}Water Regulation.

Cross References

[2-9000]

Part 1 – Transfer

Part 3 – Release of Mortgage

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a Prendre Building Management Statement or Carbon Abatement Interest

Part 14 – General Request

Part 18 – General Consent

Part 30 – Mortgage Priority

Part 48 – State Land

Part 49 – Water Allocations

Notes in text

[2-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 3 – Release of Mortgage

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Part 3 – Release of Mortgage

General Law

[3-0000]

A mortgage that is registered under the *Land Title Act 1994*, *Land Act 1994* or *Water Act 2000* over a lot or an interest operates as a charge on the lot or interest for the debt or liability secured by the mortgage (s. 74 of the *Land Title Act* or s. 341 of the *Land Act*).

Once the debt or liability secured by the mortgage has been satisfied, the mortgagor is entitled to receive a release of the mortgage from the mortgagee.

A release (Form 3 – Release of Mortgage), executed by the mortgagee, may be registered. On registration of the release, the mortgaged lot or interest ceases to be subject to the charge, to the extent shown in the release (s. 81 of the *Land Title Act* or s. 342 of the *Land Act*).

^{2,3}A notice under s. 73(1)(c) of the *Water Act*, which is taken to be a mortgage under the *Land Title Act*, may also be released by a Form 3 – Release of Mortgage.

Full or partial release

[3-0010]

If the mortgagee releases all the property securing the liability under the mortgage from the mortgage, a full release is given. A partial release is given where the release is only in respect of some of the property securing the liability under the mortgage. In such a case, the release will be a total release of that which is specified in Item 2 of the Form 3, but only a partial release of the mortgage as a whole.

The Registrar does not search the register to ensure that a purported full release in fact releases all of the lots or interests secured by the mortgage. The assumption is made that the mortgagee has included all of the lots or interests that are or remain secured by the mortgage. If it is later discovered that further lots or interests remain subject to the mortgage, another release by the mortgagee in respect of those lots or interests remaining must be lodged.

¶[3-0020] deleted

Release where there is more than one mortgagee

[3-0030]

A mortgage of a lot or interest may be given to more than one mortgagee and those mortgagees may hold their respective interests either as joint tenants or as tenants in common.

A mortgage cannot be released by only one of a number of mortgagees as relates to that mortgagee's interest only (s. 81(2) of the *Land Title Act 1994* or s. 342(2) of the *Land Act 1994*).

The survivor/s of joint mortgagees may give a release of the mortgage. In this case a Form 4 – Request to Record Death of the deceased mortgagee/s must be lodged prior to the release.

In the case of the death of the sole or last surviving mortgagee, a Form 5, 5A or 6 – Transmission by Death must precede the release by the personal representative/devisee/legatee (for trustees, see part 51 – Trusts).

If the mortgagees are registered as tenants in common, even if the mortgage itself states that the money is advanced on joint account, it is necessary to transmit the interest in the mortgage to the personal representative of any deceased mortgagee and for the release to be executed by the surviving mortgagees and the personal representative, notwithstanding s. 93(1) of the *Property Law Act 1974*.

Release where there is more than one mortgagor

[3-0040]

A mortgage given by mortgagors who hold as tenants in common can be released as relates only to the interest of one of such mortgagors.

A mortgage given by mortgagors who hold as joint tenants may not be released as relates to the interest of only one of such mortgagors. However, if the joint tenancy is first severed by transfer (see part 1, esp ¶[1-2300]), the mortgage may then be released against the severing mortgagor's interest.

Persons entitled to a release

[3-0050]

A mortgagor has a right to the release of a mortgage upon the satisfaction of the liability secured by the mortgage, and any assignee of the mortgagor's interest in the lot or other interest is also entitled on the same basis to a release of the mortgage.

Where a mortgagor is deceased, this entitlement vests in the person in whom the deceased mortgagor's property is vested under s. 45 of the *Succession Act 1981*, subject to s. 45(7) of the *Succession Act*.

Absent or incapable mortgagee

Section 61 of the *Public Trustee Act 1978*

[3-0060]

Where a mortgage has been paid out, but a discharge cannot be obtained because the mortgagee is:

- absent from Queensland; or
- dead and their estate is unadministered or, in the opinion of the Public Trustee, no person is currently acting in the administration of their estate; or
- a person not known to be alive or dead or a person unable to be found; or
- a company or corporation which has ceased to exist or, in the opinion of the Public Trustee, has ceased to function; or
- in the opinion of the Public Trustee, for any other reason unable or unavailable to give a discharge of the mortgage,

the Public Trustee is empowered to execute a release of the mortgage by virtue of s. 61 of the *Public Trustee Act*. The Public Trustee must be satisfied that there is no other person to do so. The Registrar will look for no other authority to register the release.

^{1, 2}The Public Trustee may request the Registrar to dispense with production of the Certificate of Title or other instrument, where applicable, to enable registration to be effected (s. 61(6) of the *Public Trustee Act*).

Section 101 of the *Property Law Act 1974*

[3-0070]

Where a mortgagee is:

- out of the jurisdiction; or
- cannot be found or is unknown; or

- where it is uncertain who is entitled to receive payment of the money secured by the mortgage,

the person entitled to redeem the mortgage may apply to the Supreme Court under s. 101 of the Property Law Act for an order that the amount of the debt be ascertained and paid into the Court. A certificate of the Registrar of the Court that such payment has been made and that no money remains payable under the mortgage, operates to discharge the mortgage debt (ss. 101(2) and (4) of the Property Law Act). Form 3, with Item 5 suitably modified, is appropriate and no other documentation is required.

^{1,2}The Certificate of Title, if issued, must be deposited. A person may request the Registrar to dispense with production of the Certificate of Title and advertising (s. 101(5) of the Property Law Act) (see part 17 – Request to Dispense with Production of Instrument).

Section 601AF of the *Corporations Act 2001* (Cth)

[3-0080]

If the mortgagee is a corporation that has ceased to function or has been de-registered, the Australian Securities and Investment Commission may execute a release of mortgage if satisfied that all money owing has been repaid (s. 601AF of the Corporations Act).

Legislation

[3-1000]

2, ³Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations and
- as if a reference to the freehold land register were a reference to the water allocations register; and
- as if a reference to freehold land or land were a reference to a water allocation; and
- as if a reference to a lot were a reference to a water allocation; and
- with any other necessary changes.

1, ³Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

Change of name of mortgagee

[3-2000]

If the name of a mortgagee has been changed and the mortgage is being fully released, Item 4 of the Form 3 – Release of Mortgage should include the current name and the former name e.g. ‘XYZ CORPORATION LIMITED ACN 001 311 711 FORMERLY EXIT CORPORATION LIMITED ACN 001 311 711’.

In addition, either:

- evidence of the change of name must be deposited with the Form 3 – Release of Mortgage (e.g. a certified copy of the certificate of registration); or
- reference must be made to the dealing number of a previously registered instrument with which the evidence was deposited (the reference may be provided in item 4 e.g. ‘Certified copy of the certificate of registration [or other evidence] deposited with dealing number [number]’ or in a supplementary letter).

Example – Corporation

4. Mortgagee

XYZ CORPORATION LIMITED ACN 001 311 711 FORMERLY EXIT CORPORATION LIMITED ACN 001 311 711. CERTIFIED COPY OF THE CERTIFICATE OF REGISTRATION DEPOSITED WITH DEALING NUMBER 712345678.

For further information about depositing supporting documentation see [60-1030].

²Releasing collateral mortgages

[3-2010]

Registration of a collateral mortgage is required when additional, unsecured land is added to a mortgaged lot by re-survey (see part 2, esp ¶[2-2080]) or where two or more water allocations have been amalgamated. The collateral mortgage is necessary so that the whole of the new lot is secured by the mortgage.

Collateral mortgages must not be released before the principal mortgage unless the mortgagee has other registered security over the whole of the lot. If a collateral mortgage were to be released prior to the principal mortgage, the mortgagee would no longer be in a position to exercise its rights over the whole of the lot in the event of default.

Forms

General guide to completion of forms

[3-4000]

For general requirements for completion of forms see part 59 – Forms.

A document that is lodged as an electronic conveyancing document must be accompanied by a set of lodgement instructions identifying the nominated Responsible Subscriber and the order in which the documents are to be lodged. The lodgement instructions must be digitally signed by all subscribers to the transaction.



Dealing Number

OFFICE USE ONLY

☐ X If partial release of the mortgage.

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Dealing number of mortgage being released 700012438	Lodger (Name, address, E-mail & phone number) LEGAL LODGEMENT SERVICES 125 GEORGE STREET BRISBANE QLD 4001 mail@lls.com.au (07) 3327 8004	Lodger Code BE 325
--	---	------------------------------

2. Lot on Plan Description LOT 23 ON RP67324	Title Reference 15973044
--	------------------------------------

3. Mortgagor

Only complete if not releasing the debt for all mortgagors

4. Mortgagee
SUNPAC BANKING CORPORATION ACN 123 456 789

5. Discharge/Execution by Mortgagee

The Mortgagee releases the mortgage as a charge on the land described in item 2.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

W J Burleigh

.....
WILLIAM JOHN BURLEIGH
JUSTICE OF THE PEACE (C.DEC) #34567

.....
Witnessing Officer (signature, full name & qualification)

15/10/2007

Execution Date

J Bundall

Sunpac Banking Corporation by its
duly constituted attorney James Bundall
under power of attorney 711132724

.....
Mortgagee's Signature

.....
Witnessing Officer (signature, full name & qualification)

/ /
Execution Date

.....
Mortgagee's Signature

(Witnessing officer must be in accordance with Schedule 1
of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Guide to Completion of Form 3

Item 1

[3-4010]

Insert dealing number/s of mortgage/s being released.

Item 2

[3-4020]

^{1, 2}Freehold Description

The description of the relevant lot/s should always read 'Lot [no.] on [plan reference]'. Plan references must contain the appropriate prefix (e.g. 'SP' for a survey plan, 'RP' for a registered plan, 'BUP' for a building units plan, 'GTP' for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

eg **Lot on Plan Description**
Lot 27 on RP 204939

Title reference
11223078

^{2, 3}Water Allocation Description

A water allocation should be identified as 'Water Allocation', 'Allocation' or 'WA'. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg **Lot on Plan Description**
WA 27 on AP 7900

Title reference
46012345

^{1, 3}State Tenure Description

The description of the relevant State tenure should always read 'Lot [no.] on [plan reference]'. Plan references must contain the appropriate prefix (e.g. 'CP' for a crown plan).

eg **Lot on Plan Description**
Lot 27 on CP LIV1234

Title reference
40567123

Item 3

[3-4030]

Only complete if not releasing the debt for all the mortgagors, e.g. if there are three mortgagors who hold their interests as tenants in common and only two are being released, insert in Item 3, e.g. 'Interest of John Able Citizen and Mary Constance Citizen only'.

Item 4

[3-4040]

Insert full name of mortgagee. If a mortgage has been registered and then transferred to a new mortgagee, the name appearing in Item 4 should be the name of the transferee and not that of the original mortgagee.

Item 5

[3-4050]

Execution by mortgagee. The witnessing officer must be qualified pursuant to Schedule 1 of the *Land Title Act 1994* or s. 46 of the *Land Regulation 2009*. Form 3 requires the completion of a separate witnessing provision for each signature which is required to be witnessed, even though signatures were made in front of the same witness. Execution by an attorney will require a qualified witness. (For further information, see part 60, esp ¶[60-0360], ¶[60-0390] and ¶[60-0900]).

Item 5 (Electronic Form) – The requirements for the execution and certification are contained in the Participation Rules (Queensland) for electronic conveyancing.

0¶[3-4060] and ¶[3-6000] deleted

Case Law

***Corozo Pty Ltd v Westpac Banking Corporation (No 2)* [1988] 2 Qd R 481**

[3-7000]

In this case it was held that an unregistered transferee of land subject to a registered mortgage has a right upon payment of the debt to insist upon a release from the mortgagee.

***Re Australia and New Zealand Banking Group Ltd* [1993] 2 Qd R 477**

[3-7010]

This case discussed the previous case and held that an unregistered lessee did not have the right to pay the debt and obtain a release from the mortgagee, because the equitable interest of the lessee was not enforceable against the registered interest of the mortgagee.

***Wayne v Kuszniarz & Anor* [1973] 2 NSWLR 799**

[3-7020]

In this case it was held that an equivalent application to one under s. 101 of the *Property Law Act 1974* could not be made *ex parte*, ie the mortgagee had to be named as a party in such an application.

***Re Piromalli* [1977] 1 NSWLR 39**

[3-7030]

However, in this case it was held that the above regarding the ‘mortgagee as a party’ rule was not of universal application and if no person could reasonably be named as mortgagee, an *ex parte* application could be made.

***Associated Securities Limited v Perry* [1978] Qd R 13**

[3-7040]

This case held that, although a release has the effect of releasing the property from the charge imposed by the mortgage, it does not release the mortgagor from the personal covenants contained in the mortgage. Therefore, if the mortgagor requires a release of the personal covenants, a separate, additional release may need to be prepared and executed by the mortgagee. In this case, the discharge was executed and registered in the mistaken belief that all the money owing had been paid and it was held that the mortgagor was not released from the liability to pay the balance of the mortgage money.

Section 81(3) of the *Land Title Act 1994* is unlikely to change the result in a case such as this, because the section refers to the mortgage being discharged and is silent as to whether the liability for the debt is discharged.

***Groongal Pastoral Company (In Liq) v Falkiner* (1924) 35 CLR 157**

[3-7050]

The High Court held that the wording of the discharge in this case **did** simultaneously discharge any personal obligations of the mortgagor. The reasoning of the Court was based on the fact that under the *Real Property Act 1900* (NSW) the instrument of discharge had effect as a deed.

This case, however, was distinguished in *Associated Securities v Perry* (see ¶[3-7040]), even though the form of discharge was in identical terms, on the basis that under the *Real Property Act 1861* (Qld), the form of discharge did not constitute a deed.

Fees

[3-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1, 2}Land Title Regulation;

- ^{1, 3}Land Regulation; and
- ^{2, 3}Water Regulation.

Cross References and Further Reading

[3-9000]

Part 1 – Transfer

Part 2 – Mortgage (National Mortgage Form)

Queensland Conveyancing Law and Practice, CCH Australia Limited (loose-leaf service)

Duncan and Vann, *Property Law and Practice in Queensland*, Thomson Legal and Regulatory (loose-leaf service)

Duncan, WD and Willmott, L, *Mortgages Law in Australia*, 2nd edn, The Federation Press, 1996

Notes in text

[3-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 4 – Request to Record Death

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Part 4 – Request to Record Death

General Law

Joint Tenancy and Tenancy in Common

[4-0000]

If, at the time of death, the deceased held a lot or an interest with another or others as ‘joint tenants’, his/her death effects an immediate vesting of the deceased’s lot or interest in the surviving joint tenant/s. This principle is called ‘the right of survivorship’ and it operates until there is a sole survivor who thereby acquires sole ownership of the asset notwithstanding any provision in any will.

The distinguishing features of joint tenancy are:

- the right of survivorship (as described above);
- the so called ‘four unities’ namely:
 - unity of possession (all owners are entitled to possession and no owner has a better right than another);
 - unity of interest (all owners have the same interest in the land as to extent, value and duration);
 - unity of title (all owners’ interests must be derived from the same source); and
 - unity of time (all owners’ interests must vest to them at the same time).

Another method of holding a lot or an interest is that of ‘tenancy in common’, which means simply the holding of ownership in common. It is possible to hold a tenancy in common in any shares, eg $\frac{1}{3}$, $\frac{2}{3}$ or $\frac{1}{78}$, $\frac{30}{78}$, $\frac{47}{78}$, etc.

The distinguishing features of tenancy in common are:

- No right of survivorship.
- The lot or interest is held in ‘undivided shares’, which means that each tenant in common has a distinct share in the property which has not yet been divided amongst the co-tenants. However, pending such division, all have a unity of possession (see above).
- Other than unity of possession, no other unity referred to above need exist.

In Queensland:

- companies may hold property as joint tenants (see s 34 of the *Property Law Act 1974*);
- dispositions of property to more than one person will generally be considered as being distributed to them as tenants in common, subject to specific rules (see s 35 of the *Property Law Act 1974*);
- it is possible for one owner (whether a joint tenant or a tenant in common) to apply to the court for the sale or partition of the property (see Part 5, Division 2 of the *Property Law Act 1974*).

Legislation

[4-1000]

²Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of ss 150(1) and 151 of the *Water Act 2000*, subject to the exceptions provided in ss 150(2) and 151(1) of the *Water Act 2000*, the *Land Title Act 1994* applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act 2000* an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act 1994* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act 1994*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act 2000*; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

^{1,3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the *Land Act 1994* relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s 393 of that Act.

Practice

Introduction

[4-2000]

As vesting occurs on death under the principle of holding property as ‘joint tenants’, such property is unrelated, in a strict sense, to the administration of the deceased joint tenant’s estate. The surviving joint tenant/s, and not the personal representative of the deceased joint tenant, apply to the Registrar to have the lot or interest vested in them on proving the death of the deceased joint tenant.

The application is commonly referred to as a ‘Record of Death Application’.

In all instances it is essentially the surviving joint tenant/s declaring that they are registered as the owners or holders of a lot or interest as joint tenants with the deceased, that the deceased has died (as appears from the copy of his/her certificate of death) and that he/she/they now claim entitlement to be registered as owner/s or holder/s of the lot or interest as the surviving joint tenant/s.

The most common form of Record of Death Application is discussed below.

Form of Application and Evidence

[4-2010]

Applications in respect of the death of a joint tenant are made to the Registrar by virtue of a person's right to have an interest registered under s 30 of the *Land Title Act* 1994, s 295 of the *Land Act* 1994 and s 150 of the *Water Act* 2000 and the Registrar's power to record particulars in the Register under s 29 of the *Land Title Act* 1994, s 299 of the *Land Act* 1994 and s 151 of the *Water Act* 2000.

A request is made to record the death in Item 7 of the Form 4 – Request to Record Death. Verification of the death must be deposited to support the request.

It should be noted that, if the surviving joint tenant caused or was implicated in causing the death of the deceased, the joint tenancy is not severed. A constructive trust is created to the extent that the convicted surviving joint tenant's interest would ordinarily be increased by the death of the deceased (*Re Stone* [1989] 1 Qd R 351). In such cases, it is usual for an application to be made to the Supreme Court for the appointment of a statutory trustee of the property pursuant to s 38 of the *Property Law Act* 1974. Consequently, the Request to Record Death of the joint tenant and a Form 14 – Request to Vest (see part 14, esp ¶[14-2330]) in the statutory trustee (see part 51, esp ¶[51-0170]) will be lodged and registered simultaneously.

Spelling of Deceased's Name

[4-2020]

If the spelling of the deceased's name in the copy of the certificate of death differs from the spelling on the title to the lot or interest which is the subject of the application, a statutory declaration stating that they are one and the same person may be required. Minor differences are overlooked, such as 'Margot Alison Brown' in one instance and 'Margot Allison Brown' in the other. However, significant differences, e.g. in the surname, will require explanation.

Documents Deposited with Request

Certificate of Death

[4-2030]

A request to record death may be supported by a copy of the certificate of death certified by the relevant issuing authority in the appropriate jurisdiction (e.g. Registrar of Births, Deaths and Marriages). The certificate may be either a short or long extract of the certificate of death.

If the death certificate has not issued in English, a full translation of it is required.

See part 60 – Miscellaneous, esp ¶[60-1020] and [60-1030] for more details.

Grant of Representation

[4-2035]

On occasions a copy of a grant of representation (see [60-1030]) in the deceased's estate (i.e. probate or letters of administration) may be deposited as evidence with a record of death by the surviving joint tenant. The surviving joint tenant may or may not be the person to whom the grant is made.

As evidence of death is deposited with the Supreme Court to obtain a grant of representation, the grant is acceptable to the Registrar as evidence of death for a Record of Death.

^{1,2}Certificate of Title**[4-2040]**

The Certificate of Title, if it exists, must be deposited or a request made to dispense with production (except where the request is for the interest of a lessee under a registered lease lodged without the lessor's consent).

¶[4-2050] deleted

Multiple Deaths**[4-2060]**

Multiple Record of Death Applications in the one form will be acceptable in cases typified by the following examples:

- A, B and C are joint tenants and all are deceased. One Request to record the deaths of A and B, and a Transmission Application (see part 5, 5A, 6 – Transmission Applications) in respect of C's death may be lodged. The Form 4 – Request to Record Death, suitably amended, may be executed by the personal representative of the last surviving registered owner or holder of the interest. Similarly, if A and B only are deceased, one Record of Death Application, lodged by C, will suffice. Copies of the certificates of death of the deceased persons must be provided.

NOTE: In a case (such as the example above) where all joint tenants are deceased, their deaths are recorded or transmitted chronologically as they died, as shown on the death certificates. Usually this will be obvious from the respective dates of death. However, if the dates of death are the same, evidence will be required to show who survived the longest. In some circumstances, the provisions of s 65 of the *Succession Act* 1981 may apply.

Consequently, in this example, it will be necessary to show that C was younger than A and B. This will generally be apparent from the death certificates.

- A, B and C are trustees and all are deceased. There may be one Request to record all deaths, providing there is simultaneous lodgement of a Form 14 – Request to Vest by the Public Trustee or a Form 1 – Recording of New Trustees by the personal representative of the last surviving trustee or other person authorised (see part 51 – Trusts and part 1 – Transfer, esp ¶[1-2400] to ¶[1-2430]).

The Registrar will not record a deceased person in a register, except where:

- the words 'since deceased' are included after the name on the Form 4 – Request to Record Death; and
- the lodged Form 4 – Request to Record Death is followed by either a Transmission Application or another Form 4 – Record of Death, as the case requires.

Death of a Trustee**[4-2070]**

For the requirements to record the death of a trustee see part 51 – Trusts, esp ¶[51-2060] to ¶[51-2090].

The requirements to record the appointment of new trustee/s after the death of the sole or last surviving trustee are dealt with by a Form 1 – Recording of New Trustees (see part 1 – Transfer, esp ¶[1-2400] to ¶[1-2430]).

Forms

General Guide to Completion of Forms

[4-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number

Lodger (Name, address, E-mail & phone number)

Lodger
Code



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

EILEEN VERONICA WHITE
42 GLENN STREET
ENOGERA QLD 4051
PH: 3268 4095

1. Deceased's name

VERNON THOMAS WHITE

2. Lot on Plan Description

LOT 34 ON RP64643

County

STANLEY

Parish

ENOGERA

Title Reference

14643034

3. Interest held by deceased

FEE SIMPLE

4. Applicant

Given Names

Surname

EILEEN VERONICA

WHITE

Address for service of notices to the applicant: 42 GLENN STREET, ENOGERA QLD 4051
(for rates purposes, etc.)

5. Document(s) deposited

Office copy of Death Certificate issued by the Registrar General of Births, Deaths & Marriages (Qld) or equivalent evidence from other jurisdictions

6. Authority of applicant

The applicant is:

- * the surviving joint tenant of the land
- * ~~the surviving trustee under Instrument No.~~
- * ~~the attorney (appointed under section 56 of the Trusts Act) of the surviving trustee~~
- * ~~the reversioner of the interest held by the deceased pursuant to clause of Lease/Standard Terms~~
- * ~~Document no.~~
- * ~~the last surviving joint tenant and this application is made by~~
- * ~~the personal representative of the applicant as evidenced by the original Will deposited with Transmission by~~
- * ~~Death no.~~

* delete if not applicable

7. Request

In accordance with the particulars disclosed above, it is requested that this death be recorded.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

I I Stravinsky

..... signature

IVAN IGOR STRAVINSKY

..... full name

SOLICITOR

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

10/9/2007
Execution Date

E V White
.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant and no witness is required in this instance

Guide to Completion of Form 4

Item 1

[4-4010]

Insert the name, as recorded, of the deceased joint tenant (registered proprietor, lessee, mortgagee, etc). If the interest is held on a recorded trust or by a personal representative, then this should be identified, e.g. ‘as a trustee under Transfer to Trustees No. D76543’ or ‘as a personal representative’.

Item 2

[4-4020]

^{1,2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on RP 204939	Stanley	South Brisbane	11223078

^{2,3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg	Lot on Plan Description	County	Parish	Title reference
	WA 27 on AP 7900			46012345

^{1,3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for crown plans).

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on CP LIV1234	Livingstone	Cawarral	46012345

Item 3

[4-4030]

Insert the interest of the deceased joint tenant as appropriate, i.e. ‘fee simple’, ‘Lease No. [number]’, ‘Water Allocation’ or the type of State tenure e.g. State lease.

Item 4

[4-4040]

Insert the applicant’s (one of the surviving joint tenant(s)) full name. In circumstances where the personal representative of the last surviving joint tenant to die is making the application, complete the item by inserting either:

- [name of the last surviving joint tenant] (since deceased); or

- [name of personal representative] personal representative of [name of last surviving joint tenant] (since deceased).

For requirements relating to the authority of the applicant see ¶[4-4060]

Complete the postal address of the surviving joint tenant(s) for service of notice where the request is recording the death of:

- a joint registered owner of a freehold lot; or
- a joint holder of a lease or licence under the *Land Act* 1994; or
- a joint holder of a water allocation.

Item 5

[4-4050]

Insert the documentation being deposited. For example:

- a copy of the certificate of death; or
- a copy of the grant of representation.

For further information relating to the deposit of supporting documentation (see [60-1030]).

Item 6

[4-4060]

The authority for making the application must be stated. In practice, the applicant will most commonly be the surviving joint tenant. Other options are provided on the Form. However, in all cases the inapplicable statements must be deleted.

Item 7

[4-4070]

Execute as required.

If the application is by ‘the attorney (appointed under s 56 of the *Trusts Act* 1973) of the surviving trustee’, reference should be made, adjacent to the applicant’s signature, to the dealing number of the power of attorney (e.g. ‘Power of Attorney No...’). There should also be a declaration by the attorney identifying the reason for the attorney to act as defined in s 56 of the *Trusts Act* 1973.

¶[4-6000] deleted

Case Law

Re Stone [1989] 1 Qd R 351

[4-7000]

Where a joint tenant unlawfully kills a co-joint tenant, the killer acquires that person’s interest at law as joint tenant, but holds that interest on trust for the persons entitled under the will of the deceased. That is, the incidence of survivorship inherent in a joint tenancy is not affected, but a constructive trust is imposed on the killer to the extent to which his/her interest is enlarged by the killing.

¶[4-7010] deleted

Fees

[4-8000]

Fees payable to the land registry are subject to an annual review. See the current:

- ^{1,2}*Land Title Regulation* 2005 – Schedule 2, item numbers 2(a)(i), 2(a)(ii) and 2(h);
- ^{1,3}*Land Regulation* 2009 – Schedule 11, item numbers 2(a)(i), 2(a)(ii) and 2(f); and
- ^{2,3}*Water Regulation* 2002 – Schedule 16, item numbers 5, 7, 9 and 15.

Cross References and Further Reading

[4-9000]

Part 1 – Transfer

Part 5, 5A, 6 – Transmission Applications

Part 48 – State Land

Part 51 – Trusts

De Groot, J, *Wills Probate and Administration Practice (Queensland)*, Nina Psaltis Consulting (loose-leaf service)

Duncan and Vann, *Property Law and Practice in Queensland*, Thomson Legal and Regulatory (loose-leaf service)

Notes in text

[4-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 5, 5A, 6 – Transmission Applications

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Part 5, 5A, 6 – Transmission Applications

General Law

[5-0000]

One of the first duties of a personal representative is to reduce the estate of the deceased into possession. The manner of attending to this depends on the nature of the assets to which possession must be asserted or acquired. Title to the deceased's assets passes in the first instance to his/her executor (and if to more than one executor to them as joint tenants) or if there is no executor or no executor able and willing to act, to the Public Trustee (s. 45(1) of the *Succession Act 1981*).

Upon the court granting probate of the will or letters of administration of the estate of the deceased, the property vested in his/her executor or in the Public Trustee under the provisions of s. 45(1) of the *Succession Act 1981* devolves to and vests in the person to whom the grant is made (and if to more than one person, to them as joint tenants) (s. 45(2) of the *Succession Act*).

Where title to assets comprising the estate of the deceased is formally registered, the personal representative must not only assert and acquire possession of the asset, but must also make application to transmit the title into his/her name or as he/she may direct. Such applications are generally referred to as 'Transmissions by Death' or 'Transmission Applications'.

^{2,3}Notwithstanding that a water allocation is a registrable interest and a tradable asset it is part of the deceased's personal property as opposed to their real property.

²Division 6 of Part 6 of the *Land Title Act 1994* deals with, among other things, the transmission of the interest of a deceased person in a lot to that person's personal representative (in accordance with s. 111), or to a devisee of a deceased person (in accordance with s. 112).

^{1,3} Division 9 of Part 4 of Chapter 6 of the *Land Act 1994* deals with, among other things, the transmission of the interest of a deceased person to that person's personal representative (in accordance with s. 377), or to a legatee of a deceased person (in accordance with s. 379).

Legislation

[5-1000]

²Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the *Water Act*, the *Land Title Act* applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the *Land Title Act* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and

- (e) with any other necessary changes.

^{1,3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

Introduction

[5-2000]

Note: The text *Wills Probate and Administration Practice* by John K de Groot (published by Nina Psaltis Consulting) is recommended as a valuable reference source with regard to estate administration.

A Transmission Application (or Transmission by Death) involves the registration of an estate in the name of a new registered owner or holder of an interest after the death of a sole registered owner, sole holder of an interest, or the interest of a tenant in common. Registration of the death of a joint tenant is dealt with by a Form 4 – Request to Record Death.

The lot or interest held by a deceased person may be transmitted to:

- the personal representative of the deceased (via a Form 5 or Form 5A); or
- the devisee or legatee named in the person's last will (via a Form 6); or
- a person named in an order of the Supreme Court (via a Form 14 – Request to Register Order of the Court).

Transmissions involve either:

- a will where a grant of probate or a grant of letters of administration with the will has been made by the court;
- the original last will without a grant;
- an intestacy where a grant of letters of administration has been made by the court; or
- an intestacy where no grant has been made.

¶[5-2010] and [5-2020] deleted

Merger of Estates

[5-2030]

From time to time the situation arises where a person (A) who is registered on the title as 'devisee in trust' or as 'personal representative' is also the sole beneficiary under the will of the deceased or is the only person entitled to the deceased's estate under the rules of intestacy.

Where A has discharged all the executorial duties required, other than having effected the transfer, and the property is held by A as trustee, the law is well settled that one cannot be a trustee for oneself and so the doctrine of merger will operate to merge the beneficial and legal estates.

Therefore, notwithstanding that A remains registered on the title as trustee, there is no trust in existence and, on A's death, the provisions of s. 16 of the *Trusts Act 1973* do not operate to vest the property in the Public Trustee. The property can be dealt with as an asset in A's estate by A's personal representative (pursuant to s. 45 of the *Succession Act 1981*).

Where A has died the property which is the subject of such a merger should be dealt with in the following manner:

A Transmission Application should be lodged by the person entitled to apply for a grant of representation in the estate of A, which should indicate that he/she is the person named as executor in A's will as the basis on which an application for grant would succeed.

A declaration by the executor must be deposited with the Transmission Application to the effect that A had completed all executorial duties in the original deceased estate and that A had not effected transfer to himself/herself and had for some time dealt with the property as beneficial owner rather than as trustee.

Where A is alive a Form 14 – General Request to merge the interest of A as trustee with his/her entitlement to the fee simple, water allocation or a State tenure or as sole beneficiary must be lodged (see ¶[14-2400]).

¶[5-2040] to ¶[5-2050] deleted

Intestate Estate

[5-2060]

Letters of administration in an intestate estate issued by a court outside of Queensland and resealed in Queensland can be applied to property in Queensland (s. 111(2)(a) of the *Land Title Act 1994* and s. 377(2)(a) of the *Land Act 1994*).

Intestate estates, where the gross value of the estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was valued at no more than \$300,000, may be dealt with in a Form 5A without application for a grant of letters of administration, if no letters of administration of the deceased's estate have been granted in Queensland within six months from the date of death (s. 111(2)(b) of the *Land Title Act* or s. 377(2)(b) of the *Land Act*).

Public Trustee

[5-2070]

The Public Trustee of Queensland has, under relevant Acts, a wide range of powers in relation to deceased estates. The Public Trustee **may** obtain an 'order to administer' from the Supreme Court in many different cases. For example:

- where the Public Trustee is appointed executor of a will;
- where the executor appointed under a will has renounced;
- where the testator leaves no executor;
- where every executor or administrator has died, is absent from the State, is not known or cannot be found; and
- where the deceased dies intestate.

The Public Trustee may also administer estates in the name of the deceased (s. 16 of the *Trusts Act 1973*):

- where assets are the subject of a partnership; and
- which are estates held in trust where the sole or last trustee has died.

This point is expanded in part 51 – Trusts.

An order to administer has the same effect as a grant of probate or letters of administration.

Evidence of the order to administer is given in the form of a ‘certificate of authority’ issued pursuant to s. 138 of the *Public Trustee Act 1978*. If the order to administer is in relation to an intestate estate, this certificate should refer to an order to administer in intestacy.

If the deceased estate is valued under \$150,000, it is not necessary for the Public Trustee to obtain the consent of the court to administer the estate. The Public Trustee may instead file in the court an ‘election to administer’. Evidence deposited with a Form 5 – Transmission Application would be in the form of a certificate of authority.

The certificate of authority includes the name and date of death of the deceased, as well as the name/s and address/es of the applicant/s.

Original Will

[5-2080]

Care of Original Will

Original wills must be treated with **extreme care**. It is essential that no marks or holes are made in an original will. No pencil notes should be made on an original will, nor should any ‘post it’ note stickers be attached to an original will, nor should any pins or staples be added to or removed from an original will. An original will should not be stapled to the application.

The reason for this degree of care is that any attachment to a will, or any evidence of an attachment having been made to a will, may raise the presumption that a further testamentary document made by the testator had been attached by or at the direction of the testator, thereby altering the terms of the will.

Prior to depositing an original will with a Transmission by Death application, the applicant/lodger should inspect the original will for any marks on the original will (e.g. staple holes or paper clip indentations) which could infer another testamentary document may have been attached to the original will.

If there is such inference then a statutory declaration of Plight and Condition and Finding (using Form 111 of the Uniform Civil Procedure Rules 1999 as a guide) is required from the person who made the marks in the original will.

If the marks existed at the time the original will was located, the statutory declaration is required from the person who located the original will and must include a statement as to whether there was any other testamentary document.

A clear copy of the true and last original will is to be an exhibit to the statutory declaration and an exhibit certificate is to be endorsed on the copy (Form 47 of the Uniform Civil Procedure Rules). The accompanying statutory declaration must state the exhibit is a copy of the original will.

More than one declarant may exhibit the same copy of the original will provided it is endorsed with an exhibit certificate in respect of each statutory declaration. Alternatively, declarants may exhibit separate copies of the original will to their respective declarations.

Original Will held by Court or Public Official

In some foreign jurisdictions a court or public official (e.g. notary public) will hold an original unproved will permanently, for example for safe keeping, and will not release the original will even after the death of the testator. In these cases the Registrar will accept the following in lieu of the original will.

For a court held original will:

- a court authenticated copy of the original will under seal (where there is a seal); and
- a statement from the court or a letter from a lawyer in the relevant jurisdiction advising for what purpose the will is being held and that it will not be released.

For a public official held original will:

- a copy of the original will authenticated by the public official under seal (where there is a seal); and
- a formal statement from the public official advising for what purpose the will is being held and that it will not be released.

Whether the original unproved will is held by a court or public official the following must also be provided:

- a statement of law from a practising lawyer in the relevant jurisdiction or the public official (e.g. notary public) that the will is a valid will under the law of which it was made; and
- a declaration by a practising lawyer in the relevant jurisdiction that a search was caused to be made in the jurisdiction where the unproved will is held and it was found that no grant of administration of the estate of the deceased has been made, applied for, or caveated against in the jurisdiction.

Probate

[5-2090]

A grant of probate is the approval, or verification, of the Supreme Court that the particular will is actually the last will and testament of the deceased person, and that the person named as executor is authorised to act in that capacity.

It is not essential to take out a grant of probate. However, many people do so simply for the protection it affords the executor. If a later will is discovered, the executor of the probated will cannot be sued by the executor of the later will for actions taken by the first executor pursuant to the court's authority through the grant of probate. The exception is where the existence of the later will was known and not disclosed by the first executor in the probate application.

Where probate is granted, the original will remains permanently in the Supreme Court. A copy of the will is part of an original probate document which bears the seal of the Supreme Court of Queensland.

Generally, when probate has not been taken out, the original will is lodged with the Transmission Application. Where the Public Trustee is the applicant, a certificate is lodged if an order to administer or an election to administer is relied on.

Grant of Representation from outside Queensland

[5-2100]

Grant of representation under the *British Probates Act 1898* (Qld)

Where a grant of representation (however described) is made in a jurisdiction to which the British Probates Act applies, it may be resealed by the Supreme Court of Queensland. Once the foreign grant is resealed, it has the same standing as a Queensland grant and it may be lodged with a Form 5 Transmission Application to transmit the registered interest of the deceased to the personal representative.

If no reseal of a foreign grant (which was made in a jurisdiction to which the British Probates Act applies) is sought, application may be made to the Registrar to register a Form 5A Transmission Application which is supported by the original foreign grant or an exemplification of the foreign grant provided that the person/s to whom the grant was made are the same as the applicant/s for the transmission. Reference should be made to [60-1030] relating to deposit of supporting documentation when preparing an application of this type.

Grant of representation not under the *British Probates Act 1898* (Qld)

Where a grant of representation (however described) is made in a jurisdiction to which the British Probates Act does not apply, in order to transmit the registered interest of the deceased, a grant of representation should be sought from the Supreme Court of Queensland and the Queensland grant may be lodged with a Form 5 Transmission Application.

Intestacy

[5-2110]

When a registered owner or holder of an interest dies without leaving a will, the Supreme Court may appoint an administrator to administer the estate in accordance with the rules laid down in the Uniform Civil Procedure Rules 1999. A person who wishes to administer an estate applies to the Court to be appointed as the administrator.

The Supreme Court issues a document known as ‘letters of administration’, which authorises the person named as administrator to control and administer the estate of the deceased person in accordance with s. 610 of the Uniform Civil Procedure Rules. It is also referred to as a grant of administration. The letters of administration are the authority for a transmission to the administrator as personal representative.

Under the *Land Title Act 1994* and *Land Act 1994*, it is not essential to apply for letters of administration before making a Transmission Application unless the gross value of the estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was over \$300,000.

If letters of administration are not lodged, then the applicant on a Form 5A must explain in the declaration annexure to Form 5A his/her entitlement to administer the estate. The applicant must declare the names and relationships of all those entitled to the estate and details of the existence or non-existence of a de-facto spouse under the Uniform Civil Procedure Rules.

Name Variation

[5-2120]

The name of the deceased registered owner or holder of an interest is given in full in Item 1 of the Forms 5, 5A and 6 and minor differences in spelling do not require explanation. If it is considered that the name in the other documents being lodged cannot be safely accepted as being that of the deceased registered owner or holder of the interest (e.g. upon a change in surname), then a supplementary declaration (in Form 20) identifying one with the other, together with any relevant evidence (e.g. a copy of a certificate of marriage) is required.

Where the name of a beneficiary or personal representative is different in the Transmission Application to that shown in the will, a statutory declaration supported by relevant evidence, is required from that person setting out the circumstances of the difference in the name.

Return of Certain Deposited Documents

[5-2130]

Registry practice is to return to the lodger, at the time of lodgement, certain original documents that are required to be deposited as evidence. Refer to [60-1030]. The following comments relate to the return of some documents deposited with a Form 5, 5A or 6 – Transmission Application.

An original will once deposited with a Transmission Application in the registry will be dealt with in a similar manner as if it was deposited in the Supreme Court of Queensland Court of Probate. The original will is examined by registry staff to ensure it is in order and retained as a permanent public record.

An original will held by the registry with a registered Transmission Application will only be released to the Supreme Court of Queensland for a grant of representation application. Where the original will is required for such an application, the personal representative or their solicitor must request in writing for the Registrar to forward the original will to the Court. The request must state the authority for them to make the request and details of the probate registry where the application will be made. The Registrar will forward the original will and other relevant documentation (e.g. codicil) to the Court and notify the applicant it has been sent.

An original will held by the registry with an unregistered Transmission Application will only be released in the following circumstances:

- in response to a written request from the lodger to fully withdraw the Transmission Application after the application is withdrawn; or
- where the Transmission Application is rejected under s. 157 of the *Land Title Act 1994* or s. 306 of the *Land Act 1994*.

Where an original will is required for grant of representation in Queensland and the will is held with an unregistered Transmission Application, the dealing must be fully withdrawn from registration prior to its release from the Registry. The lodger must request in writing for the Transmission Application to be fully withdrawn. Registry staff will notify the lodger by letter once the dealing has been fully withdrawn. The original will can then be released with the Transmission Application to the lodger on presentation of the letter at the office where the Transmission Application was lodged. It is then the responsibility of the personal representative to arrange for deposit of the original will with the grant of representation application.

Where a grant of representation is to be sought in a jurisdiction other than Queensland, a certified copy of the relevant Transmission Application, including a certified copy of the original will, may be provided on request and payment of the relevant fees.

Forms of Transmission

Form 5 – Transmission Application by Personal Representative (Grant in Queensland) [5-2140]

This form of Transmission Application is used by a personal representative who has obtained a grant of representation or a reseal of a grant of representation in Queensland.

On registration, the applicant appears on the title as ‘personal representative’.

Form 5A – Transmission Application by Personal Representative (No Grant in Queensland)

[5-2150]

This form of application is used where:

- (a) the deceased registered owner or holder of an interest left a will and the applicant is or is entitled to be the deceased’s personal representative or, in the opinion of the Registrar, would succeed in an application for a grant of representation (i.e. probate or letters of administration with the will annexed) or a reseal in Queensland of a grant to which the *British Probates Act 1898* applies but has not obtained such a grant or reseal; or
- (b) in the case of an intestacy, the applicant would, in the opinion of the Registrar, succeed in an application for a grant of letters of administration, and:

- (i) the gross value of the deceased's estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was not over \$300,000 (or such other amount as may be prescribed by regulation); and
- (ii) six months has elapsed from the date of death of the intestate and no letters of administration of the deceased's estate have been granted.

In these circumstances, the Registrar performs a role somewhat akin to that of a court of probate. The Registrar will require a supplementary statutory declaration to establish the validity of the will if considered necessary, e.g. a statutory declaration of due execution where no attestation clause appears in the will or the will is undated. In such cases, a clear and true copy of the last original will must be provided as an exhibit to any supplementary statutory declaration and endorsed with the appropriate exhibit marking and certificate.

The Registrar will also examine the deceased's certificate of death to ensure that the cause of death does not suggest a lack of testamentary capacity at the date of the will. If it does, the Registrar will ask for evidence to clarify the matter.

On registration the applicant appears on the title as 'personal representative'.

Form 6 – Transmission Application for Registration as Devisee/Legatee

[5-2160]

This form of application is made by a devisee/legatee of the deceased registered owner or holder of the interest, with the written consent of the personal representative or person entitled to appointment as such.

As indicated, the applicant must be the person beneficially entitled under a will to a lot or an interest of a deceased registered owner or holder of an interest.

Presumption of Tenancy

For wills made or republished prior to 1 December 1975: the common law presumption of joint tenancy applies where there is no clear indication in the will as to the tenancy of the beneficiaries unless the will provides otherwise by express word or by necessary implication from the words used. E.g. a substitutional provision in a will is an indication that the primary beneficiaries are not to take as joint tenants. Where there is a substitutional provision or words of severance expressed in a will, the primary beneficiaries shall be taken to be tenants in common.

For wills made or republished on or after 1 December 1975: where there is no clear indication in the will as to the tenancy of the beneficiaries, s. 35 of the *Property Law Act 1975* provides that a disposition should be construed as made to or for the beneficiaries as tenants in common, and not as joint tenants, unless the disposition provides that the beneficiaries are to take as joint tenants or tenants by entireties.

Beneficiaries Surviving Testator

Section 33B of the *Succession Act 1981* requires a beneficiary under a will to survive the testator for a period of 30 days, unless a contrary intention appears in the will. Accordingly, an application in Form 6 cannot be executed within 30 days of the deceased's death unless such a contrary intention appears in the will.

Interested Witnesses

As a Transmission Application in Form 6 is akin to a transfer from the personal representative to the beneficiary, for deaths prior to 1 April 2006 the terms of the former s. 15 of the *Succession Act 1981* applicable prior to 1 April 2006 and in force at the date of death are

relevant. The former s. 15 of the Succession Act renders dispositions other than payments of debts or remuneration to a witness, his/her spouse or persons claiming under the witness or spouse, null and void.

The applicants are to declare that neither they nor a spouse of theirs was a witness to the deceased's will. If this is not declared to, the application will be requisitioned as follows:

'The applicant should, by statutory declaration, declare that neither they nor a spouse of theirs was a witness to the will of... deceased'.

Section 11 of the Succession Act that replaces the former s. 15 applies to deaths on or after 1 April 2006. This section does not void the beneficial disposition to the spouse of a witness. It does void a beneficial disposition to a witness in circumstances other than mentioned in s. 11(3) of the Succession Act. Therefore a statutory declaration is required from the applicant stating that they were not a witness to the will. If the declaration is not produced the application will be requisitioned as follows:

'The applicant should declare that they were not a witness to the will of [name of deceased], if such is the case (see s. 11 of the *Succession Act 1981*).'

For deaths on or after 1 April 2006, where a beneficial disposition has been made to a witness and one of the circumstances referred to in s. 11(3) of the Succession Act applies, the Registrar would require evidence of the particular circumstance. If there are more than two witnesses to the will, the matter will be gauged on its merits.

Registration

On registration, the devisee/legatee appears on the title as a registered owner or holder of an interest. The personal representative is obliged to ensure that a distribution of the assets is in order before consenting to these applications.

^{1,3} Upon satisfying the Chief Executive that the beneficiary is entitled to an interest in a lease, sublease or licence under the will and the personal representative has given written approval, the beneficiary may be registered as lessee, sublessee or licensee under s. 379 of the *Land Act 1994*.

1, 2 Life Estate Created by Will

[5-2163]

The recording of a beneficial remainder estate is prohibited by s. 30(2) of the *Property Law Act 1974*. That section states that 'an interest in remainder created after the commencement of the Act must not be registered in the freehold land register'. Section 30(2A) provides that 'subsection (2) has effect despite anything in the *Land Title Act 1994*'.

Under a will, only the personal representative (as trustee) can exercise the powers conferred by the *Trusts Act 1973* in respect of trust property, including any life estate. To clarify, where a life estate is created under a will the life estate is not able to be recorded on title. Instead the interest must be recorded in the name of the personal representative.

Therefore, a Form 6 – Transmission Application (by beneficiary) and a charge relating to a life estate cannot be registered.

A Form 5 or 5A – Transmission Application for transmission to the personal representative are the only acceptable forms in the circumstance. A request to record the life estate is **not** registrable in conjunction with the Form 5 or 5A.

¹Rights to Reside, Charges and Conditions in Will

[5-2167]

Section 5 of the *Trusts Act 1973* includes within the definition of ‘trust property’ a personal licence to reside for life given by will. However, this is a personal right or licence and, like other conditions and charges contained in the will, it does not constitute an estate or interest in land.

A right to reside, a charge or some other condition contained in a will may **not** be recorded on the title.

If the terms of a will place a condition on the beneficiary which must be complied with before the beneficiary can take the land, then evidence of the condition being complied with must be deposited with the application (e.g. a statutory declaration from the personal representative).

Undisclosed Trust

[5-2170]

The Registrar is not required to supervise undisclosed trusts and will register applications which, on their face, are entitled to registration.

Limitations

[5-2180]

Most Transmission Applications in Form 5 are straightforward, as the validity of the will or the administration in intestacy has already been established and proved in the court and some form of evidence issued. These applications register the applicant as ‘personal representative’.

If the grant of representation is a ‘limited’ grant to certain actions, e.g. limited to dealings with certain property, ‘limited’ should be noted in item 6 of the Form 5 after the words ‘personal representative’. The titles registry is only concerned where the executor is limited to certain actions and not a limitation on the appointment of the executor.

Other Equities

[5-2190]

There may be other equities affecting a lot or an interest, such as trust or partnership equities or the equity of a purchaser under a contract of sale (between the deceased and the purchaser). A lot or an interest which is the subject of a trust, partnership or contract of sale should **not** be dealt with by way of a ‘limited transmission’, i.e. a recording of the personal representative as ‘personal representative – trust’, ‘personal representative – partnership’ or ‘personal representative – contract of sale’. The personal representative should simply be recorded (by the transmission application) as ‘personal representative’. Once this has occurred, the other equities can be dealt with by way of the appropriate Form 1 – Transfer (e.g. a Form 1 – Transfer to Trustees (see part 1, esp ¶[1-2380] and ¶[1-2390])).

Advertising Requirements

[5-2200]

The Registrar may require that public notice be given of a transmission application prior to registering the application. However, the Registrar has discretion in regard to this.

For information about advertising see [60-0760] and [60-0830].

¶[5-2210] to ¶[5-2240] deleted

Forms

General Guide to Completion of Forms

[5-4000]

For general requirements for completion of forms see part 59 – Forms.



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Dealing Number

Lodger (Name, address, E-mail & phone number)

COATES & SULLIVAN
SOLICITORS
210 ELIZABETH STREET
BRISBANE QLD 4000
mail@coatessullivan.com.au
(07) 3227 5280

Lodger Code
320

1. Deceased's name

JOHN MICHAEL BROWN

2. Lot on Plan Description

LOT 1 ON RP155755

Title Reference

16560051

3. Interest held by deceased

FEE SIMPLE

4. Applicant

Given Names

Surname/Company Name and Number

MARY ALICE

BROWN

Address for service of notices to the applicant: 1 DOE STREET, CARINA QLD 4152
(for rates purposes, etc.)

5. Document(s) deposited

*Grant of Probate)
*Grant of letters of Administration with the will annexed) issued by the Supreme Court of Queensland in the
*Grant of letters of administration (intestacy)) estate of the deceased
*Reseal of grant of representation)
*Exemplification of grant of representation)

* delete if not applicable

6. Request

The applicant is the personal representative of the deceased and it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

J Coates

.....signature

JOHN IAN COATES

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

20/07/2017

Execution Date

M Brown

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant and no witness is required in this instance

Dealing Number

Lodger (Name, address, email & phone number)
PHELPS & FOX
SOLICITORS
48 CREEK STREET
BRISBANE QLD 4000
mail@pelpsfox.com.au
(07) 3227 4646

**Lodger
Code**
(if any)
205



OFFICE USE ONLY

Privacy Statement

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1. Deceased's name

JAMES MICHAEL BROWN

2. Lot on Plan Description

LOT 1 ON RP145344

Title Reference

16561151

3. Interest held by deceased

FEE SIMPLE

4. Applicant Given Names

HELEN PETRA

Surname/Company Name and Number

BROWN

Postal address of the applicant:

(for service of notices, including rates)

11 HARE STREET, CARINA QLD 4152

5. Document(s) deposited

- *Original last will)
*Office copy of Death Certificate issued by the Registry of Births, Deaths &)
Marriages (Qld) or equivalent evidence from another state or country) of the deceased
- *Grant of representation) other than from Queensland
*Exemplification of grant of representation) other than from Queensland
*rule through if not applicable

6. Request

In accordance with the particulars disclosed in the attached declaration, it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

Witnessing officer must be aware of his/her obligations under section 162 of the *Land Title Act 1994*

Separate executions are required for each applicant. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

..... signature

..... full name

..... qualification

Witnessing Officer

20/07/2017
Execution Date

J E Phelps
JOHN ERIC PHELPS

Applicant's or Solicitor's Signature

..... signature

..... full name

..... qualification

Witnessing Officer

/ /
Execution Date

Applicant's or Solicitor's Signature

(Witnessing officer must be in accordance with Schedule 1 of *Land Title Act 1994* eg Legal Practitioner, JP, C Dec)

Note: A Solicitor is required to print full name if signing on behalf of the Applicant and no witness is required in this instance

I, HELEN PETRA BROWN

of 11 Hare Street, Carina, Brisbane

in the State of Queensland

do solemnly and sincerely declare that:

1. The applicant is or is entitled to be the personal representative of the deceased because:
 - * the applicant is the executor of the last will of the deceased.
 - * ~~(if other, state basis of entitlement)~~
2. I have caused a search to be made and find that no grant of administration of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.

If a will

3. ~~- *(a) The deceased did not marry on or after the date of execution of the will.
 - *(b) The deceased married me on or after the date of execution of the will however, our marriage was solemnised on or after 1 April 2006 and I was married to the deceased at the time of his/her death.
 - *(c) The deceased did not enter into a civil partnership on or after the date of execution of the will.
 - *(d) The deceased did enter into a civil partnership with me on or after the date of execution of the will and I was in a civil partnership with the deceased at the time of his/her death.~~

If a will and applicant is surviving husband or wife of the deceased

4. *The marriage between the deceased and me had not been dissolved nor had any proceedings for annulment been commenced.

If a will and marriage between applicant and deceased has been dissolved/annulled

5. ~~*The marriage between the deceased and me was dissolved/annulled on or after 1 April 2006 however, by the deceased's will the deceased expressed an intention that my appointment as executor not be revoked.~~

If a will and applicant is the survivor of a civil partnership with the deceased

6. ~~*The civil partnership between the deceased and me had not been terminated nor found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively.~~

If a will and a civil partnership between the applicant and deceased has been terminated or is void

7. ~~*The civil partnership between the deceased and me was terminated or was found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively, however by the deceased's will the deceased expressed an intention that my appointment as executor would not be revoked.~~

If a will and deceased died on or after 5 June 2017 and applicant is surviving de facto partner

8. ~~*The de facto relationship between the deceased and me had not ended.~~

If a will and deceased died on or after 5 June 2017 and de facto relationship between the applicant and deceased had ended

9. ~~*The de facto relationship between the deceased and me had ended, however by the deceased's will the deceased expressed an intention that my appointment as executor would not be revoked.~~

If deceased died intestate

10. ~~*The deceased died intestate and his/her gross estate in Queensland at the date of death did not exceed \$300,000.~~

***rule through if not applicable**

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867 (Qld)*.#

The form of wording should comply with the appropriate Oaths/Evidence Act under which the declaration is being made. Note a declaration under the *Oaths Act 1867 (Qld)* can only be taken by the persons listed in section 13 of that Act.

J E Phelps

.....signature

JOHN ERIC PHELPS

.....full name

Solicitor

.....Qualification

Witness

as authorised under the relevant Oaths/Evidence Act

.....signature

.....full name

.....qualification

Witness

as authorised under the relevant Oaths/Evidence Act

20/06/2017
Execution Date

H P Brown

Applicant's Signature

/ /
Execution Date

Applicant's Signature

Dealing Number



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Lodger (Name, address, email & phone number)

PHELPS & FOX
SOLICITORS
48 CREEK STREET
BRISBANE QLD 4000
mail@phelpsfox.com.au
(07) 3227 4646

Lodger

Code
(if any)
205

1. **Deceased's name**
JAMES MICHAEL BROWN

2. Lot on Plan Description	Title Reference
LOT 1 ON RP145344	16561151

3. **Interest held by deceased**
FEE SIMPLE

Note: A Form 24A - Property Information (Transmission Application) must be attached to this Form where interest being transmitted is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "water allocation" (Water Act 2000)

4. Applicant	Given Names	Surname	(include tenancy if more than one)
	PATRICIA ALICE	BROWN	

5. **Document(s) deposited**

~~*Grant of probate~~)
~~*Grant of letters of administration with the will annexed~~) **issued by the Supreme Court of Queensland in the**
~~*Reseal of grant of representation~~) **estate of the deceased**
~~*Exemplification of grant of representation~~)

~~*Grant of representation~~) **other than from Queensland**
~~*Exemplification of grant of representation~~) **other than from Queensland**

*Original last will of the deceased and an office copy of Death Certificate issued by the Registry of Births, Deaths & Marriages (Qld) or equivalent evidence from another state or country

*rule through if not applicable

6. **Request**

In accordance with the particulars disclosed in the attached declaration and the consent of the (entitled) personal representative having been given, it is requested that the applicant be registered as proprietor of the above interest in accordance with this claim.

Witnessing officer must be aware of his/her obligations under section 162 of the *Land Title Act 1994*

Separate executions are required for each applicant. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

G H Wilston

..... signature

GREGORY HAROLD WILSTON

..... full name

SOLICITOR

..... qualification

Witnessing Officer

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 e.g. Legal Practitioner, JP, C Dec)

20/07/2017

Execution Date

P A Brown

Applicant's or Solicitor's Signature

/ /
Execution Date

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant and no witness is required in this instance

I, PATRICIA ALICE BROWN

of 24 Buck Street, Carina

in the State of Queensland

do solemnly and sincerely declare that:

1. The applicant is the devisee / legatee under the last will of the deceased.
2. ~~*The land described in clause _____ of the will is the land described in item 2 on Form 6.~~
To be completed where the land in item 2, on Form 6, is specifically identified other than by way of lot on plan description
3. The information contained on the attached Form 24A is true and correct.
4. *If a will*
 *(a) The deceased did not marry on or after the date of execution of the will.
~~*(b) The deceased married me on or after the date of execution of the will however, our marriage was solemnised on or after 1 April 2006 and I was married to the deceased at the date of his/her death.~~
 *(c) The deceased did not enter into a civil partnership on or after the date of execution of the will.
~~*(d) The deceased entered into a civil partnership with me on or after the date of execution of the will and I was in a civil partnership with the deceased at the time of his/her death.~~
5. *If deceased died before 1 April 2003*
~~*(a) Neither I nor a spouse of mine was a witness to the execution of the will.~~
If deceased died on or after 1 April 2003 but before 1 April 2006
~~*(b) Neither I nor a spouse of mine as defined by section 5AA of the Succession Act 1981 was a witness to the execution of the will.~~
If deceased died on or after 1 April 2006
 (c) *(i) I was not a witness to the execution of the will.
~~*(ii) I was a witness to the execution of the will but documentation is deposited herewith evidencing the application of section 11(3) of the Succession Act 1981.~~
6. *I have caused a search to be made and find that no grant of administration of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.
Only required if the will is not proved or not resealed in Queensland
7. *The marriage between the deceased and me had not been dissolved nor had any proceedings for annulment been commenced.
Required if the applicant is surviving husband or wife of the deceased and has not been granted a grant of representation in Queensland
8. ~~*The marriage between the deceased and me was dissolved/annulled on or after 1 April 2006 however, by the deceased's will the deceased expressed an intention that my entitlement as a beneficiary not be revoked.~~
9. ~~*The civil partnership between the deceased and me had not been terminated nor found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively.~~
Required if the applicant is survivor of a civil partnership and has not been granted a grant of representation in Queensland
10. ~~*The civil partnership between the deceased and me was terminated or found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively, however, by the deceased's will the deceased expressed an intention that my entitlement as a beneficiary not be revoked.~~
11. *If deceased died on or after 5 June 2017*
~~*(a) The de facto relationship between the deceased and me had not ended.~~
 Required if the applicant is surviving de facto partner of the deceased and has not been granted a grant of representation in Queensland
~~*(b) The de facto relationship between the deceased and me had ended, however by the deceased's will the deceased expressed an intention that my entitlement as beneficiary not be revoked.~~

* rule through if not applicable

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of *the Oaths Act 1867 (Qld)*.#

The form of wording should comply with the appropriate Oaths/Evidence Act under which the declaration is being made. Note a declaration under the *Oaths Act 1867 (Qld)* can only be taken by the persons listed in section 13 of that Act.

G H Wilston

.....signature

GREGORY HAROLD WILSTON

.....full name

SOLICITOR

.....Qualification

Witness

As authorised under relevant Oaths/Evidence Act

20/06/2017
Execution Date

P A Brown

Applicant's Signature

I, PATRICIA ALICE BROWN
of 24 Buck Street, Carina, Queensland
declare that:

~~*I am the person to whom the grant of representation was made.~~

*I am the person named as executor in the original last will.

~~*I am entitled to be the personal representative of the deceased by virtue of _____.~~

*rule through if not applicable

All just debts and funeral expenses have been paid and testamentary expenses have been adequately provided for.
Legacies, if any, have been paid or adequately provided for.

AND I consent to this application.

G H Wilston

.....signature

GREGORY HAROLD WILSTON

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

20/06/2017

Execution Date

P A Brown

Personal Representative's Signature

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /

Execution Date

Personal Representative's Signature

Guide to Completion of Form 5

Item 1

[5-4010]

Insert the name, as recorded, of the deceased registered owner or holder of the interest.

Where a personal representative of an estate is recorded on title (original personal representative) and a new personal representative is appointed before the estate was fully administered, Item 1 must be expanded in the following manner:

‘[name of the deceased original proprietor or holder] currently registered in the name of [name of the original personal representative] as personal representative.’

Item 2

[5-4020]

Insert the details of the lot which is being transmitted or the lot over which the interest being transmitted is registered. For further information see part 1 – Transfer, esp ¶[1-2020].

More than one lot on plan description may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is required for the transmission of different interests. For more information see [59-2020].

Item 3

[5-4030]

Insert the interest held by the deceased. This may be an estate in fee simple, an interest in a lease, an interest in a mortgage, etc. The interest is described, for example, as:

- ‘fee simple’
- ‘Lease No. G123456’
- Mortgage No. 701543622’
- ‘State Lease’
- ‘Water Allocation’

Where the interest being transmitted constitutes only part of a lot or interest, it is necessary to insert, e.g. ‘½ interest in fee simple’ or ‘½ interest in Lease No. G123456’ or ½ interest in water allocation or ‘½ interest in State Lease No. 654321’.

Item 4

[5-4040]

Insert the applicant’s full name. This should coincide with the name of the person in whose favour the grant of representation (referred to in Item 5) was made. Where the Form 5 is supported by a Queensland Reseal of Probate, the person claiming the estate in the application must be the person who submitted the documents to the Court for reseal and is named on the face of the reseal.

In the case of a (trustee) company, its Australian Company Number should be provided.

Complete the postal address of the applicant(s) for service of notice if the deceased was:

- a registered owner of a freehold lot; or
- a holder of a lease or licence under the *Land Act 1994*; or

- a holder of a water allocation.

Item 5**[5-4050]**

The document/s deposited in support of the Transmission Application must be identified here. The inapplicable documents indicated on the Form must be deleted.

It will be noted that the wording of s. 111(2)(a) of the *Land Title Act 1994* and s. 377(2)(a) of the *Land Act 1994* refer simply to the 'resealing of a grant of representation' and therefore include the reseal of a grant of letters of administration on intestacy. Refer to [60-1030] for information relating to the deposit of supporting documentation.

Item 6**[5-4060]**

Execution and dating of the Transmission Application is required as indicated on the Form. As noted on the Form, the Application may be signed by a solicitor on behalf of the applicant and no witness is required in this instance. However, the solicitor **must** print his/her full name immediately below the signature.

¶[5-4070] deleted

Declaration by Applicant**[5-4080]**

In the usual case, no declaration by the applicant is required and it will be noted that the Form does not incorporate one. However, if the deceased's name as recorded in the Register differs from the deceased's name as shown in the deposited grant of representation or reseal, a statutory declaration confirming that they are one and the same person is required.

For example:

'The George Brown shown as the registered proprietor of Lot [no.] is one and the same person as the George Howard Brown referred to in the grant of probate deposited with the Form 5 application dated the... day... of 20...'

If the differences are significant, the Registrar may require the grant to incorporate, as an alias, the name of the deceased as recorded in the register.

Documentation to be Lodged**[5-4090]**

The following documentation must be lodged to register the transmission:

- (1) Form 5;
- (2) probate (either original or Supreme Court office copy);

or

reseal of probate;

or

letters of administration;

or

where there is an order to administer or an order to administer in intestacy, certificate of authority and Supreme Court office copy of the will;

or

election to administer and certificate of authority;

- (3) declarations and evidence to establish identity, if name changes are involved;
- (4) ^{1, 2}Certificate of Title, if it exists, or a request made to dispense with production (except where the transmission is for the interest of a lessee under a registered lease lodged without the lessor's consent); and
- (5) ^{2, 3}for a water allocation title:
 - (a) Form W2F152 – Notice to registrar of water allocations of existence of supply contract (for water allocations managed under a Resource Operations Licence) – see part 49, esp ¶[49-0030]; or
 - (b) Water Allocation Dealing Certificate – (for water allocations not managed under a Resource Operations Licence) – see part 49, esp ¶[49-0080].

Guide to Completion of Form 5A

Item 1

[5-4100]

Insert the name, as recorded, of the deceased registered owner or holder of the interest.

Item 2

[5-4110]

Insert the details of the lot which is being transmitted or the lot over which the interest being transmitted is registered. For further information see part 1 – Transfer, esp ¶[1-2020].

More than one lot on plan description may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is required for the transmission of different interests. For more information see [59-2020].

Item 3

[5-4120]

Insert the interest held by the deceased. This may be an estate in fee simple, an interest in a lease, an interest in a mortgage, etc. The interest is described, for example, as:

- 'fee simple'
- 'Lease No. G123456'
- 'Mortgage No. 701543622'
- 'State Lease'
- 'Water Allocation'

Where the interest being transmitted constitutes only part of a lot or interest, it is necessary to insert, e.g. '½ interest in fee simple' or '½ interest in Lease No. G123456' or ½ interest in water allocation or '½ interest in State Lease No. 654321'.

Item 4

[5-4130]

Insert the applicant's full name. In the case of a company, its Australian Company Number should be provided.

Complete the postal address of the applicant(s) for service of notice if the deceased was:

- a registered owner of a freehold lot; or
- a holder of a lease or licence under the *Land Act 1994*; or
- a holder of a water allocation.

Item 5

[5-4140]

The document/s deposited in support of the application should be identified here. The inapplicable documents indicated on the Form must be deleted. Refer to [60-1030] for information relating to the deposit of supporting documentation.

If the certificate of death of the registered owner or holder of an interest is being deposited, the cause of death should be checked to ensure that it does not suggest a lack of testamentary capacity at the time the will was made. If it does, a letter from a registered medical practitioner stating, in his/her opinion, at the date of execution of the will the testator had testamentary capacity to make a will or a statutory declaration from a solicitor who witnessed the will setting out how the solicitor satisfied himself/herself as to the testator's testamentary capacity, will be required.

Item 6

[5-4150]

Execution and dating of the Transmission Application is required as indicated on the Form. As noted on the Form, the Application may be signed by a solicitor on behalf of the applicant and no witness is required in this instance. However, the solicitor **must** print his/her full name immediately below the signature

Declaration by Applicant

[5-4160]

The document/s deposited will be those necessary to establish the entitlement to be the personal representative of the deceased. In the case of an application by the executor of any unproved will, the original will and the certificate of death of the deceased are likely to be the only documents required.

As the Form is used in different circumstances, it is necessary to comment separately on the declarations required for the separate circumstances in which the Form is used. This Form of Transmission Application is used where:

- (a) the deceased registered owner or holder of an interest left a will and the applicant is or is entitled to be the deceased's personal representative or, in the opinion of the Registrar, would succeed in an application for a grant of representation (i.e. probate or letters of administration with the will annexed) or a reseal in Queensland of a grant to which the *British Probates Act 1898* applies but has not obtained such a grant or reseal; or
- (b) in the case of an intestacy, the applicant would be entitled, in the opinion of the Registrar, to obtain a grant of letters of administration (but has not obtained such a grant); and:
 - (i) the gross value of the deceased's estate in Queensland, other than property held by the deceased as a joint tenant, was not over \$300,000 (or such other amount as may be prescribed by regulation); and
 - (ii) six months have elapsed from the date of death of the intestate.

A declaration in the prescribed Form 5A annexure must be completed and lodged with the Transmission Application. The statements required to be included or deleted are indicated on the declaration. However, two paragraphs are deserving of comment.

Paragraph 1

[5-4170]

This paragraph may require the applicant to state the basis upon which he/she is entitled to be the personal representative. For example, if the instituted executor has died or renounced and the substituted executor is the applicant, this should be made clear and the relevant certificate of death or renunciation must be deposited. Similarly, if the applicant is the surviving executor, this should be made clear and a copy of the certificate of death of the deceased executor should be deposited with the Application. In these circumstances, the statement which should appear in paragraph 1 might be:

- (a) The applicant is the surviving executor appointed under the will referred to above.
- (b) AB, the other executor so appointed, died on 10 July 1992 as appears by the office copy of certificate of death deposited herewith.'

If the applicant is entitled to appointment as an administrator with the will annexed, the evidentiary statements required to establish this are the same as are required by the Supreme Court of Queensland in an application for a grant of letters of administration with the will annexed. It may be that the basis of entitlement can be stated, such as 'The executor AB appointed by the will referred to above has died (certificate of death deposited herewith) and I am the sole residuary beneficiary'. In such a case, the space provided on the Form may be sufficient.

Where there is insufficient space on the single page declaration annexed to Form 5A for all paragraphs or for all declarants to execute on the same page as the declaration, separate declarations must be completed and executed. (Copies of certificates of death, original renunciations and/or consents should be referred to as 'deposited' with the Application).

If the situation is that referred to in paragraph (b) above, Paragraph 1 will require the applicant to establish his/her entitlement to a grant of letters of administration. If the space provided on the Form is insufficient for this purpose, a Form 20 – Enlarged Panel must be used.

Prior to 1 April 2003, s. 5 of the *Succession Act 1981* included a definition of 'de facto spouse' to provide for a sharing by a de facto spouse of the estate of a person who died intestate.

Section 5AA of the Succession Act now includes the definition of a spouse generally as 'the person's husband or wife; or de-facto partner, as defined in the *Acts Interpretation Act 1954* (the AIA), section 32DA; or civil partner, as defined in the AIA, schedule 1'.

Where a Grant of Letters of Administration in Queensland of an intestate's estate has not been made and the deceased died on or after 1 May 1998, if in an application of this type the applicant is:

- (a) the deceased spouse, the following is required:

for a death between 1 May 1998 and 31 March 2003, inclusive –

- a statement that he/she is the spouse of the deceased and the deceased was not survived by a de facto spouse as defined by s. 5 of the *Succession Act 1981* as in force at the date of death of the deceased.

for a death on or after 1 April 2003 –

- a statement that he/she/they is/are the surviving spouse/s of the deceased as defined by s. 5AA of the *Succession Act 1981*.
- (b) the deceased's de facto spouse, the following is required:
- for a death between 1 May 1998 and 31 March 2003, inclusive –
- a statement that he/she is the de facto spouse of the deceased as defined by s. 5 of the *Succession Act 1981*, as in force at the date of death of the deceased, and that the deceased was not survived by a spouse.
- (c) the deceased's child, the following is required:
- for a death between 1 May 1998 and 31 March 2003, inclusive –
- a statement that he/she is a child of the deceased and that the deceased was not survived by a spouse or a de facto spouse as defined by s. 5 of the *Succession Act 1981* as in force at the date of death of the deceased.
- for a death on or after 1 April 2003 –
- a statement that he/she is a child of the deceased and the deceased was not survived by a spouse as defined by s. 5AA of the *Succession Act 1981*.

The applicant child of the deceased must also identify, by name, all the children of the deceased who survived the deceased and their dates of birth.

However, if the deceased was survived by more than one child, as many as four children may apply as personal representatives.

Section 610 (Priority for letters of administration) of the Uniform Civil Procedure Rules 1999 requires that a person with a higher priority to the applicant must be accounted for (e.g. if a child of the deceased is the applicant and the deceased was survived by a spouse/de facto spouse, the spouse/de facto spouse must renounce his/her right to administer the deceased's estate).

Paragraph 2

[5-4173]

The 'search' which this paragraph states as having been caused to be made is the same as the one required in an application for a grant of representation. It is not necessary to lodge any evidence that the search referred to in this paragraph has been made, nor is it necessary to specify the date on which the search was made. In practice, the search should be conducted immediately prior to the execution of the Application, which should be lodged promptly thereafter.

Paragraph 3

[5-4176]

As indicated on the form the inapplicable clauses must be ruled through.

Paragraph 4

[5-4179]

When the husband or wife of the deceased is the applicant in a Form 5A, and the marriage between the deceased and the spouse has not been dissolved or annulled, then this must be indicated by retaining paragraph 4.

Paragraph 5**[5-4182]**

When the former husband or wife of the deceased is the applicant in Form 5A, and the divorce or annulment occurred on or after 1 April 2006, and a contrary intention appears in the will that the former husband or wife is entitled despite the divorce or annulment, then this must be indicated by retaining paragraph 5.

Paragraph 6**[5-4184]**

When the surviving civil partner of the deceased is the applicant in a Form 5A, and the civil partnership between the deceased and the civil partner had not been terminated or has not been found to be void under section 18 or 30 of the *Civil Partnerships Act 2011*, then this must be indicated by retaining paragraph 6.

Paragraph 7**[5-4188]**

When the former civil partner of the deceased is the applicant in a Form 5A, and the civil partnership between the deceased and the civil partner had been terminated or has been found to be void under section 18 or 30 of the *Civil Partnerships Act*, and a contrary intention appears in the will that the civil partner's appointment as executor would not be revoked despite the termination or finding, then this must be indicated by retaining paragraph 7.

Paragraph 8**[5-4189]**

When the surviving de facto partner of the deceased is the applicant in a Form 5A, and the de facto relationship between the deceased and the de facto partner had not ended, then this must be indicated by retaining paragraph 8.

Paragraph 9**[5-4190]**

When the former de facto partner of the deceased is the applicant in a Form 5A, and the de facto relationship between the deceased and the de facto partner had ended, and a contrary intention appears in the will that the de facto partner's appointment as executor would not be revoked despite the ending of the de facto relationship, then this must be indicated by retaining paragraph 7.

Paragraph 10**[5-4191]**

Substantiation of the statement that the gross value of the estate in Queensland does not exceed \$300,000 is **not** required. The Registrar relies on the applicant's statement in the declaration.

General Comments**[5-4200]**

Separate executions are required for each declarant. Where there is sufficient space on the annexure to Form 5A, it is permissible for more than one declarant to make and execute the declaration on the annexure. However, where there is insufficient space for all declarants to execute on the same declaration, separate declarations must be completed and executed.

If the applicant is to execute the declaration outside of Queensland, the appropriate form of attestation clause should be used. Refer to [60-0260] regarding the requirements for the form of declarations for other jurisdictions.

Although not required to be disclosed, if the lot or interest is an asset of a partnership or the deceased was the undisclosed sole trustee of it, the Form 5A may be inappropriate as a grant of representation may be necessary to enable the trust to be assumed. Such lot or interest should **not** be dealt with by way of a 'limited transmission', i.e. a recording of the personal representative as 'personal representative – trust' or 'personal representative – partnership'. The

personal representative would be recorded (by the transmission application) as ‘personal representative’. Once this has occurred, these other equities can be dealt with by way of the appropriate Form 1 – Transfer (e.g. a Form 1 – Transfer to Trustees (see ¶[1-2380] and ¶[1-2390])).

As previously noted, a Transmission Application may be registered in these circumstances only after six months from the date of death, where no letters of administration have been granted in that time and where the gross estate of the intestate in Queensland, other than property held by the deceased as a joint tenant, was not over \$300,000 (or as otherwise prescribed by regulation).

Documentation to be Lodged

[5-4210]

The following documentation must be lodged to register the transmission:

- (1) Form 5A;
- (2) documents referred to as ‘deposited’ in Item 5 of the Transmission Application;
- (3) Form 20 and supplementary statutory declaration/s, as appropriate; and
- (4) ^{1,2}Certificate of Title, if it exists, or a request to dispense with production (except where the transmission is for the interest of a lessee under a registered lease lodged without the lessor’s consent).
- (5) for a water allocation title:
 - (a) Form W2F152 – Notice to registrar of water allocations of existence of supply contract (for water allocations managed under a Resource Operations Licence) – see part 49, esp ¶[49-0030]; or
 - (b) Water Allocation Dealing Certificate (for water allocations not managed under a Resource Operations Licence) – see part 49, esp ¶[49-0080].

Guide to Completion of Form 6

Item 1

[5-4220]

Insert the name, as recorded, of the deceased registered owner or holder of the interest.

Item 2

[5-4230]

Insert the details of the lot which is being transmitted or the lot over which the interest being transmitted is registered. For further information see part 1 – Transfer, esp ¶[1-2020].

More than one lot on plan description may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is required for the transmission of different interests. For more information see [59-2020].

Item 3

[5-4240]

Insert the interest held by the deceased. This may be an estate in fee simple, an interest in a lease, an interest in a mortgage, etc. The interest is described, for example, as:

- ‘fee simple’
- ‘Lease No. G123456’

- ‘Mortgage No. 701234589’
- ‘State Lease’
- ‘Water Allocation’.

Where the interest being transmitted constitutes only part of a lot or interest, it is necessary to insert, e.g. ‘½ interest in fee simple’ or ‘½ interest in Lease No G123456’ or ½ interest in water allocation or ‘½ interest in State Lease No 654321’.

Item 4**[5-4250]**

If there is more than one applicant, their entitlement should be shown, e.g. ‘as joint tenants’ or ‘as tenants in common in equal shares’ or ‘as tenants in common in the shares of one-third and two-thirds respectively’, etc as the case may be.

Item 5**[5-4260]**

The document/s deposited in support of the Transmission Application should be identified here. The inapplicable documents indicated on the Form must be deleted. Refer to [60-1030] for information relating to the deposit of supporting documentation.

It will be noted that the wording of s. 111(2)(a) of the *Land Title Act 1994* and s. 377 (2)(a) of the *Land Act 1994* refer to the ‘resealing of a grant of representation’ and therefore include the reseal of a grant of letters of administration on intestacy.

If the certificate of death of the registered owner or the holder of an interest is being deposited, the cause of death should be checked to ensure that it does not suggest a lack of testamentary capacity at the time the will was made. If it does, a letter from a registered medical practitioner stating, in his/her opinion, at the date of execution of the will the testator had testamentary capacity to make a will or a statutory declaration from a solicitor who witnessed the will setting out how the solicitor satisfied himself/herself as to the testator’s testamentary capacity, will be required.

Item 6**[5-4270]**

Execution and dating of the Transmission Application is required as indicated on the Form. As noted on the Form, the Application may be signed by a solicitor on behalf of the applicant and no witness is required in this instance. However, the solicitor **must** print his/her full name immediately below the signature.

Declaration by Applicant**[5-4280]**

A declaration in the prescribed Form 6 annexure must be completed and deposited with the Application. The statements required to be included or completed are indicated on the declaration. However, some paragraphs are deserving of comment.

Paragraph 1**[5-4290]**

Where the devisee/legatee is a corporation, this paragraph should be varied to begin ‘The applicant is’ (not ‘I am’). The declarant should include a statement that he/she is authorised to make the declaration on the corporation’s behalf. Further, even in the normal case where the applicant declares that he/she is the devisee/legatee, additional identification or evidence of entitlement may be required, for example, where:

- (a) the applicant is not named or is named differently in the will and/or is a substituted beneficiary; or

- (b) the effectiveness of the devise/legacy depends, as a matter of law, on other conditions being fulfilled.

In either of these circumstances, evidence must be provided to establish the entitlement of the applicant to the devise/legacy.

The Registrar does not require evidence of the payment of legacies and debts.

Examples falling within (a) above are as follows:

- (i) Where the devise/legacy is to a class such as ‘to such of my children as shall survive me’. Here, the applicant must give details of the testator’s children, including age, and make it clear that, if a child has failed to survive the testator, that child died without issue. Otherwise, the implications of s. 33N of the *Succession Act 1981* must be considered (i.e. the entitlement of the deceased child’s issue to take the deceased child’s share). An appropriate statement in this Item might be:

‘The deceased left as his only children surviving him, us, your declarants.’

‘No child of the deceased predeceased him.’

‘AB, the only other child of the deceased, died on 10 January 1985 as appears by the office copy certificate of death deposited herewith, without issue.’

Note that s. 65 of the *Succession Act 1867* continues to have relevance where the will was executed prior to 1 January 1982 (the commencement date of the *Succession Act 1981*) and the deceased died prior to 1 April 2006.

- (ii) If the devisee/legatee is named ‘Albert Brown’ in the will, but his correct name is ‘Albert William Brown’, then no statement is required to identify them as one and the same. However, a significant difference, e.g. in the surname, will require explanation.
- (iii) If the applicant received his/her entitlement to claim by virtue of being a substituted or residuary beneficiary, then particulars of the predeceasing of the primary beneficiary should be declared and an office copy certificate of death of the primary beneficiary should be deposited with the Application. The statement required might be:

‘I am the substituted beneficiary of the land described in Item 2, AB the primary beneficiary having predeceased the deceased as appears by the office copy certificate of death deposited herewith.’

Where the primary beneficiary was ‘issue’ of the testator, the relevance of s. 33N of the *Succession Act 1981* should be addressed as discussed in example (i) above. Again, the relevance of s. 65 of the *Succession Act 1867* should also be considered.

Examples falling within (b) above are as follows:

- (i) If the applicant is required by the will to have attained a certain age or met a certain qualifying condition (e.g. to have married), then evidence will be required showing that the age or other condition has been met.

If the provisions of ss. 28, 29 or 30 of the *Succession Act 1981* or the comparable sections that replaced those sections from 1 April 2006 as contained in Division 5 of Part 2 of the *Succession Act 1981* appear to affect the devise or legacy, appropriate evidence would need to be provided to establish entitlement.

Paragraph 2	[5-4300]
Please complete as requested in the paragraph on the form.	
Paragraph 3	[5-4303]
As indicated on the form the information contained in the Form 24 must be true and correct.	
Paragraph 4	[5-4305]
As indicated on the form the inapplicable clauses must be ruled through.	
Paragraph 5	[5-4307]
As indicated on the form the inapplicable clauses must be ruled through.	
Paragraph 6	[5-4310]
As indicated on the form, this paragraph is relevant only where the applicant's claim is pursuant to an unproven will.	
Paragraph 7	[5-4320]
When the husband or wife of the deceased is the applicant in a Form 6, and the application is not supported by a grant of representation in Queensland, then he/she must indicate that the marriage between the deceased and the husband or wife has not been dissolved or annulled by retaining paragraph 7.	
Paragraph 8	[5-4322]
When the husband or wife is the applicant in a Form 6, and the marriage between the deceased and the applicant was dissolved or annulment occurred on or after 1 April 2006, and a contrary intention appears in the will that the former husband or wife is entitled despite the divorce or annulment, then this must be indicated by retaining paragraph 8.	
Paragraph 9	[5-4324]
When the surviving civil partner is the applicant in a Form 6, and the civil partnership between the deceased and the civil partner had not been terminated or has not been found to be void under section 18 or 30 of the <i>Civil Partnerships Act 2011</i> , then this must be indicated by retaining paragraph 9.	
Paragraph 10	[5-4326]
When the former civil partner of the deceased is the applicant in a Form 6, and the civil partnership between the deceased and the civil partner had been terminated or has been found to be void under section 18 or 30 of the <i>Civil Partnerships Act</i> , and a contrary intention appears in the will that the former civil partner's entitlement as beneficiary not be revoked, then this must be indicated by retaining paragraph 10.	
Paragraph 11	[5-4327]
When the surviving de facto partner of the deceased is the applicant in a Form 6, and the de facto relationship between the deceased and the de facto partner had not ended, then this must be indicated by retaining paragraph 11(a).	

When the former de facto partner of the deceased is the applicant in a Form 6, and the de facto relationship between the deceased and the de facto partner had ended, and a contrary intention appears in the will that the de facto partner's entitlement as beneficiary would not be revoked despite the ending of the de facto relationship, then this must be indicated by retaining paragraph 11(b).

General Comments

[5-4330]

Separate executions are required for each declarant. Where there is insufficient space on the annexure to Form 6 for declarants to make and execute on the annexure, additional declarations must be completed.

If the applicant is to execute the declaration outside of Queensland, the appropriate form of attestation clause should be used. Refer to [60-0260] regarding the requirements for the form of declarations for other jurisdictions.

Consent of Personal Representative

[5-4340]

This part of the Form requires the completion of the name and address of the personal representative or person entitled to appointment as such and requires the deletion of the inapplicable items.

As with a devisee/legatee, if the unproven will showed the executor's name as 'Alice Brown', but her correct name was 'Alice Emily Brown', no evidence is required to identify them as one and the same. However, a significant difference (e.g. in the surname) will require an explanation.

It is necessary to insert in this section of the Form the basis of entitlement to be the personal representative. Where the Form 6 is supported by a Queensland Reseal of Probate, the person entitled to consent to the transmission as personal representative is the person whose name appears on the face of the reseal.

The execution of the consent by the personal representative must be witnessed by a person qualified in accordance with s. 161 of the *Land Title Act 1994* or s. 310 of the *Land Act 1994*.

A personal representative, without a grant of representation in Queensland, who is not the applicant must make a statutory declaration with any relevant paragraphs from the Form 5A Declaration by Applicant annexure (with "applicant" replaced with "personal representative"). For example, if the personal representative was:

- the current or former husband or wife of the deceased – paragraphs 4 and 5 (see ¶[5-4179] and ¶[5-4182]); or
- the current or former civil partner of the deceased – paragraphs 6 and 7 (see ¶[5-4184] and ¶[5-4188]); or
- the current or former de facto partner of the deceased – paragraphs 8 and 9 (see ¶[5-4189] and ¶[5-4190]).

General Comments

[5-4350]

The consent of the personal representative is required even if the personal representative and the applicant are one and the same.

Separate executions are required for each personal representative consenting to a Form 6.

It is noted that the consent incorporates statements regarding the payment of or provision for just debts, funeral and testamentary expenses and legacies. The Registrar does not require evidence that these matters have been attended to. It is the personal representative's responsibility. These statements are incorporated to replace the need for a declaration relating to these issues by alerting personal representatives to some basic matters they should consider before consenting to the application.

Appropriation

[5-4355]

Where an appropriation has taken place in the course of administering the estate, a Form 6 will be permitted provided that it is accompanied by a declaration from the personal representative stating, if such is the case:

- an appropriation has occurred during the course of administering the deceased's estate;
- the provisions of s. 33(1)(l) of the *Trusts Act 1973* have been complied with; and
- no application has been made to the Court to vary the appropriation.

Documentation to be Lodged

[5-4360]

The following documentation must be lodged to register the transmission:

- (1) Form 6;
- (2) those referred to as 'deposited' as set out in Item 5 of the Transmission Application;
- (3) supplementary statutory declaration/s, as appropriate;
- (4) ^{1,2}Certificate of Title, if it exists, or a request to dispense with production (except where the transmission is for the interest of a lessee under a registered lease lodged without the lessor's consent); and
- (5) for fee simple, a State tenure (State lease or licence) and a water allocation title a Form 24A – Property Information (Transmission Application); and
- (6) ¹for fee simple or a State tenure (State lease or licence) a Form 25 – Foreign Ownership Information, if applicable (see [25-0020] and [25-0030]); and
- (7) ^{2,3}for a water allocation title:
 - (a) Form W2F152 – Notice to registrar of water allocations of existence of supply contract (for water allocations managed under a Resource Operations Licence) – see part 49, esp ¶[49-0030]; or
 - (b) Water Allocation Dealing Certificate – (for water allocations not managed under a Resource Operations Licence) – see part 49, esp ¶[49-0080].

¶[5-6000] deleted

Case Law

[5-7000]

Nil.

Fees

[5-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1,2}Land Title Regulation;
- ^{1,3}Land Regulation; or
- ^{2,3}Water Regulation.

Cross References and Further Reading

[5-9000]

de Groot, *Wills Probate and Administration Practice (Queensland)*, Nina Psaltis Consulting (loose-leaf service)

Notes in text

[5-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 7 – Lease

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Part 7 – Lease

General Law

Preliminary

[7-0000]

A lease is a contract between a lessor and a lessee whereby the lessor as registered proprietor grants to the lessee an estate or interest in land for a fixed term in consideration of the lessee paying rent. The lessee holds the leasehold estate during the term of the lease and the lessor holds the reversion, being the lessor's estate in the land subject to the lease. The leasehold estate is an asset of the lessee and may be assigned during the lessee's lifetime or upon his/her death.

The lessee acquires exclusive possession of:

- all or part of a lot as defined in s. 4 of the *Land Title Act 1994*; or
- all of a water allocation as defined in the *Water Act 2000*.

¹The building or land being leased is called 'the demised premises'.

Section 64 of the Land Title Act authorises registration of a lease or sub-lease over the whole or part of a lot and the Water Act authorises registration of a lease or sub-lease over the whole of a water allocation. A lease may therefore cover:

- the whole of a lot or water allocation;
- ²part of a lot;
- ²the whole of a building erected on a lot;
- ²part of a building erected on a lot;
- ²the whole of a lot in a building units plan or group titles plan;
- ²part of a lot or the common property in a building units plan or group titles plan;
- ²part of the common property in a community titles scheme.

A lease does not require registration to be valid (s. 71 of the Land Title Act).

¹However, if the initial term of the lease exceeds three years it must be registered to achieve indefeasibility (ss. 184 and 185(1)(b) of the Land Title Act).

The relationship of lessor and lessee is governed by a wide range of statutory controls affecting different aspects of the relationship. These substantially restrict the parties' freedom to negotiate the terms of the lease contract. Statutory controls operate by regulating:

- certain types of tenancies (e.g. *Property Law Act 1974*, *Retail Shop Leases Act 1994*, *Residential Tenancies Act 1994*);
- aspects of land use, resumption and planning controls;
- the recovery of possession (e.g. *Property Law Act*); and
- the relationship of the contracting parties (e.g. *Racial Discrimination Act 1975* (Cth)).

The trend is of increasing statutory controls over these aspects of leases.

Capacity to Grant and Accept Lease

Lessor

[7-0010]

The lessor must be the registered owner of the fee simple or of a water allocation or a share in the fee simple or a water allocation being leased. If a sub-lease, the sub-lessor must grant the sub-lease from its leasehold estate.

Section 78 of the *Land Title Act 1994* coupled with Part 7 of the *Property Law Act 1974* permits 'a proprietor' to grant a lease. The definition of 'proprietor' in schedule 2 of the *Land Title Act* includes a mortgagee in possession. Because of the lack of specific legislative authority in Queensland, the mortgage must give the mortgagee express authority to lease the mortgaged property.

A trustee of a bankrupt's estate or an Official Trustee in Bankruptcy, is authorised by s. 134 of the *Bankruptcy Act 1966* (Cth) to lease any property of the bankrupt.

A person, or two or more persons may lease to himself/herself/themselves (ss. 14(3), (4) and (5) of the *Property Law Act*). A person may also grant a lease over his/her fee simple estate or water allocation to himself/herself jointly with another (s. 14(2) of the *Property Law Act*).

If a joint tenant, the lessor may lease to a co-joint tenant or to another, without severing the joint tenancy (*Cowper v Fletcher* (1865) 122 ER 1270; *Frieze v Unger* [1960] VR 230). Such action does, however, suspend the joint tenancy (Butt, P, *Land Law*, 2nd edn, Law Book Company, 1988, p 203). A joint tenant can sever the joint tenancy by transferring his/her interest in the joint tenancy to himself/herself or to a third party if the other joint tenants are notified (see part 1, esp ¶[1-2300]).

If the lessor is a trustee or personal representative, there must be no prohibition against executing the lease in the will or trust instrument. If there is no such prohibition, but no specific power to lease, s. 32(1)(e) of the *Trusts Act 1973* gives the trustee authority to lease.

¹A trustee or personal representative or the registered proprietor may grant a lease over a lot which is the subject of a life estate with the consent of the life tenant.

There is no authority for a minor to execute a lease as lessor. Accordingly, a lease by a minor either as a sole lessor or as one of several lessors is not acceptable unless a Court Order authorises a person to execute the lease on behalf of the minor.

Lessee

[7-0020]

A lease to a minor (i.e. a person less than 18 years of age) is valid unless repudiated by the minor within a reasonable time after he/she attains majority. The execution for a minor as lessee must be by his/her legal guardian or the solicitor for the legal guardian, eg 'AB, father and legal guardian of DE' or 'XY, solicitor for AB, father and legal guardian of DE'. The normal witnessing requirements for an individual or a solicitor apply to this type of execution. There is nothing to prevent a lease to a minor being registered on the indefeasible title, however, the endorsement will include reference to this fact.

If more than one lessee, the lessees will hold either as joint tenants or tenants in common. In a joint tenancy, each tenant's interest devolves to the other/s on death (if a natural person) or on dissolution (if a corporation). As a tenant in common, each lessee holds separate interests in land capable of transmission by will. (For more information on joint tenancy and tenancy in common, see part 4, esp ¶[4-0000].)

A lessee may be a corporation. Section 34 of the *Property Law Act 1974* permits a corporation to be a lessee, or a corporation and a natural person to be joint lessees.

A foreign person or foreign corporation may be a lessee.

A lessee may be a trustee or personal representative appointed under a will. A trustee may renew a lease pursuant to s. 39 of the *Trusts Act 1973*.

Term

[7-0030]

A lease must be for a definite term so that the commencement and termination dates are capable of being fixed with certainty. A lease may commence on a date in the past or in the future. A future lease will be void and not registrable if it takes effect later than 21 years from the date of the instrument purporting to create it (s. 102(3) of the *Property Law Act 1974*). The term of a future lease to a different lessee must not be coincident with the term, including further terms under options to renew, of a current lease, unless a concurrency is intended and expressed.

Leases expressed for a duration of short periods, whether the periods are continuous or otherwise, are capable of registration. Examples include leases for:

- certain hours of the day or night;
- specified days over a number of years; or
- the life of the lessor, the lessee or a named third person.

If granted by a trustee, a lease cannot exceed 21 years (s. 32(1)(e) of the *Trusts Act 1973*) unless the trust deed authorises leases for a greater term.

The term of a lease can be extended, either by lodging a new lease or by amending the term prior to the expiration of the term (s. 67 of the *Land Title Act 1994*).

(For the term of retirement village leases see ¶[7-2130].)

Note: Only the initial term and first option period of the lease are recorded on the relevant title.

Mortgagee's Consent

[7-0040]

If there is a registered mortgage of the lot (as defined in ss. 4 and 38 of the *Land Title Act 1994*), the mortgagee's consent to a subsequent lease or amendment of lease is required for the lease or amendment to be valid against the mortgagee (s. 66 of the *Land Title Act*). This does not affect the validity of the lease against third parties, but protects the rights of the lessee if the mortgagee takes possession of the lot. However, the consent is not a prerequisite for registration and the lease will be registered on the assumption that the lessee does not intend to seek the consent.

¹If the Certificate of Title is lodged with the lease for cancellation, the mortgagee is deemed to have consented to the lease and no further consent in Form 18 will be necessary (see 18-2030).

¹Local Government Approval

[7-0050]

All approvals required under the *Land Title Act 1994* or other Acts must be in accordance with that Act.

Local government approval is required for:

- a lease of part of land for a term exceeding ten years (inclusive of further term/s pursuant to option/s to renew); or
- a lease of any part of a building which includes **part** of the land outside the building for a term exceeding ten years (inclusive of further term/s pursuant to option/s); or
- a lease of part of a lot in a building unit plan or group title plan or part of the common property (ss. 8 and 22 of the *Building Unit and Group Titles Act 1980*). This applies to only those developments that relate to a specified Act referred to in the *Body Corporate and Community Management Act 1997* which are:
 - (a) the *Integrated Resort Development Act 1987*; or
 - (b) the *Mixed Use Development Act 1993*; or
 - (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or
 - (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
 - (e) the *Sanctuary Cove Resort Act 1985*;

(s. 65(3A) of the Land Title Act and schedules 19 and 26 of the Sustainable Planning Regulation 2009).

However, local government approval is not required for a lease of part of a lot in a lower plan under the Registration of Plans (H.S.P. (Nominees) Pty Limited) Enabling Act or the Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty Limited) Enabling Act.

An approval is current for six months from the date it was given (s. 50(4) of the Land Title Act).

Duty

[7-0060]

Under the provisions of s. 11 of the Revenue Legislation Amendment Act 2005 lease duty was abolished from 1 January 2006. This makes lease duty inapplicable in some circumstances. For an instrument of lease where the term commences on or after 1 January 2006 lease duty does not apply and is not required to be stamped. For a lease where the term commenced prior to 1 January 2006, lease duty will apply and the instrument will need to be stamped.

Under s. 426 of the *Duties Act 2001* the State is not liable to pay duty. However when a lease to the State commenced before 1 January 2006 it still must be properly stamped. In effect the lease must bear a notation by either the Office of State Revenue or an authorised registered self assessor.

Covenants

[7-0070]

Sections 105, 106 and 107 of the *Property Law Act 1974* imply obligations on the lessor and lessee and powers on the lessor. These will have the same force and effect as if set out in the lease unless negated or modified by express covenant contained in the lease or another instrument (s. 49 of the Property Law Act).

In practice, covenants and conditions are contained in the lease itself or incorporated in either a Form 20 – Schedule or by reference to a registered ‘standard terms document’ in terms of ss. 169 and 170 of the *Land Title Act 1994*, or both.

Concurrent Lease

[7-0080]

A lease granted by a lessor from its reversion of an existing lease over the same land and for an identical, longer or shorter period as the existing lease, is a concurrent lease. A concurrent lessee is not granted exclusive possession, but a lease of the lessor's reversion for the duration of the concurrent lease.

It may be granted by a lessor from its reversion as an owner of the lot or by a sub-lessor over the leasehold reversion on a sub-lease. A concurrent lease is valid if unregistered.

²However such a lease for a period greater than three years should be registered to be indefeasible.

If A leases to B and then grants a concurrent lease to C, for the duration of the concurrency of the two leases:

- C is B's lessor;
- B's rent is payable to C; and
- C may recover possession of B's lease (not A).

¹Easement

[7-0090]

Where the land being leased has the benefit of an easement, the lessee takes the benefit of such easement, whether or not this entitlement is recited in the lease. If the lessee is granted an easement over another part of the lessor's land in terms of covenants contained in the lease, the lessee can be granted a separate instrument documenting that easement for registration. Ancillary rights contained in lease covenants may refer to the use of lifts, passageways, toilets etc, but these are not capable of being registered as easements.

Merger of Lease

[7-0100]

If a lessee acquires the reversion (i.e. the fee simple or water allocation) or if the registered owner acquires an assignment of a lessee's interest, a merger of the lease occurs. Such a merger is not, however, automatic, as a merger by operation of law will only occur if the beneficial interest of the lessee's estate merges or is extinguished in equity (s. 17 of the *Property Law Act 1974*). A merger will not occur in equity unless it is intended by the parties. A sub-lease is not terminated on the merger of the head-lease in the fee simple or water allocation (s. 115 of the *Property Law Act*). To effect a merger, a Form 14 – Request to Record a Merger on the title is required (see part 14, esp ¶[14-2070]).

¹Option to Purchase

[7-0110]

An option to acquire the fee simple or other reversionary interest on or after the expiry of a lease (whether or not contained in a 'short lease' as defined in s. 4 of the *Land Title Act 1994*), must be registered to achieve indefeasibility (ss. 184 and 185(2) of the *Land Title Act*).

Amendment of Lease

[7-0120]

A registered lease may be amended by registering an instrument of amendment of lease (s. 67 of the *Land Title Act 1994*) (see part 13, esp ¶[13-2000]).

Option for Renewal

[7-0130]

If a lease contains an option for renewal, the option may be for a period longer than the initial term of the lease. There is no limit to the number of options a lease can contain.

¹Options to renew contained in:

- a registered lease with an initial term of more than three years; or
- a ‘short lease’ (as defined in s. 4 of the *Land Title Act 1994*) having an initial term which, together with further term/s pursuant to option/s, exceeds three years,

are indefeasible by registration (ss. 184 and 185(2) of the *Land Title Act*).

¹An option contained in an unregistered short lease is not indefeasible (s. 185(1)(b) of the *Land Title Act*).

¹A right to exercise an option for renewal is indefeasible by registration of the lease. If extensions of the lease term are unregistered (ie they are not made the subject of a new lease), the lessee loses the protection of indefeasibility in respect of any further options for renewal (see also ¶[7-0120] and ¶[7-2150]).

Sub-Lease

[7-0140]

A sub-lease is a lease granted by the lessee from its leasehold estate. The term of the sub-lease must be less than the duration of the head lease. The termination date for the sub-lease must be at least one day before the termination date for the head lease. If the period is equal to or greater than the duration of the head lease, it will constitute an assignment and will not operate as a sub-lease, as there is no reversion to the head lease.

If a head lease is surrendered and renewed it is not necessary to surrender and renew any sub-lease as it is determined that the new lease would be as good and valid to all intents and purposes as if all the sub-leases had likewise been surrendered at or before the taking of such new lease (s. 113 of the *Property Law Act 1974*).

A sub-lease is not surrendered if the head lease is surrendered or merged in the fee simple or water allocation (s. 115 of the *Property Law Act*), but the sub-lease will take the reversion of the surrendered head-lease.

An option for renewal contained in a sub-lease cannot extend the term of the sub-lease beyond the duration of the head lease. In practice, an option contained in a sub-lease is exercised subsequent to and conditional upon the exercise of any option contained in the head lease.

¹Lease of Common Property under the *Building Units and Group Titles Act 1980* for Specified Acts

[7-0150]

The introduction of the *Body Corporate and Community Management Act 1997* limits the application of the *Building Units and Groups Titles Act 1980* to those developments under the provisions of the specified acts referred to in the *Body Corporate and Community Management Act*. The specified acts are:

- (a) the *Integrated Resort Development Act 1987*; or
- (b) the *Mixed Use Development Act 1993*; or
- (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or

- (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
- (e) the *Sanctuary Cove Resort Act 1985*.

Subject to the approval of the local government (see ¶[7-0050]) and pursuant to a resolution without dissent, the body corporate may:

- grant a lease over part of the common property not leased to it for the purpose of creating additional common property; and
- grant a sub-lease over part of the common property leased to it as additional common property.

There is no provision in the Building Units and Group Titles Act which allows for the grant of a lease over the entire common property in a building units or group titles plan.

Legislation

[7-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Practice

Lease

[7-2000]

To be registered, a lease is prepared in Form 7, together with covenants and conditions contained in a Form 20 – Annexure or a registered standard terms document identified by dealing number, or a combination of these.

Only one copy of the lease is to be presented for registration.

¹If a Certificate of Title (as defined in ss. 4 and 42 of the *Land Title Act 1994*) has issued, this must be deposited with the lease for cancellation.

If there is a prior registered mortgage, the mortgagee's consent will not be a prerequisite to registration.

The lease must be noted with duty, if applicable (see ¶[7-0060]). Lodgement fees are payable.

Execution

[7-2010]

The lessor and lessee must execute Items 8 and 9 of the Form 7, respectively.

For executions see part 50 – Companies and Corporations, esp ¶[50-0130] ¶[50-0140] and ¶[50-2000] and part 60 –Miscellaneous, esp ¶[60-0900] *ff.*

Rental

[7-2020]

Item 7 of the Form 7 provides for rental to be stated. If there is insufficient space, Item 7 may show 'See Schedule' or 'See Document No ...'. Failure to insert rental details will prevent registration of the lease.

Consent

[7-2030]

Consents should be prepared on Form 18. All consents to a lease should be bound into the lease. Consents to a lease or amendment of lease are required by:

- any mortgagee of the fee simple or water allocation if the lease is to be valid against the mortgagee (s. 66 of the *Land Title Act 1994*). However, consents of mortgagees are not a prerequisite to registration.
- ¹a life tenant, if a lease is granted by a trustee, personal representative or registered proprietor and a charge for a life estate is registered.

¹Local Government Approval

[7-2035]

Approval of the relevant local government is required for leases and some instruments that affect leases of any part of a lot external to a building. Approval is required to a lease of:

- part of a lot;
- part of the common property in a community titles scheme;
- part of a lot or part of the common property, in a building units or group titles plan for those developments that relate to a specified Act referred to in the *Body Corporate and Community Management Act 1997* (see ¶[7-0050]);

if the term of the lease (including option/s to renew) is more than ten years.

Approval is required to any amendment of a lease that extends the term (including option/s to renew) beyond ten years if the lease has not been approved.

The instrument of lease or amendment must be lodged within six months of the local government approval.

Note: Leases of the whole or part of a building, irrespective of the number of the floors, or the term of the lease, do not require local government approval unless part of the land outside the building is also included.

Lease of Water Allocation – Special Requirements

[7-2036]

Water Allocation Managed under a Resource Operations Licence

In addition to other relevant requirements for a lease, a lease of a water allocation managed under a resource operations licence must be accompanied by a ROP 13 — Notice of Existence of Water Supply Contract.

Water Allocation Not Managed under a Resource Operations Licence

In addition to other relevant requirements for a lease, a lease of a water allocation not managed under a resource operations licence must be accompanied by a Water Allocation Dealing Certificate.

¹Lease by Body Corporate for a Community Titles Scheme

[7-2037]

When the body corporate of a community titles scheme executes a lease of the common property as lessor a certificate, in accordance with the scheme's regulation module, authorising the transaction must be deposited with the instrument of lease.

Requirements Specific to Lessee

Co-Lessees

[7-2040]

If there is more than one lessee, Item 3 of the Form 7 must show how the lessees intend to hold the lease between them. Where the lease does not show whether the co-lessees are to hold as tenants in common or as joint tenants, the lease will be requisitioned for the item to be completed. If holding as tenants in common, the share each lessee intends to hold must also be shown.

Trustee

[7-2050]

If the lessee is to be recorded as a trustee, the words 'as trustee' must be inserted after the lessee/s name/s in Item 3 (refer to ¶[7-4030]).

There is no longer a requirement to provide details of the trust instrument when lodging a lease to a trustee lessee (e.g. by depositing a certified copy of the trust deed or referring to a previous dealing where the trust deed was deposited).

For the specific requirements in relation to the transfer of a lease interest to a trustee lessee using a Form 1 – Transfer – see Part 1, esp ¶[1-2390].

Where a lessee holds as trustee and wishes to appoint a new trustee, this should be done by using a Form 1 – Transfer (see Part 1, esp ¶[1-2400] to ¶[1-2430]).

Foreign Person or Foreign Corporation

[7-2060]

If a lessee is a company incorporated outside of Australia, evidence of incorporation from that country must be lodged, together with a translation by an acceptable interpreter if the evidence of incorporation is in a language other than English. If the lease is to a foreign government, an Order in Council in terms of s. 4(1) of the *Foreign Governments (Titles to Land) Act 1948* authorising the lease and a certificate in terms of s. 4(4) of that Act if the lessee is a nominee of the foreign government, are required.

¹If a lease to a foreign person or company exceeds 25 years (inclusive of further term/s pursuant to option/s), a Form 25 – Foreign Ownership Information must be lodged for noting on the

Foreign Ownership of Land Register pursuant to s. 4(1) of the *Foreign Ownership of Land Register Act 1988*.

Mortgagee in Possession

[7-2070]

A mortgagee in possession may only grant a lease if there is express authority to do so in the mortgage instrument as there is no specific legislative authority in Queensland. Before a mortgagee in possession may lease the mortgaged property, evidence by way of a declaration of the mortgagor's default and of service of a notice of demand must be produced. The mortgagee's lease in Form 7 must be accompanied by a declaration as to the default and service of the notice on the mortgagor (preferably in Form 20), with a copy of the notice attached. Where a mortgagee enters into subsequent leases, evidence of any continuing default by the mortgagor must be produced.

One of the effects of the mortgagee acting in this manner is to encumber the mortgagor's right to redemption. Accordingly, if the mortgage is redeemed, the registered lease (granted by the mortgagee) remains as an encumbrance over the property affected. Similarly, where the property is sold or the mortgagee exercises its power of sale, any registered lease granted by the mortgagee remains as an encumbrance on the title of the purchaser.

Where a mortgagee in possession has granted a lease:

- the mortgagee in possession may deal with, or execute a surrender of, the lease as lessor; or
- a person other than the mortgagee in possession may obtain an order of the court to remove the lease.

Where the mortgage is no longer registered on title, the current lessor may deal with the lease.

¶[7-2080] deleted

Merger of Lease

[7-2090]

Where there is a merger of lease, the lessee may make application in Form 14 – Request to Record Merger to record the merger of lease. This is a purely voluntary application and will not be requested by requisition.

The consent of any mortgagee of the lease must also be deposited. A duty notation is not required. However, lodgement fees are payable.

¹The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

Concurrent Lease

[7-2100]

To register a concurrent lease on the indefeasible title, the examiner will inspect the lease to ensure that one of following has been included:

- (a) the consent (in Form 18) of the original lessee to the concurrent lease; or
- (b) the words 'concurrent with Lease No ...' (inserted following the description of the leased area in Item 5 of the Form 7); or
- (c) a covenant to that effect (inserted in the schedule of covenants).

Both the original and concurrent leases will remain on the title.

Prior Registered Lease

[7-2110]

The following table determines the requirements for surrender, cancellation or removal of registered leases, in cases where a lease is lodged ('New Lease') and there is a prior registered lease on the indefeasible title or water allocation title ('Existing Lease').

- 'Extensions' refers to any period for which the initial term of the lease has been extended pursuant to a Form 13 – Amendment of Lease;
- 'Option Period' refers to the period of a further term pursuant to the exercise of an option to renew.

This table only applies when the New Lease is over the same premises or interest (being a lot, a water allocation, or part of a lot) as the Existing Lease.

¹It does not apply to a lease of a different part of a lot (eg a different shop in a shopping centre, or a different Lease area on a Survey Plan).

Time Relating to Existing Lease			
	Lodged During Initial Term (including Extensions)	Lodged During First Option Period	Lodged When Initial Term (including Extensions) and Option Period have Expired
New Lease to Same Lessee	New Lease for residual, longer or shorter period than term or term plus Extensions: No additional requirement. Existing Lease surrendered by operation of law. Existing Lease removed from title.	New Lease for residual, longer or shorter period than the Option Period: No additional requirement. Existing Lease surrendered by operation of law or expired if option has not been exercised. Existing Lease removed from title.	No additional requirement. Existing Lease expired. Existing Lease removed from title.
New Lease to Different Lessee	New Lease for residual, longer or shorter period than term or term plus Extensions: Concurrent lease if indicated by New Lease or if existing lessee acknowledges New Lease (Form 18 – General Consent). Both leases remain on title. If not concurrent lease, either surrender (Form 8 – a lodgement fee is payable*) or determination (Form 14 – a lodgement fee is payable*) of Existing Lease required. Existing Lease removed from title by surrender or determination.	New Lease for residual, longer or shorter period than the Option Period: Concurrent lease if indicated by New Lease or if existing lessee acknowledges New Lease (Form 18 – General Consent). Both leases remain on title. If not concurrent lease, complete item 8 – the option has not been exercised or a declaration by lessor that option has not been; surrender of Existing Lease (Form 8 – a lodgement fee is payable*); or determination of Existing Lease (Form 14 – a lodgement fee is payable*) required. Existing Lease removed from title.	No additional requirement. Existing lease expired. Existing Lease removed from title.
No New Lease – Lessor wants Existing Lease Removed from Title	Surrender (Form 8 – a lodgement fee is payable*) or determination (Form 14 – a lodgement fee is payable*) of Existing Lease required. Existing Lease removed from title by surrender or determination.	Surrender (Form 8 – a lodgement fee is payable*) or determination (Form 14 – a lodgement fee is payable*) of Existing Lease or Request to Remove Lease from title with declaration by lessor that option not exercised (Form 14 – a lodgement fee is payable*). Existing Lease removed from title by surrender, determination or Request to Remove Lease.	Request to Remove Lease from title (Form 14 – no lodgement fee is payable). Existing Lease removed from title.

* See *Land Title Regulation* 2015, Schedule 2 or *Land Regulation* 2009, Schedule 11

Amendment of Lease

[7-2120]

A registered lease is amended by lodging a Form 13 – Amendment of Lease (see part 13, esp ¶[13-2000]).

¹Retirement Village Lease

[7-2130]

Retirement village leases are usually granted for a term of years or the life of a lessee (or the surviving joint lessee). The latter leases terminate upon the death of the lessee (or surviving lessee). In leases with this term, the words relating to the termination date in Item 6 of the Form 7 may be deleted and the words ‘or on the death of the lessee’ as appropriate, inserted together with or in place of the termination date. Item 6 must not state words such as ‘refer to clause [number] in the lease’.

Retirement village leases often contain a power of attorney clause, where the lessee grants power to the lessor to surrender the lease if an event occurs that would end the lease. Such powers of attorney cannot be used to execute documents in cases of death or mental incapacity of the lessee unless they are irrevocable in terms of s. 10 of the *Powers of Attorney Act 1998* (see further part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney).

Death of Lessee

[7-2140]

On the death of a joint lessee, a Form 4 – Request to Record Death should be lodged. On the death of a sole lessee or a lessee tenant in common, a Form 5, 5A or 6 – Transmission by Death Application should be lodged. In either case, no copy of the lease will be required to accompany the application.

If a sole or surviving lessee of a lease for the life of a lessee dies during the currency of the lease, the death of the lessee must be recorded, by lodging a Form 4 – Record of Death, to extinguish the lease from the register. This request must be made either by the personal representative or the registered owner if authority to do so is contained in the lease. Such request must be supported by evidence of the death of the lessee and the applicant’s authority to act in that capacity (eg the original probate).

For more information see part 4, esp ¶[4-4060] or part 5.

Option for Renewal

[7-2150]

The exercise of an option to renew a lease may be registered by registering a new lease for the term specified in the option to renew in the original lease.

Duty must be noted, if applicable (see ¶[7-0060]). Lodgement fees are payable.

The Registrar does not automatically remove expired leases from the title.

(For more information on the removal of leases from the register, see ¶[7-2110] and ¶[7-2200].)

Option to Purchase

[7-2160]

No reference is made to options to purchase in lease endorsements on the indefeasible title, nor is an enquiry made by the Registrar whenever a subsequent transfer is lodged to ensure that the option has not been disregarded.

Sub-Lease

[7-2170]

The formalities required for the creation and registration of a sub-lease are similar to those for a lease. Leases may contain covenants prohibiting or restricting sub-letting, but the Registrar will not review the head-lease to ensure that such prohibitions or restrictions are observed. If a sub-lease is presented in registrable form, it will be registered without investigation. The sub-lease must be in Form 7 with the covenants contained in an annexed Form 20 – Schedule or incorporated by reference to a registered ‘standard terms document’, or a combination of both.

Duty must be noted, if applicable (see ¶[7-0060]). Lodgement fees are payable.

²If the registered proprietor/head-lessor consents to the sub-lease, and the Form 18 – General Consent (see part 18 – General Consent) is deposited with the lease, the Certificate of Title, if issued, must also be deposited for cancellation or a request made to dispense with production.

If there is a registered mortgage of the lot,

- the consent of the mortgagee in Form 18 may be obtained and lodged; or
- ¹the Certificate of Title, if issued, may be deposited;

but neither are a prerequisite to registration.

¹It was previous practice, when a lot was subject to a number of leases (eg shopping centres), to record all transactions relating to a lease on the original copy of the registered lease held in the register and not on the indefeasible title. To ensure that all recordings for leases registered prior to April 1994 are identified, it is prudent to search both the indefeasible title and the registered original lease.

Transfer of Lease

[7-2180]

See part 1 – Transfer, esp ¶[1-2480].

Dealing with Expired Lease

[7-2190]

Where a dealing with a lease is lodged after the initial term and any first unexercised option period, it will be registered if it was executed **in** the initial term.

Where a dealing with a lease is lodged after the initial term and any first unexercised option period, it will not be registered if it was executed **after** the initial term.

Where a dealing with a lease is lodged in the first option period which has not been exercised, the following will apply:

- if the dealing has been executed in the initial term, the dealing may be registered
- if the dealing has been executed in the first option period which has not been exercised the dealing must be preceded by a Form 13 – Amendment to extend the term of the lease.

An amendment of a lease must not be lodged after the lease’s term (which includes any first unexercised option period) has ended (s. 67(2)(c) *Land Title Act 1994*).

Cancellation of Expired Lease

[7-2200]

The Registrar does not automatically remove expired leases from the title. However, where the appropriate form is lodged an expired lease will be removed (see ¶[7-2110] for details).

Where a new lease over:

- the same lot; or
- ²same part of a lot

is lodged, the Registrar will remove an existing lease, in which the initial term and options have expired, in conjunction with an examination and registration of the new lease.

Where there is no option to renew or the period equivalent to a further term available under an option to renew has expired and no amendment has been lodged to extend the lease, the registered owner may at any time apply in a Form 14 – General Request to cancel the lease and remove it from the title. No lodgement fee is payable.

Where the lease contains an option for renewal and the period equivalent to a further term available under the option has not expired, the Form 14 – General Request to remove the lease from the title must be accompanied by a Form 20 – Declaration sworn by the lessor confirming that the option was not exercised by the lessee. The Request may deal with multiple leases on one title or one lease on multiple titles. Lodgement fees are payable.

²It is recommended that instruments that require the creation of an indefeasible title be preceded by a Form 14 – Request to Remove all expired leases. The Request should be made by the registered owner (lessor) and should include all leases:

- (a) where the initial term, including any extensions registered by a Form 13 – Amendment of Lease, has expired and no option for renewal exists;
- (b) where the initial term and any period equivalent to a further term available under an option to renew have expired; and
- (c) with an option to renew that was not exercised by the lessee.

No lodgement fees are payable for leases in (a) or (b). Lodgement fees are payable for leases in (c). A Request relating to leases in (c) must be supported by a declaration by the registered owner (lessor) to the effect that the option was not exercised.

A single Form 14 – Request to Remove expired leases may be used for multiple leases over any number of lots owned by one registered owner.

See Example 4 in Part 14 – General Request for an example of a Request to remove an expired lease from the title.

¹Survey requirements of a lease over part of a lot

[7-2205]

Item 5 of the Form 7 contains a description of the demised premises (the leased area). If the demised premises comprise the whole of a lot, no further means of identification is required.

If part of a lot is leased, a plan of survey or explanatory format plan identifying the part of the land must be lodged to precede the instrument of lease. If part of a building and part of the lot outside the building is leased, a sketch of the part of the building must be deposited and a plan identifying the part of the land is required to be lodged to precede the instrument of lease. The plan must be prepared in accordance with direction 4.8.2 and either direction 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans.

A sketch plan contained in a prior registered lease is not acceptable for identifying a leased area in a new lease of part of a lot.

Leases are to be described on plans by an alpha descriptor, for example – lease A (etc) in lot [number] on [Plan type and number] (eg Lease A in Lot 1 on SP123456). For the requirements describing leases on plans see direction 4.8.2 of the Registrar of Titles Directions for the Preparation of Plans (see also part 21 – Plans and Associated Documents, esp ¶[21-2090]).

¹Sketch

[7-2210]

If part of a building on a lot is leased, the premises must be sufficiently identified, either by means of a description satisfactory to the Registrar or a sketch, which conforms to the standards, required by the Registrar (s. 65 of the *Land Title Act 1994*). An additional fee is payable for the examination of a sketch.

When the roof of a building is leased, it is regarded as being a lease of land. Consequently, the plan must define the roof height and the leased area as a volumetric parcel. The plan must be drawn to conform with the usual standards required for a volumetric plan of part of the land and the normal local government approval requirements apply.

The lease of space for signage on the wall of a building will require similar attention.

The standard requirements for sketches of part of a building vary according to the rental paid by the lessee and/or the term of the lease. See Direction 5 of the Registrar of Titles Directions for the Preparation of Plans for the standards for a sketch.

¶[7-2220] to ¶[7-2340] deleted

¹General Comments

[7-2350]

Architectural or building plans are not acceptable.

Sketches must be securely bound into the lease document, ie with one staple in the top left corner.

Prior to registration, when an original sketch plan in an instrument is deficient and is replaced by a new one, the original sketch plan should be marked ‘cancelled’ and initialled by all parties. The new sketch plan should be signed by all parties and both sketch plans securely bound into the lease document.

Amendments to the area of a registered lease are not permitted (s. 67(3) of the *Land Title Act 1994*).

Approval of the relevant local government on Form 18 is required to some leases (see ¶[7-2035]).

Note: Leases of the whole or part of a building, irrespective of the number of the floors, or the term of the lease, do not require local government approval unless part of the land outside the building is also included.

¹Master Sketch

[7-2355]

When a title is affected by multiple leases, the Registrar may request the deposit of a master sketch showing all the leased areas of the centre/complex. The master sketch is not to be included as part of the lease lodged for registration. See Direction 5.3.9 of the Registrar of Titles Directions for the Preparation of Plans for the standards for a master sketch.

¶[7-2360] deleted

¹Examples of Sketches**[7-2370]**

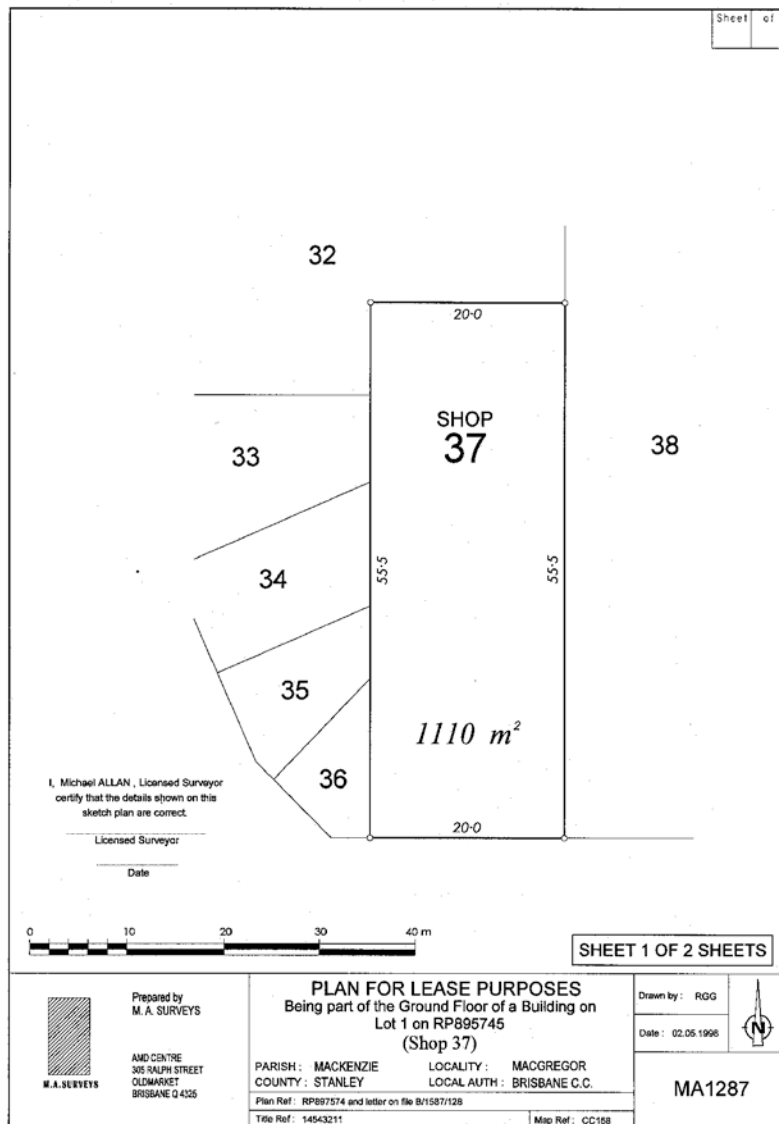
The following examples of sketches are set out below:

- (1) lease of part of a building with a high value and/or long term, lodged with a site plan;
- (2) site plan by direct connection;
- (3) site plan by offsets;
- (4) master sketch for multiple leases;
- (5) identifier table to accompany a master sketch for multiple leases;
- (6) sketch for a lease of part of a building with a high value and/or long term;
- (7) sketch for a lease of part of a building with low value and short term.

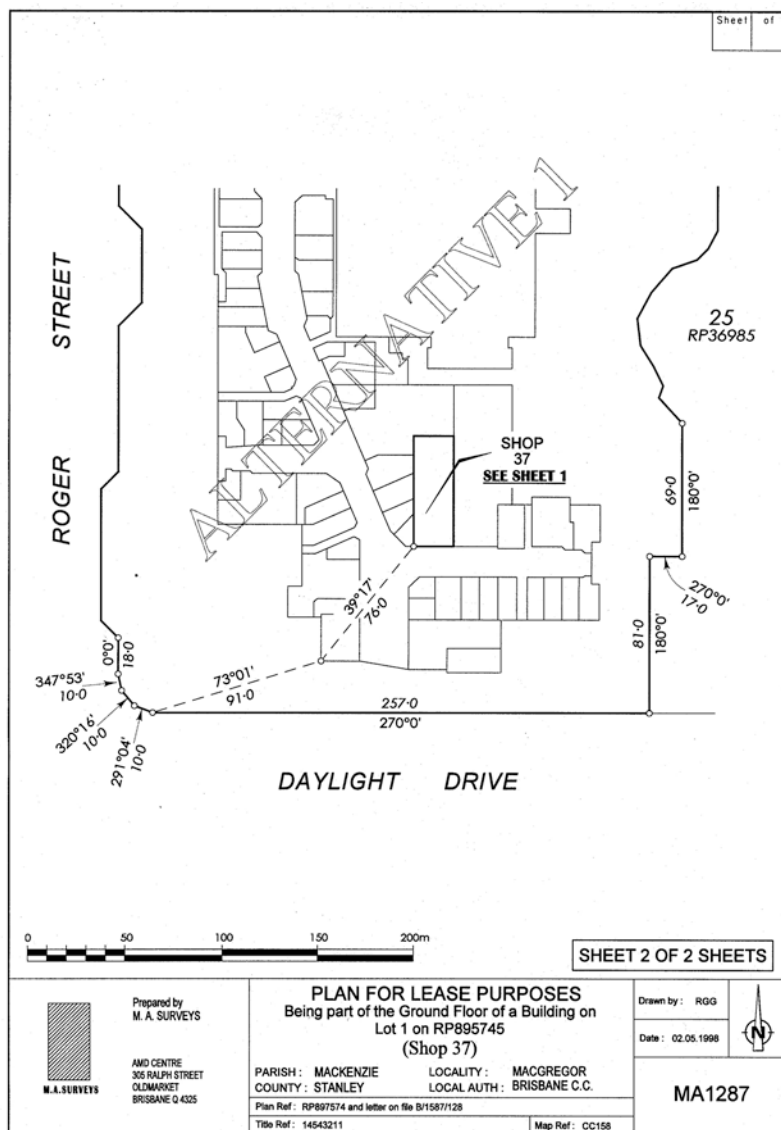
Example of a sketch for a lease of part of the ground floor of a building with multiple leases of high value and/or long term

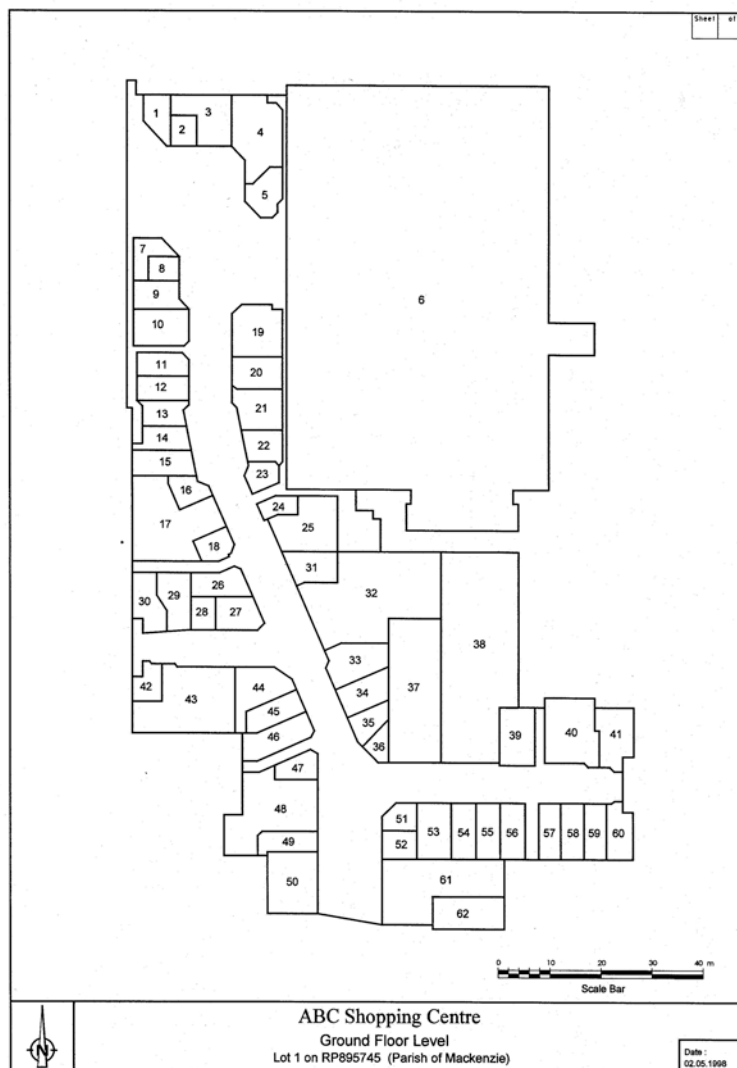
NOTE:

- 1 A sketch plan of a lease of high value and/or long term must be certified by a Licensed Surveyor.
- 2 Scale may be indicated by a ratio or by a barscale or by both. The sketch may be photo reduced only when the barscale is used.
- 3 This sketch must be accompanied by a location sketch. For examples see Alternatives 1 or 2.



Example of location by direct connection

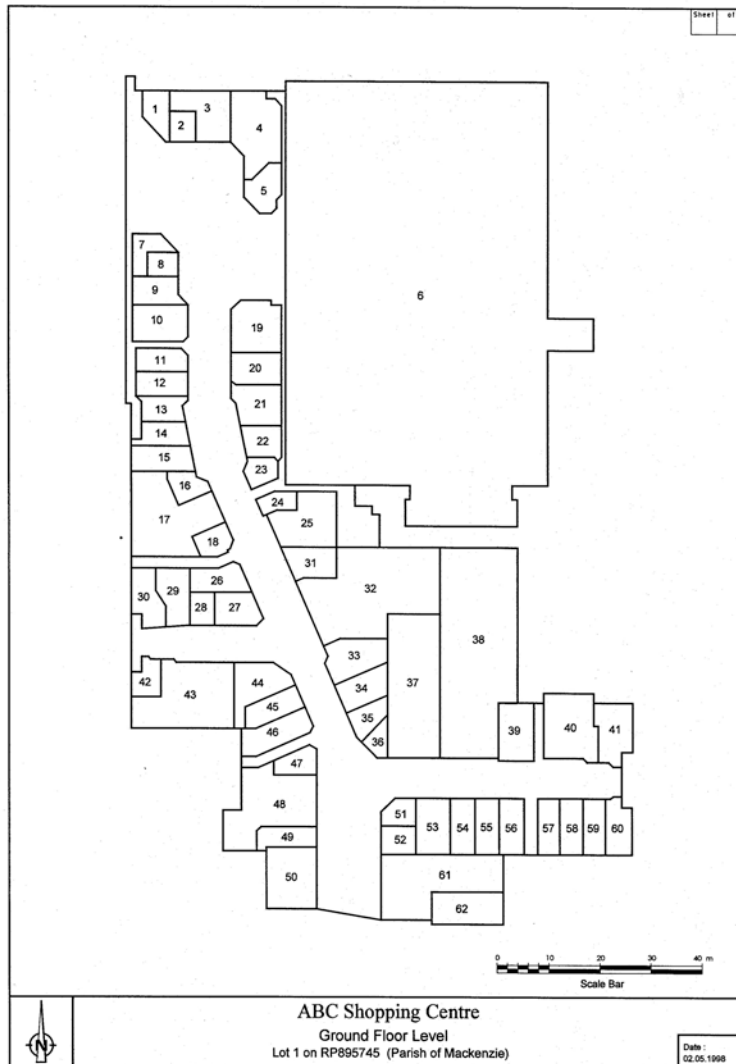


Example of location by offsets

Example of master sketch of multiple leases

NOTE:

This sketch must be drawn on paper that is no larger in size than International A1 and may be drawn over a number of sheets.



Example of table of leases to accompany master sketch

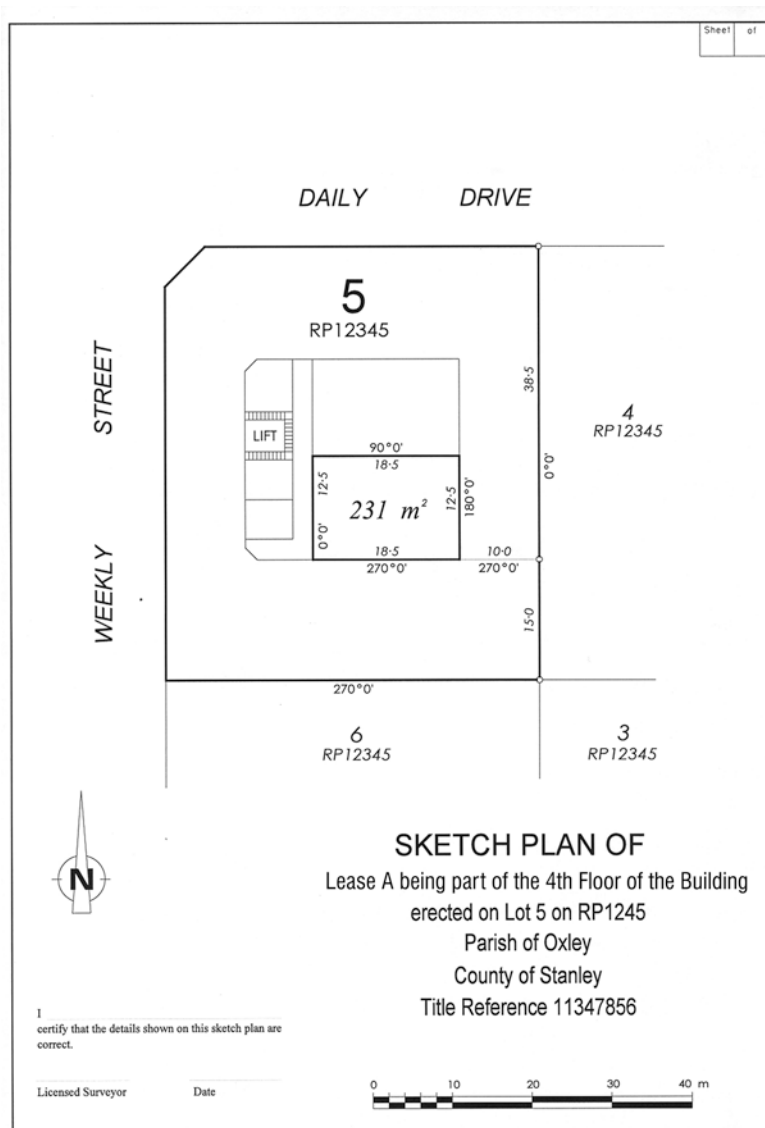
IDENTIFIER	DEALING NUMBER	IDENTIFIER	DEALING NUMBER
1		50	
2		51	
3		52	
4		53	
5		54	
6		55	
7		56	
8		57	
9		58	
10		59	
11		60	
12		61	
13		62	
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49			

ABC Shopping Centre
Ground Floor Level
Lot 1 on RP895745 (Parish of Mackenzie)

Date:
02.05.1998

Example of a sketch for a lease of part of a building with low value and short term**NOTE:**

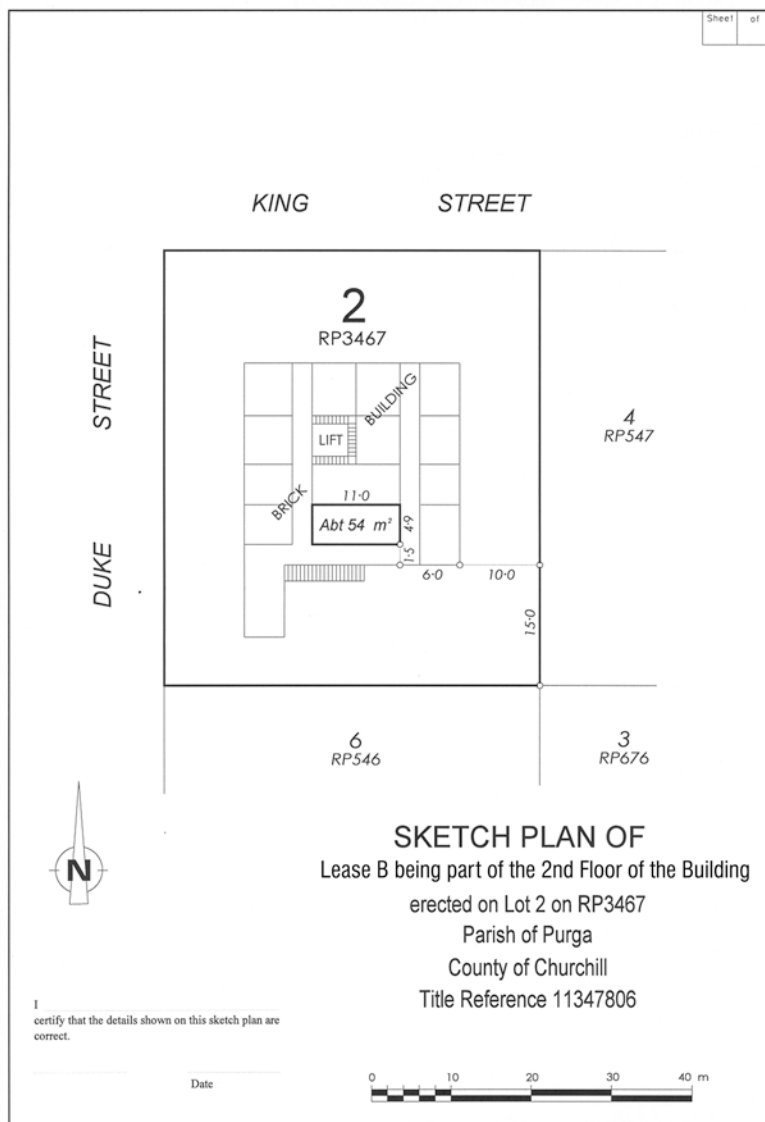
- 1 *A sketch plan of a lease of high value and long term must be certified by a Licensed Surveyor.*
- 2 *Scale may be indicated by a ratio or by a barscale or by both. The sketch may be photo reduced only when the barscale is used.*



Example of a sketch for a lease of part of a building with high value and/or long term

NOTE:

- 1 A sketch plan of a lease of high value and long term must be certified by a Licensed Surveyor.
- 2 Scale may be indicated by a ratio or by a barscale or by both. The sketch may be photo reduced only when the barscale is used.



Forms

General Guide to Completion of Forms

[7-4000]

For general requirements for completion of forms see part 59 – Forms, esp ¶[59-2000].

Dealing Number



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1. Lessor SUBURBAN SHOPPING CO PTY LTD ACN 685 742 321	Lodger (Name, address, E-mail & phone number) SACHS & CO. SOLICITORS 45 ALBERT STREET BRISBANE QLD 4000 mail@sachsco.com.au (07) 3227 9850	Lodger Code 102
---	--	---------------------------

2. Lot on Plan Description LOT 42 ON RP99332	Title Reference 13431166
--	------------------------------------

3. Lessee Given names PARKER JAMES AQUILLA NEIL	Surname/Company name and number SCRIVNER SCRIVNER	(include tenancy if more than one) AS JOINT TENANTS
--	---	--

4. Interest being leased FEE SIMPLE

5. Description of premises being leased PART OF THE GROUND FLOOR OF THE BUILDING (LEASE A) AS SHOWN ON THE SKETCH HEREIN
--

6. Term of lease Commencement date/event: 1/12/2007 Expiry date: 30/11/2011 and/or Event: #Options: 2 X 3 years #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	7. Rental/Consideration SEE STANDARD TERMS DOCUMENT 700144350
---	--

8. Grant/Execution The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- *the attached schedule; *the attached schedule and document no.; * document no. 700144350.....; *Option in registered Lease no. 712589347..... has not been exercised. * delete if not applicable
--

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature	(seal) or Full name of company to be shown	<i>J Thomas</i> , Director JOHN PETER THOMAS
.....full name		<i>P Dean</i> , Secretary PAUL IAN DEAN
.....qualification	1/12/2007 Execution Date Lessor's Signature

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

9. Acceptance The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease. <i>E E Shield</i>signature EGERTON ELI SHIELDfull name JUSTICE OF THE PEACE (QUALIFIED) #22345qualification	28/11/2007 Execution Date	<i>P J Scrivner</i> <i>A N Scrivner</i> Lessee's Signature
---	-------------------------------------	--

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Guide to Completion of Form 7

Item 1

[7-4010]

Insert the full name of lessor or, in the case of a sub-lease, the full name of the lessee under the head-lease.

²If the lessor is a body corporate under a community titles scheme then insert ‘Body Corporate for [name of scheme] community titles scheme [scheme number] eg ‘Body Corporate for Seaview community titles scheme 1234’.

If the lessor holds in trust or as a personal representative, then this must be stated, eg ‘[name of transferor] as Trustee’ or ‘[name of transferor] as personal representative’.

Item 2

[7-4020]

¹Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for Crown plans). The area of the lot/s is not shown.

The entire panel of Item 2 must be completed.

eg	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

Item 2 must contain the description of the lot or lots and the title reference or references for the land that is affected by the lease, for example:

- for a multi-lot title, include only the descriptions of the lot or lots that the lease area spatially affects;
- where the lease is of part of a building and the building is situated on more than one lot or one title include only the lot or title that the lease area spatially affects.

Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are Administrative Plans. Administrative Plan is abbreviated to AP as the prefix of the plan identifier.

All information needed to complete Item 2 will appear on a search of the water allocation title.

eg	Lot on Plan Description	Title reference
	WA 27 on AP 7900	46012345

Item 3**[7-4030]**

Insert the lessee's full name and tenancy if there is more than one lessee.

If holding as tenants in common, the share each lessee intends to hold must also be shown.

If the lessee is to be recorded as a trustee, the words 'as trustee' must be inserted after the lessee/s name/s in Item 3.

For example:

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
	PARKER JAMES	SCRIVNER	AS TRUSTEE

¹If the lessee is a body corporate under a community titles scheme then insert 'Body Corporate for [name of scheme] community titles scheme [scheme number] eg 'Body Corporate for Seaview community titles scheme 1234'.

Item 4**[7-4040]**

Insert 'fee simple' or 'water allocation' or, if a sub-lease, the head lease number.

Item 5**[7-4050]**

Where the whole of every lot/s or the whole of every water allocation/s in the title/s described in Item 2 is being leased, insert in Item 5 'the whole of the land', 'the whole of the lot/s' or 'the whole of the water allocation/s'.

¹Where the whole of a lot or lots but not all of the lots on a multi-lot title described in item 2 is being leased insert in Item 5 the lot on plan description/s of only the lot or lots which are the subject of the lease.

¹If only part of the land described in Item 2 is being leased, insert in Item 5 'Lease [identifier] on SP [number] (must be a survey plan that is recorded in the registry)' eg, 'Lease A on SP976123'.

¹If only part of the floor of a building including part of a building format lot described in Item 2 is being leased, insert eg, 'Part of the xth floor of the building being Lease [identifier] as shown on the sketch herein'.

Where a lease is of part of a building and the building is situated on more than one lot, the description of the premises being leased should also include reference to the lot/s that the lease physically affects e.g. 'Part of the xth floor being Lease [identifier] so far as relates to lot [number] on SP [number] only'.

Note: It is a requirement that the description of the lease area shown in Item 5 aligns with the description shown on the sketch.

Item 6**[7-4060]**

Complete the dates in full e.g. 16/10/2007 or events on which the lease commences and expires. The details of the option/s must be completed. Where the lease does not contain an option/s, insert Nil.

Item 7 [7-4070]

Rental may be set out in a Form 20 – Schedule attached to the Form 7 or a supplementary document, in which case the panel should contain the words ‘see [Schedule/Document No. [number]]’.

Item 8 [7-4080]

Complete as indicated and execute as required.

Item 9 [7-4090]

Execute as required.

¶[7-6000] deleted

Case Law

Broons & Lennox Hatfield Nominees Pty Ltd v Registrar of Titles
(unreported, OS No 285 of 1989) [7-7000]

A lease by a registered owner to himself/herself cannot contain enforceable covenants.

***Cowper v Fletcher* (1865) 122 ER 1270** [7-7010]

A joint tenant may lease his/her interest to another without severing the joint tenancy.

***Sinclair v Connell* [1968] 1 NZLR 118** [7-7020]

The term of a lease can be granted for the life of a lessor, a lessee or a named third person. This was followed in *Borambil Pty Ltd v O’Carrol* [1972] 2 NSWLR 302.

***The Center Pty Ltd v Thomas Magnus Pty Ltd* [1969] Qd R 452** [7-7030]

The local government’s consent to a lease of part of a building erected on the land is only required if the leased premises comprise land outside of the building.

***Daniher v Fitzgerald* (1919) 19 SR (NSW) 260** [7-7040]

Consent of a mortgagee does not affect the validity of a lease against third parties, but protects the lessee if the mortgagee takes possession of the fee simple.

***Mercantile Credits Ltd v Shell Co Aust Ltd* (1976) 136 CLR 326** [7-7050]

An option to renew contained in a registered lease is protected by registration of that lease.

***Friedman v Barrett, Ex p Friedman* [1962] Qd R 498** [7-7060]

Option/s to renew a short lease beyond three years from the commencement of the original term must be registered to achieve indefeasibility.

***Medical Benefits Fund of Australia Ltd v Fisher* [1984] 1 Qd R 606** [7-7070]

The registered owner of a new indefeasible title holds its interest free from all interests not notified on the new indefeasible title.

Re Eastdoro Pty Ltd [1990] 1 Qd R 424

[7-7080]

Where a registered lease contains options for renewal, the options are indefeasible interests. Therefore the due exercise of each of the options for renewal is enforceable against a proprietor who becomes registered after registration of the lease.

Massart v Blight (1951) 82 CLR 423

[7-7090]

The lack of lessor's consent will not prevent the valid passing of a leasehold estate.

Fees

[7-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ¹Land Title Regulation; and
- ²Water Regulation.

Cross References and Further Reading

[7-9000]

See part 8 – Surrender of Lease for details relating to:

- surrender of lease by operation of law, ¶[8-0020]
- surrender of lease by the lessee, ¶[8-0030]
- disclaimer of lease, ¶[8-0050] and ¶[8-2010]
- surrender of lease under power of attorney to surrender, ¶[8-0060] and ¶[8-2020]
- determination of lease by re-entry by lessor, ¶[8-0070] and ¶[8-2030]

Duncan and Vann, *Property Law and Practice in Queensland: being a commentary on the Property Law Act 1974*, Law Book Co, 1982.

Halsburys: Laws of England (4th edn), Butterworths, 1973-1987.

Woodman RA, *The Law of Real Property in New South Wales*, Law Book Co, 1980.

Cassidy and Redfern, *Australian Tenancy Practice and Precedents*, Butterworths (loose-leaf service)

Notes in text

[7-9050]

Note ¹ – This numbered section is not applicable to water allocations or the Water Allocations Register.

Note ² – This paragraph or statement is not applicable to freehold land.

Part 8 – Surrender of Lease

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Part 8 – Surrender of Lease

General Law

Preliminary

[8-0000]

In this part unless otherwise stated:

- a lease means a lease of freehold land or a water allocation, or a sublease of a State lease under the *Land Act* 1994; and
- a sublease means a sublease of freehold land or a water allocation, or a sub-sublease of a State lease under the *Land Act* 1994.

A registered lease may be –

- wholly; or
- ¹partly;

surrendered by operation of law or by registering a surrender of the lease executed by the lessor and the lessee (s 69(1) of the *Land Title Act* 1994 or s 328(1) of the *Land Act* 1994).

¹Destruction of the leased building may suspend the lessee's obligations under the lease until reinstatement (s 105 of the *Property Law Act* 1974). This will not, however, operate as a surrender of the lease.

¶[8-0010] deleted

Surrender by Operation of Law

[8-0020]

A surrender by operation of law occurs when the lessee is granted a new lease from the lessor to commence during the currency of the old lease. The new lease may be for a period which is identical to, longer or shorter than the residue of the old lease.

Surrender by Lessee

[8-0030]

A registered lease may be surrendered by registering a surrender with the consent of every mortgagee and sub-lessee of the lessee (s 69(2) of the *Land Title Act* 1994 or s 328(3) of the *Land Act* 1994). Further, if the lease being surrendered is also the burdened interest of a registered easement, the consent of the grantee of the easement and all registered mortgagees and lessees who receives the benefit of the easement must be deposited. This is required as under s 90A of the *Land Title Act* 1994, a registered easement that burdens a registered lease ends when the lease ends.

Due to the effect of s 69(4) of the *Land Title Act* 1994 or s 328(5) of the *Land Act* 1994, the date the lease is surrendered (inserted at Item 5 of the Form 8 – Surrender of Lease) cannot be after the date of lodgement of the Form 8 – Surrender of Lease).

²If the head-lease is surrendered, the sub-lease will continue in existence and take the reversion on the head-lease (ss 113 and 115 of the *Property Law Act* 1974).

²Merger of Lease

[8-0040]

In instances where the registered owner of a lot acquires the interest in a lease over:

- that lot; or
- a water allocation; or
- ¹part of the lot;

there is **not** an automatic merger of the interest in the fee simple or water allocation. A request must be made by the registered owner to merge the interests.

Disclaimer of Lease

[8-0050]

A lease may be disclaimed on the bankruptcy of a lessee (s 70 of the *Land Title Act* 1994 or s 382 of the *Land Act* 1994).

Surrender by Lessor under Power of Attorney

[8-0060]

If a lessee cannot be located to execute the surrender or is otherwise in default under the terms of the lease, the lessor may execute a surrender if there is an enabling power of attorney clause contained in the lease.

¹Retirement village leases may contain a power of attorney where the lessee grants the power in favour of the lessor to surrender the lease where an event occurs that would terminate the lease, usually the death of the surviving lessee.

Unless the power is irrevocable in terms of s 10 of the *Powers of Attorney Act* 1998, a power of attorney cannot be used to execute any document if the power is revoked upon the death or incapacity of the donor lessee.

Re-Entry by Lessor – Determination of Lease

[8-0070]

If the lessor under a registered lease of:

- ²a lot; or
- ^{1,2}part of a lot; or
- ^{1,3}a registered sublessor of a sublease under the *Land Act* 1994;

re-enters and takes possession under the lease or pursuant to powers implied by s 107 of the *Property Law Act* 1974, the lessor may lodge a request for the Registrar to register the re-entry (s 68(1) of the *Land Title Act* 1994 or s 339(1) of the *Land Act* 1994).

Re-Entry by Lessor – for Repudiation

[8-0075]

A lease may be determined for repudiation relying upon a common law right to terminate a contract for breach.

Repudiation can occur where a lessee indicates either by words or conduct that they do not intend to be or do not regard themselves as being bound by any of their obligations under the lease and the lessor accepts the lessee's breach of his or her obligations as a repudiation of the lease. The most common example of repudiation is abandonment of the premises (in the case of land) or the water allocation by the lessee without the express or implied consent of the lessor.

Lease to a Deregistered Company

[8-0080]

^{1, 2}Where a company was dissolved prior to the commencement of the *Companies Act* 1961, all property and rights whatsoever vested in the Crown (s 300 of the *Companies Act* 1931). Therefore, if the lessee is a company that was deregistered prior to 1 July 1962, the lease may be surrendered and must be dealt with by the State of Queensland (represented by the Department of Justice and Attorney General). See ¶[8-2040] and part 14 – General Request, esp ¶[14-2300].

Under the Australian Securities and Investments Commission (ASIC), where the lessee is a company no longer in existence, the lessor may re-enter and take possession, as notice of default may be served on the ASIC. If circumstances do not permit the use of this procedure, then as the lease is vested in the ASIC pursuant to s 601AD of the *Corporations Act* 2001 (Cth), the ASIC has the power to execute a surrender pursuant to s 601AE of that Act.

^{1, 3}Surrender of a Trustee Lease

[8-0085]

All of part of a registered trustee lease may be surrendered by registering a surrender with the consent of every registered mortgagee and sublessee in Form 18 – General Consent (s 58(5) of the *Land Act* 1994).

Legislation

[8-1000]

Application of the *Land Title Act* 1994 to the *Water Act* 2000

Under the provisions of ss 150(1) and 151 of the *Water Act* 2000, subject to the exceptions provided in ss 150(2) and 151(1) of the *Water Act* 2000, the *Land Title Act* 1994 applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act* 2000 an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act* 1994 and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act* 1994:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act* 2000; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

^{1, 3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the *Land Act 1994* relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s 393 of that Act.

Practice

Form of Surrender

[8-2000]

A surrender of lease or sub-lease is executed by the lessee and lessor and lodged in a Form 8 – Surrender of Lease. The Form 8 provides for a:

- full; or
- ¹partial;

surrender of the lease.

¹For a partial surrender, the area surrendered must be capable of precise definition. If the surrendered area is the whole of a lot, a plan of survey to identify the surrendered area is not required. Similarly, if the surrendered area is the whole of a building or the whole floor of a building, a sketch plan of the surrendered area is not required. If the surrendered area is not capable of precise definition the following applies:

- If the surrendered area is over part of a lot, the area to be surrendered, or the area to remain in the lease, must be defined by a plan of survey or explanatory format plan lodged to precede the surrender. The plan must be drawn in accordance with direction 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans.
- If the surrendered area is part of a floor of a building a sketch plan of the area to be surrendered, or the area to remain, should be bound into the surrender document. For the minimum requirements for a sketch plan see Direction 5 of the Registrar of Titles Directions for the Preparation of Plans.

^{1, 2}The Certificate of Title must be deposited, if issued, or a request made to dispense with production.

There is no requirement to deposit copies of the surrendered lease.

Lodgement fees are payable and a duty notation is required.

The consent of every mortgagee and sub-lessee of the lessee are also required in Form 18 – General Consent.

If the lease being surrendered is also the burdened interest of a registered easement, the consent of the grantee of the easement and all registered mortgagees and lessees who receives the benefit of the easement must be deposited.

Disclaimer of Lease

[8-2010]

A lessor may, after a trustee for a bankrupt lessee has disclaimed a lease that is unsaleable or not readily saleable, request to register the disclaimer to give effect to s 133(2) of the *Bankruptcy Act* 1966 (Cth).

For further information see part 14 – General Request, esp ¶[14-2260].

Surrender by Lessor under Power of Attorney

[8-2020]

A power of attorney contained in a lease must be registered prior to the lessor executing the surrender.

Lodgement fees are payable.

For further information see part 16 – Power of Attorney, esp ¶[16-2050].

Re-Entry by Lessor – Determination of Lease

[8-2030]

A request to record the re-entry by the lessor is made in Form 14 – General Request. For further information see part 14 – General Request, esp ¶[14-2350].

Re-Entry by Lessor – for Repudiation

[8-2035]

A request to record the re-entry by the lessor for repudiation is made in Form 14 – General Request. For further information see part 14 – General Request, esp ¶[14-2350].

Lease to Deregistered Company

[8-2040]

^{1, 2}Company Deregistered Prior to the *Companies Act* 1961

Pursuant to s 300 of the *Companies Act* 1931, when a company was dissolved, all property and rights whatsoever vested in the company immediately before its dissolution shall be ‘deemed to be *bona vacantia*, and shall accordingly belong to the Crown’.

However, during this period the Crown could not hold freehold land or an interest in freehold land. It was not until the *Queensland Government Land Holding Amendment Act* 1992, which inserted s 15A into the *Real Property Act* 1861, that ‘The Crown in right of the State may, under this Act, acquire, hold and deal with land under the name “Queensland Government”’.

When dealing with a lease where the lessee is a company that was deregistered prior to 1 July 1962, a surrender of lease should be produced. The surrender of such lease (Form 8) must be executed by a person who is authorised to sign on behalf of the State of Queensland (represented by the Department of Justice and Attorney General) and lodged together with the evidence that the company is deregistered, without the necessity of recording the vesting to the State of Queensland on the title.

^{1, 2}The Certificate of Title must be deposited, if issued, or a request made to dispense with production.

Company Deregistered under the Australian Securities and Investments Commission (ASIC)

A surrender (Form 8) of a lease to a company that has been deregistered may be executed by ASIC, and lodged together with the evidence that the company is deregistered, without the necessity of recording the vesting to ASIC on the title.

²Merger of Lease**[8-2050]**

See Part 14 – General Request, esp ¶[14-2070].

^{1, 3}Surrender of a Trustee Lease**[8-2055]**

All of part of a registered trustee lease may be surrendered by registering a surrender with the consent of every registered mortgagee and sublessee in Form 18 – General Consent (s 58(5) of the *Land Act* 1994).

The approval of the Minister is not required to be deposited with the surrender.

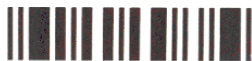
Lodgement fees are not applicable. A duty notation is required.

Forms

General Guide to Completion of Forms**[8-4000]**

For general requirements for completion of forms see part 59 – Forms.

Dealing Number

**OFFICE USE ONLY****Privacy Statement**

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Dealing number of instrument being surrendered	Lodger (Name, address, E-mail & phone number)	Lodger Code
700145672	BENTON & WEBB 148 WICKHAM STREET FORTITUDE VALLEY QLD 4006 info@bentonwebb.com (07) 3252 0774	501
2. Lot on Plan Description	County	Parish
LOT 42 ON RP99332	MARCH	WEYBA
3. Lessor	Title Reference	
SUBURBAN SHOPPING CO PTY LTD ACN 685 742 321	13431166	
4. Lessee		
PARKER JAMES SCRIVNER and AQUILLA NEIL SCRIVNER		

5. Surrender/Execution**a) Surrender of Freehold Lease/Sublease**

***Full Surrender** The lease/sublease in item 1 is surrendered from 30/11/2007.

***Partial Surrender** The lease/sublease in item 1 is surrendered from ____/____/____.

*so far as relates to the land in item 2.

*so far as relates to the part of the leased area.

OR

b) Surrender of Land Act Sublease

*I surrender all my right title and interest in the sublease in item 1 as from ____/____/____.

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

E E Shield

.....signature

EGERTON ELI SHIELD

.....full name

JUSTICE OF THE PEACE (QUALIFIED) #29345

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

28/11/2007

Execution Date

P J Scrivner

A N Scrivner

Lessee's Signature**6. Acceptance**

The Lessor accepts this surrender.

(seal)

or Full name of
company to be shown

J Thomas, Director
JOHN PETER THOMAS

P Dean, Secretary
PAUL IAN DEAN

29/11/2007

Execution Date**Lessor's Signature**

Guide to Completion of Form 8

Item 1

[8-4010]

Insert dealing number of lease or sublease being surrendered (eg L778961X).

Item 2

[8-4020]

^{1, 2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on RP 204939	Stanley	South Brisbane	11223078

^{2, 3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg	Lot on Plan Description	County	Parish	Title reference
	WA 27 on AP 7900			46012345

^{1, 3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for a crown plan).

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on CP LIV1234	Livingstone	Cawarral	40567123

Item 3

[8-4030]

Insert full name of lessor or sub-lessor.

Item 4

[8-4040]

Insert full name of lessee or sub-lessee.

Item 5

[8-4050]

Complete where indicated. Delete paragraph, sentence or words that are not applicable and execute as required.

The date the lease is surrendered cannot be after the date of lodgement of the Form 8 – Surrender of Lease).

Item 6**[8-4060]**

Execute as required.

¶[8-6000] deleted

Case Law

[8-7000]

In the unreported decision of Dowsett J (No 20 of 1994), in the matter of the *Corporations (Queensland) Act 1990* and *Hassell Holdings Pty Ltd*, the court held that a mortgagee exercising power could serve notice of a default by a defunct lessee company on the Australian Securities Commission.

The High Court held in *Progressive Mailing House Pty Ltd v Tabali Pty Ltd* (1985) 157 CLR 17 that a repudiation occurs when a party has an intention, either expressly by words or impliedly by conduct, to no longer be bound by the contract or indicates clearly an inability to perform the obligations under the contract (see also, *Shevill v Builders Licensing Board* (1982) 149 CLR 620, *Buchanan v Byrnes* (1906) 3 CLR 70 and *Marshall v Council of the Shire of Snowy River* [1994] NSW Conv R 55-719).

***India Pty Ltd v Florin Pty Ltd & Ors* [2003] SASC 161**

[8-7010]

A lease can be terminated on the application of ordinary principals of contract law and, where this occurs, no notice under s 124 of the *Property Law Act 1974* is required.

In this case the lessee failed to keep the premises open during normal business hours, which was a requirement and an essential term of the lease.

Under the lease, breach of this essential term entitled the lessor at his option to treat the breach as a repudiation by the lessee.

This the lessor did, thus bringing the lease to an end and giving the lessor the right to sue for damages for breach of contract.

Fees

[8-8000]

Fees payable to the registry are subject to an annual review. See the current:

- ^{1,2}*Land Title Regulation 2005* – Schedule 2, item numbers 2(h), 2(m) and 4; and
- ^{1,3}*Land Regulation 2009* – Schedule 11, item number 2(b); and
- ^{2,3}*Water Regulation 2002* – Schedule 16, item numbers 11 and 15.

Cross References and Further Reading

[8-9000]

Part 7 – Lease

Part 14 – General Request

Part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney

Part 18 – General Consent

Duncan and Vann, *Property Law and Practice in Queensland*, Law Book Co (loose-leaf service)

Cassidy and Redfern, *Australian Tenancy Practice and Precedents*, Butterworths (loose-leaf service)

Notes in text

[8-9050]

Note ¹ – This numbered section, paragraph or statement is not applicable to water allocations.

Note ² – This numbered section, paragraph or statement is not applicable to State land.

Note ³ – This numbered section, paragraph or statement is not applicable to freehold land.

¹Part 9 – Easement

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¹Part 9 – Easement

General Law

In this part, unless otherwise stated, a reference to a lot means:

- a freehold lot;
- land granted in trust under the *Land Act* 1994; or
- non freehold land (including any lease of non-freehold land or sublease of non-freehold land) other than a road;

and

a reference to a registered owner or owner means:

- a registered owner of a freehold lot or interest; or
- a holder of land granted in trust under the *Land Act* 1994; or
- a holder of non freehold land (including any lease of non-freehold land or sublease of non-freehold land) other than a road.

The Nature of Easements

[9-0000]

An easement is a right annexed to land to utilise other land in a particular manner. It does not involve the taking of any part of natural produce of the land or any part of its soil. It may, however, prevent the owner of the other land from utilising his/her land in a particular manner (*Halsbury's Laws of England* (4th edn, 1975) Volume 14, page 4).

An example of an easement is where one owner (of the 'burdened lot') allows another owner (of the 'benefited lot') to pass over his/her land.

The land advantaged by the easement is called the 'benefited lot' or 'dominant tenement'. The land over which the easement is granted is called the 'burdened lot' or 'servient tenement'. The benefit of an easement runs with the benefited lot, i.e. it passes from one owner to the next, and the burden of the easement runs with the burdened lot. Therefore, all future owners of the burdened lot are bound by the easement, unless it is surrendered or extinguished.

Generally, for an easement to exist there must be a benefited and a burdened lot. The exception to this is the case of an 'easement in gross' (where there is a burdened lot only) to serve the purposes of local government or a government instrumentality.

An easement (other than an easement in gross) must accommodate the benefited lot and contribute to the full enjoyment of the benefited lot.

Re Ellenborough Park [1956] 1 Ch 131 is the landmark case which established the essential characteristics of an easement, which are:

- (a) There must be a benefited lot and a burdened lot.
- (b) An easement must 'accommodate' the benefited lot.

- (c) Benefited and burdened lot owners must be different persons.
- (d) A right over land cannot amount to an easement unless it is capable of forming the subject matter of a grant.

Note:

- (i) As previously mentioned, easements in gross are not required to exhibit the characteristics in (a) and (b) above.
- (ii) Section 86 of the *Land Title Act* 1994 and s 367 of the *Land Act* 1994 allow easements to be granted if the benefited and burdened lot are owned by the same person.

It is sometimes a matter of great difficulty to determine whether a particular ‘right’ is capable of forming the subject matter of a grant. Some examples will demonstrate this:

- an easement over the whole of the land is capable of forming the subject matter of a grant;
- but it cannot rob the owner of the servient tenement of the reasonable use of their land (*Weigall v Toman* [2008] 1 Qd R 192.);
- a right to provide a wind break is capable of forming the subject matter of a grant (*Ford v Heathwood* [1946] QWN 11);
- but a right to privacy is not (*Brown v Flower* [1911] 1 Ch 219).

Many other examples could be given of these difficulties.

A further difficulty arises in attempting to distinguish easements from other rights.

Easements Distinguished from Other Rights

Appurtenant or Natural Rights

[9-0010]

These rights arise at common law as an incident of land ownership and include:

- a right to support and bind in its natural state; and
- a right to surface water.

Unlike an easement, these rights will not of themselves be an interest in land.

Profits a prendre

[9-0020]

That is, a right to remove soil, produce or animals from the land.

These interests arise by agreement and relate to the right to enter upon land and extract or remove part of its substance, for example, sand, gravel, trees etc (see part 29 – Profits a prendre). They may be granted to any person, not just another property owner.

Licence

[9-0030]

An agreement whereby an owner permits another person to act in a way which would otherwise involve trespass or nuisance is a licence. A licence:

- is a personal right and not an interest in land; and
- falls short of a grant of exclusive use.

Some Examples of Easements

[9-0040]

The easement right must be for an acceptable purpose which is capable of precise definition. Some easements that are regularly created include easements:

- of right of way for access;
- of support of buildings;
- for party (or shared) walls;
- for drainage or sewerage reticulation;
- for water storage/supply;
- of retention of light or air;
- for electricity transmission;
- for encroachment;
- for eavesdrop.

Examples of frequently encountered purposes which are not acceptable are ‘view’ or ‘environmental’ purposes. An easement may be granted for more than one purpose.

The right granted must not be vague, imprecise or indefinite and must be for a matter which is capable of being the subject of a grant.

Whilst the category of easements is not closed, it has been stated that it will be unlikely that any easements of a new nature will be readily recognised at law, particularly in circumstances where they would be of a character of the owner agreeing not to exercise some of the owner’s rights of ownership (see *Phipps v Pears* [1965] 1 QB 76).

Currency of Easement

[9-0050]

Easement Granted for a Term

An easement, unless otherwise stated, is granted in perpetuity. However, easements can be granted for life only, for a term of years or for some other period, such as until the happening of an agreed upon event. For example, if the grantee is a lessee, the easement will expire on the termination of the lease.

Easement to take effect in the future

An easement that is to take effect at some future time, can not be registered. Under the provisions of s 85B of the *Land Title Act* 1994 or s 366 of the *Land Act* 1994, on registration of an easement, an easement is created and hence the grantee would have a title to this interest in the easement. However, in this case the grantee has no interest in the easement because the easement has not yet come into existence. Further, until the easement comes into effect:

- there is no dominant tenement (benefited lot) nor is there a servient tenement (burdened lot); and
- the dominant tenement is not accommodated nor benefited by the easement.

This means that until the easement operates as an easement, characteristics essential to an easement are not present, and no easement exists.

Restrictive Covenants

[9-0060]

Except as provided in part 6 Division 4A of the *Land Title Act* 1994 (Covenants), a restriction on a user of land is not capable of being registered in Queensland (s 4 of the *Property Law Act* 1974). This prohibits the registration of covenants contained in an easement that restrict registered owners from exercising a right that they would otherwise be entitled to exercise as owner of that land.

However, in some cases the subject matter of the restriction may be capable of sustaining an easement (eg a right of support for buildings). In these cases, an appropriately drawn easement could be registered in the Freehold Land Register and would grant an interest in land.

Easement to Self

[9-0070]

A person may grant an easement to himself/herself as owner of both the benefited and burdened lots (s 86 of the *Land Title Act* 1994 or s 367 of the *Land Act* 1994).

Practice

Creation of Easement

[9-2000]

Easements are created:

- (a) by a grant of easement under the provisions of Part 6 Division 4 of the *Land Title Act* 1994 and Part 4 Division 8 of the *Land Act* 1994;
- (b) by resumption of land, generally under the provisions of the *Acquisition of Land Act* 1967;
- (c) by a court ordering a statutory right of user under the provisions of the *Property Law Act* 1974; or
- (d) in the past, by an 'Old System' deed.

Easement Created by Grant

[9-2010]

An owner of a lot or lessee of a registered freehold lease may grant an easement over his/her lot or lease either for the benefit of an owner of another lot (the benefited lot) or freehold lease, or to a body such as a local government. The latter is an example of an easement in gross, where there is only a burdened lot and not a benefited lot. Under s 82 of the *Land Title Act* 1994 or s 362 of the *Land Act* 1994, easements are created upon the registration of an easement. The easement is a Form 9 – Easement.

Definition by Plan

[9-2020]

An easement may only be created by registering an easement and the easement must state the nature of the easement and its terms, the land to be benefited and the land to be burdened.

An easement must be defined by a registered survey plan or explanatory format plan before the easement (Form 9 – Easement) can register (s 83(1)(a) of the *Land Title Act* 1994 or s 363(1)(a) of the *Land Act* 1994). This requirement does not apply to an easement over the whole of a lot.

A possible exception might be an easement to a public utility provider over large areas of undeveloped lands. In these cases, identification by a sketch certified by a licensed surveyor may, at the Registrar's discretion, be sufficient.

However, an easement is not created on the registration of an easement plan. An easement is created only on the registration of the Form 9 – Easement, or a Form 14 – General Request if the easement is created by resumption.

The easement must set out the nature of the easement and its terms and specify the benefited lot and the burdened lot. This latter requirement does not of course apply to an easement in gross.

A plan designating an easement must include the words 'proposed easement' if it is lodged without the easement. When the plan and easement are lodged at the same time, the word 'proposed' should not be shown on the plan. The designation of proposed easement does not create an easement and is not evidence of a present intention to create an easement.

Plans for easement purposes must comply with directions 4.8.2, and either direction 6, 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans (see also part 21 – Plans and Associated Documents, esp ¶[21-0020] and ¶[21-2080]).

²When the Form 9 is lodged, the Certificates of Title for both the benefited and burdened lots must be lodged (if they are in existence). However, as an easement in gross has only a burdened lot, only the Certificate of Title (if it exists) for that lot is required. For more information on easements in gross, refer to ¶[9-2180].

Any easement whether proposed or created by registration of an easement will not be affected by a subsequent plan of subdivision, unless the easement is affected by the boundaries of that survey. The effect of this is that where a subsequent plan has been registered cancelling a lot over which an easement plan has been surveyed, that easement area, whether granted or not, may subsequently be granted or further granted, provided that the boundaries of the easement area have not been altered or amended in any way and are not intersected by a new lot boundary on any further plan of subdivision.

Lodgement fees are payable and a duty notation is required.

Easement Created by Resumption

[9-2040]

Many easements in gross are created by way of resumption under the provisions of the *Acquisition of Land Act 1967*. This Act authorises constructing authorities to acquire an easement. A ‘constructing authority’ is defined in the Act as the State or a local government or any other person authorised by legislation to acquire land. This power enables constructing authorities to acquire an easement without affecting a pre-existing easement.

Under the *Land Act 1994*, the Governor in Council can resume an easement over a holding. Under the Act, the Governor in Council can also resume an easement on behalf of a constructing authority. Under the *Lands Acquisition Act 1989* (Cth), the Commonwealth has the power to resume an easement.

Such easements are created on the registration of a Form 14 – Request to Register a Resumption, which is lodged with a copy of the gazetted proclamation of the resumption, or, where the Brisbane City Council is resuming the land, a copy of the gazetted notification of resumption. An easement plan is lodged prior to the Form 14.

Lodgement fees are payable.

²The Certificate of Title (if it exists) for the burdened lot does not have to be produced.

Easement Created by a Court Ordering a Statutory Right of User

[9-2050]

A statutory right of user is defined in s 180 of the *Property Law Act 1974* as a right of way, access to or entry upon land. The imposition of a statutory right of user occurs when a court, on the application of the registered owner of the proposed benefited lot, orders that the registered owner of the proposed burdened lot provide an easement to the owner of the benefited lot. The conditions under which a statutory right of user can be imposed are set out in s 180 of the *Property Law Act 1974*.

The registration of an easement created by a statutory right of user is usually effected in the same manner as an easement created by an express grant. That is, a survey plan of the easement and an easement in Form 9 are lodged. The court order should be produced as evidence. However, any court order contrary to these requirements must be referred to the Registrar for consideration.

Where there is no person with the necessary capacity to accept the imposition of the easement by the court, the court has power to order any person to execute any instrument (s 180(5) of the *Property Law Act 1974*). This includes the execution of the plan of survey, in order to give effect to the easement as ordered. Usually, the Registrar of the Court is ordered to execute the easement documentation.

²Easement Created Pursuant to s 250 of the *Property Law Act 1974*

[9-2060]

Section 250 of the *Property Law Act 1974* provides a procedure for requiring old system land to be brought under the *Land Title Act 1994*. Any person claiming to have any interest in the land, which interest includes an easement, may make application to have that interest noted on any Certificate of Title, which may issue for the land. If the applicant establishes its claim, then the Registrar notes the Certificate of Title accordingly.

Restriction as to Height, Depth or Volume

[9-2070]

Easement Over the Whole of a Lot

Where an easement is over the whole of a lot and the easement is not defined on a survey plan, but is restricted to a specified height above or below a horizontal plane or between horizontal planes, the height restrictions must refer to Reduced Levels on Australian Height Datum (RL on AHD) and be shown in Item 2 of Form 9 – Easement. For example:

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land)			
LOT 1 ON RP145897 (Restricted to the land between RL1 and RL5 on AHD)	STANLEY	NUNDAH	14500101

Where an easement over the whole of a lot is restricted, and the easement is defined on a survey plan, the restriction must be shown on the face of the plan. Item 2 of the Form 9 – Easement must not make reference to the RL on AHD. The following two examples indicate how the restriction may be described in Item 2 of the Form 9 – Easement:

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land)			
Easement X (Restricted) in Lot 1 on SP111222 on SP123456	STANLEY	NUNDAH	14500101

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land)			
Easement X (Restricted) on SP123456	STANLEY	NUNDAH	14500101

Where an easement over the whole of a lot is restricted by an inclined plane or a series of different horizontal planes, a volumetric plan depicting the easement is required.

Easement Over Part of a Lot

Where an easement is over part of a lot and is restricted, a survey plan in either standard or volumetric format is required. If the easement, depicted on a standard format plan is restricted, the restriction must be shown on the face of the plan. Item 2 of the Form 9 – Easement must not make reference to the RL on AHD. The following two examples indicate how the restriction may be described in Item 2 of the Form 9 – Easement:

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land)			
Easement X (Restricted) in Lot 1 on SP111222 on SP123456	STANLEY	NUNDAH	14500101

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land)			
Easement X (Restricted) on SP123456	STANLEY	NUNDAH	14500101

²Approval of Planning Body

[9-2080]

Easements generally do not require the approval of the planning body. However, easements that give access to a lot from a constructed road require the plan of survey depicting the easement to be approved by the planning body. For information relating to the required planning body approval of the plan of survey depicting an easement giving access to a lot from a constructed see part [21-2080].

Consent to Easement by Lessee

[9-2082]

In view of the provisions of s 184(1) of the *Land Title Act* 1994 or s 302(2) of the *Land Act* 1994, a new easement requires the consent of every affected lessee of a lot burdened by the easement. The consent must be given on a Form 18 – General Consent and be deposited with the Form 9 – Easement.

³Consent to Easement for State Land

[9-2083]

In view of s 363(1)(c) of the *Land Act* 1994, an easement may be registered only if the Minister has given written approval to the easement. The approval must be given on a Form 18 – General Consent and be deposited with the Form 9 – Easement.

Easement Executed by the Body Corporate for a Community Titles Scheme

[9-2085]

When the Body Corporate for a community titles scheme executes an easement, a copy of the resolution, in accordance with the scheme's regulation module, must be deposited with the easement.

Easement Granted by Party to Itself

[9-2090]

An easement from a person to himself/herself created by registering an easement under Part 6 Division 4 of the *Land Title Act* 1994 or Part 4 Division 8 of the *Land Act* 1994 can include covenants, as s 82(3) of the *Land Title Act* 1994 or s 362(2) of the *Land Act* 1994 require the easement to specify 'the nature of the easement and its terms'. The covenants would only be enforceable when the benefited and burdened lots were no longer in common ownership. Section 50 of the *Property Law Act* 1974 makes covenants enforceable by a person against himself/herself and one or more other persons, but not covenants between a person and himself/herself alone.

Easement Granted to Lessee

[9-2100]

An easement can be given by a lessor to a lessee over land not included in the lease. In this respect, the easement would be cancelled when the lessee surrenders his/her interest in the lease. Once the lease expires, so does the interest in the easement. There is no need for an easement to a lessee of an expired lease to be formally surrendered.

Easement Granted by Lessee of a Freehold Lease

[9-2105]

An easement can be granted by a lessee of a freehold lease during the term of a lease.

A registered easement, to the extent it benefits or burdens a registered freehold lease ends when the lease ends (s 90A(1) of the *Land Title Act* 1994).

The Registrar may remove an easement that has ended from the Freehold Land Register (s 90A(3) of the *Land Title Act* 1994).

If a registered freehold lease is surrendered in part, to the extent the registered easement benefits or burdens the part of the lease that was surrendered, the easement ends (s 90A(2) of the *Land Title Act 1994*).

An easement that burdens part or the whole of a lease of land (as identified at Item 3 of the Form 9 – Easement) that is over part of the lot, must be defined by a registered survey plan or explanatory format plan before the easement can register. This requirement does not apply to an easement over a lease, which is of the whole of a lot.

An easement that burdens part or the whole of a building in a lease (as identified at item 3 of the Form 9 – Easement) must be defined by a registered survey plan or explanatory format plan before the easement can register.

Easement Dedicated as a Road

[9-2110]

For information on easement dedicated as road see part 21 – Plans and Associated Documents, esp ¶[21-2230].

Resumption of Land

[9-2120]

For information on easement affected by resumption see ¶[14-2320].

¶[9-2130] deleted

Easement Over Non-Freehold Land and Freehold Land

[9-2140]

Easements can be registered over non-freehold land.

Where one of the lots in an easement is non-freehold land and the other lot is freehold land, the easement is registered in both the Freehold Land Register and the relevant State Land Register. Only one copy of the easement is required and normal registration fees are payable.

State Land Easement – Action When Land is Subsequently Made Freehold

[9-2150]

Where an easement has been registered and both the benefited and burdened lots are State tenure land, and one of the parcels is subsequently freeholded, the dealing number is carried forward to the deed of grant created in the Freehold Land Register. This number is then carried forward to the indefeasible title created for the lot.

Prior to November 1995, the procedure was for the State land administration office to forward the original easement to the land registry for notation on the original deed of grant. The easement received a land registry dealing number for filing purposes. The original dealing number allocated by the State land administration office was also referred to in the endorsement recorded on the deed of grant.

New Easement Over Land to be Dedicated for Public Use

[9-2155]

Where an easement to be registered over land that is to be dedicated for public use on registration of a plan of survey, and the easement is depicted on that plan, the easement may only be lodged:

- after the easement has been consented to by the Minister;
- the plan has been registered; and
- the title for the reserve or unallocated State land has been created.

On the plan, the easement must be referred to as ‘proposed’. The consent must be deposited with the easement when it is lodged.

The easement must be referred to State Land Asset Management of the department prior to lodgement to request that Ministerial consent be given.

Easement Endorsement

[9-2160]

Benefit easements are endorsed on the benefited lot as, e.g. ‘Easement No [number] benefiting the land over easement A on RP 123457’.

Burden easements are endorsed on the burdened lot as, e.g. ‘Easement No [number] burdening the land to Lot 1 on RP 145762 over Easement A on RP 123457’.

If the benefited lot is amalgamated with land that does not have the benefit of the easement, the endorsement of the easement on the new indefeasible title created will state that the easement is to only part of the lot.

Care should be taken to ascertain if the endorsement on the benefited lot contains a ‘part of’ notation, in which case any subsequent survey of that lot will require the allocation of the benefit in whole or part to any new lots created by that survey.

If a burdened lot is the subject of a plan of subdivision, then the easement will only be recorded on the titles for any new lots through which that easement passes.

Merger of an Easement within a Lot

[9-2170]

²If the Registrar creates a single indefeasible title for a number of lots and those lots comprise both the dominant and servient tenements of an easement, the easement is extinguished by virtue of s 87(b) of the *Land Title Act* 1994.

²Similarly, if lots that contain both the dominant and servient tenements of an easement are amalgamated into one lot by survey, on creation of the indefeasible title for the amalgamated lot the easement is extinguished by virtue of s 87(b) of the *Land Title Act* 1994.

³Under the provisions of s 368(2) of the *Land Act* 1994, if the same person becomes the trustee, lessee or licensee of the land benefited and burdened by an easement, the easement is extinguished only if:

- the trustee, lessee or licensee asks the chief executive to extinguish the easement; or
- the land benefited and the land burdened are amalgamated.

Easement in Gross

[9-2180]

An easement in gross is only registered against the burdened lot and is granted to public utility providers under s 81A of the *Land Title Act* 1994 or Schedule 6 of the *Land Act* 1994. Public utility providers are:

- (a) the State or another entity representing the State;
- (b) the Commonwealth or another entity representing the Commonwealth;
- (c) a local government;
- (d) a person authorised by law to provide a public utility service;
- (e) a person authorised under an Act to provide a public utility service;
- (f) an entity approved by the Minister as suitable to provide infrastructure for use by another entity in the provision of a particular public utility service;
- (g) a person approved by the Minister as suitable to provide a particular public utility service; and
- (h) a mill owner, but only for the registration of a cane railway easement.

An easement may only be registered in favour of a person mentioned in (g) above if it is for the public utility service mentioned.

Public utility easements may only be created in favour of a public utility provider for:

- (a) right of way;
- (b) drainage or sewerage;
- (c) supply of water, gas, electricity, telecommunication facilities or other public utility service;
- (d) water storage; or

Note – The term ‘water storage’ relates to the inundation of water upstream of a weir or the barrier of a dam outside the storage area at full supply level. The easement instrument must include a ‘sketch’ that shows the extent of inundation. This is to ensure that the owner of the land or any interested party is able to establish the limits, on the land, of inundation.

- (e) an infrastructure corridor; or
- (f) a purpose mentioned in s 125(1) of the *State Development and Public Works Act* 1971; or

Note – A public utility easement for the purposes (e) and (f) must be granted to only The Coordinator General.

- (g) cane railway; or

Note – A public utility easement for cane railway must be granted to a mill owner and only for a purpose for which a cane railway easement may be granted under the *Sugar Industry Act 1999*, for example, to facilitate harvest of cane and supply of cane to any mill or between any mills.

- (h) public thoroughfare.

Note – A public utility easement for ‘right of way’ for the public must be a public thoroughfare easement created in favour of the State or a local government only, and the use of the easement is limited to pedestrian access, cyclists and vehicles reasonably necessary for the building and maintenance of the easement.

A combination of these purposes is allowable in a single easement. However, public utility easements given to a person approved by the Minister may only be for the service approved by the Minister.

Examples of easements in gross are easements given to local governments for drainage and sewerage purposes or to electricity authorities for the supply of electricity.

As with other easements, there must be an easement plan unless:

- (a) the easement is over the whole of a lot; or
- (b) the easement is to an electricity authority over a large area of undeveloped land, in which case, a sketch plan approved by the Registrar may be sufficient; or
- (c) the easement is for water storage, in which case it must include a ‘sketch’ that shows the extent of inundation behind the weir. The ‘sketch’ may be in the form of a sketch, plan or map.

Easements in gross over part of a lot may only be created if a plan of survey designating the easement area and an easement are registered in accordance with s 82(1) of the *Land Title Act 1994* or s 362(1) of the *Land Act 1994*. The easement must be executed by the owner of the lot being burdened and must specify the nature of the easement and its terms.

A public utility easement for water storage may only be registered over the whole of the land.

In easements taken by resumption, the easement plan is signed by the constructing authority.

An easement in gross may contain multiple servient lots in different ownerships. The grantors should be separately described in Item 1 of the Form 9 – Easement, eg ‘AB (Parcel 1), CD (Parcel 2), EF (Parcel 3), etc’ and the descriptions of the servient tenements in Item 2 should be similarly identified.

²As s 60(1) of the *Land Title Act 1994* provides that ‘A lot or an **interest in a lot** may be transferred...’. An easement in gross may be transferred from one public utility provider to another. However, this does not apply to easements with both dominant and servient tenements as in those cases the benefit and burden pass with the ownership of the land.

³A public utility easement under the *Land Act 1994* may be transferred to another public utility provider. The written approval of the Minister’s is required (s 369A (1) of the *Land Act 1994*).

Except for a public thoroughfare easement, s 85B of the *Land Title Act 1994* or s 366 of the *Land Act 1994* authorises the registered owner of a lot burdened by a public utility easement to

recover a reasonable contribution towards the upkeep of the easement from the public utility provider. It also allows for the liability to be amended or excluded by agreement.

Lodgement fees are payable on an easement in gross to a public utility provider and a duty notation is required.

Easement Created Pursuant to s 437A of the *Petroleum and Gas (Production and Safety) Act 2004*

[9-2185]

Section 437A of the *Petroleum and Gas (Production and Safety) Act 2004*, enables the creation of an easement to benefit the holder of a pipeline licence under that Act, by registering an instrument under the *Land Title Act 1994* or a document under the *Land Act 1994* to create the easement.

The *Land Title Act 1994*, part 6, division 4, or the *Land Act 1994*, chapter 6, part 4, division 8 applies to the easement as if:

- a) it were a public utility easement; and
- b) the pipeline licence holder were a public utility provider.

The completion of the Form 9 – Easement is the same as an Easement in Gross except for Item 7 – Purpose of Easement which should include wording similar to the following:

- Gas pipeline purposes pursuant to Pipeline Licence No [insert number] granted under the *Petroleum and Gas (Production and Safety) Act 2004*.

A copy of the pipeline licence must be deposited with a Form 9 – Easement, or alternatively Item 7 may refer to a dealing number where the evidence was previously deposited.

An easement created under s 437A of the *Petroleum and Gas (Production and Safety) Act 2004* may be transferred to another pipeline licence holder. A Form 1 – Transfer of the easement and a copy of the approval by the State authorising the transfer must be deposited. For information about depositing supporting documentation see [60-1030].

An easement in favour of a public utility provider as defined in s 81A of the *Land Title Act 1994* or in Schedule 6 of the *Land Act 1994* may be transferred to a pipeline licence holder under the *Petroleum and Gas (Production and Safety) Act 2004*. A copy of the pipeline licence and a letter on the relevant firm's letterhead confirming that the pipeline licence relates to the easement shown in Item 1 must be deposited with a Form 1 – Transfer, or alternatively Item 5 may refer to a dealing number where the evidence was previously deposited.

Lodgement fees are payable and a duty notation is required.

Modification or Extinguishment of Easement by Surrender

By Order of the Court

[9-2190]

Section 181 of the *Property Law Act 1974* enables the court to modify or wholly or partially extinguish an easement. The court has power to:

- (a) direct a survey of the land to be made and a plan of survey to be prepared;

- (b) order any person to execute any instrument/s in registrable form to give effect to the order; and
- (c) order the production of any Certificate of Title, deed or other instrument or document relating to any land.

If the court orders that the applicant is to execute instrument/s or document/s for giving effect to the order, the Registrar's requirements in the following cases are set out below:

- (a) If the court order alters the easement in any way other than by a reduction or partial extinguishment of the easement, that is, it relocates all or part of the easement, then the following is required:
 - (i) lodgement of a Form 10 – Surrender of Easement for the existing easement;
 - (ii) lodgement of a survey plan of the new easement;
 - (iii) lodgement of a Form 9 – Easement for the new easement; and
 - (iv) lodgement of the Certificates of Title (if issued) for both the benefited and burdened lots. A copy of the court order is also required if any person other than the registered proprietors of the benefited and burdened lots have executed any instrument.
- (b) If the court order modifies some or any of the covenants of the easement, then a Form 14 – General Request to register the order of the court is lodged, together with a copy of the order and the Certificates of Title for both the benefited and burdened lots (if issued).
- (c) If the order is for partial extinguishment of the easement, a Form 10 – Surrender of Easement to partially extinguish the easement is lodged, together with a plan of survey of the area of the burdened lot being extinguished bound into the Surrender. The Certificates of Title for both the benefited and burdened lots (if issued) and a copy of the court order are also required.
- (d) If the court order is for the full surrender of the easement, then a Form 10 – Surrender of Easement, together with the Certificates of Title for both the benefited and burdened lots (if issued) are lodged. A copy of the court order is required if any person authorised by the court, other than the registered proprietor of the lots has executed any instrument or document.

For information about depositing supporting documentation see ¶[60-1030].

However, if the court makes a direct order of extinguishment or modification, a Form 14 – Request to Register Court Order is required.

See also part 10 – Surrender of Easement, part 13, esp. ¶[13-0020] and part 14 – General Request, esp. ¶[14-2430].

Forms

General Guide to Completion of Forms

[9-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



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1. Grantor WILLIAM JOHN SMITH and MARY ISABELL SMITH	Lodger (Name, address, E-mail & phone number) CLINTON & ASSOCIATES SOLICITORS 391 QUEEN STREET BRISBANE QLD 4000 info@clintons.com.au (07) 3228 3349	Lodger Code 94
--	---	--------------------------

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land) EASEMENT A ON RP145897	STANLEY	NUNDAH	14500101
#Dominant Tenement (benefited land) LOT 140 ON RP103010	STANLEY	NUNDAH	13429151

not applicable if easement in gross

3. Interest being burdened FEE SIMPLE	#4. Interest being benefited FEE SIMPLE
# not applicable if easement in gross	

5. Grantee Given names LAWRENCE ARTHUR	Surname/Company name and number MORGAN	(include tenancy if more than one)
--	---	------------------------------------

6. Consideration \$1.00	7. Purpose of easement RIGHT OF WAY
-----------------------------------	---

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of:- *the attached schedule; *the attached schedule and document no.; *document no.

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

J I Clinton

.....signature

JONATHON IAN CLINTON

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

V N Stinson

.....signature

VALDA NORMA STINSON

.....full name

JUSTICE OF THE PEACE (C.DEC) #42345

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

7/10/2007
Execution Date

W J Smith

M I Smith

Grantor's Signature

10/10/2007
Execution Date

L A Morgan

Grantee's Signature

Guide to Completion of Form 9

General

[9-4010]

A Form 9 is used when an easement is granted after the registration of a plan under Part 6, Division 4 of the *Land Title Act* 1994 or Part 4 Division 8 of the *Land Act* 1994.

An easement may be granted for the same purposes and covenants in one easement by the registered owners of the following lots:

- (a) one servient lot to one dominant lot;
- (b) multiple servient lots in different ownership to one dominant lot; and
- (c) one servient lot to multiple dominant lots in different ownership.

In the case of (b), the grantors should be separately described in Item 1 of the Form 9 as ‘AB (Parcel 1), CD (Parcel 2), EF (Parcel 3), etc’ and the descriptions of the servient tenements in Item 2 should be identified by parcel numbers.

In the case of (c), the grantees should be separately described in Item 5 of Form 9 as ‘AB (Parcel 1), CD (Parcel 2), EF (Parcel 3), etc’ and the description of the dominant tenements in Item 2 should be identified by parcel numbers.

Item 1

[9-4020]

Insert the full name of the grantor of the easement, i.e. the registered owner of the burdened lot or lessee of the freehold lease. If the grantor is:

- (a) A trustee or personal representative, this information should appear at Item 1. For example, ‘as trustee under Transfer to Trustees No [number]’, or ‘as personal representative of the estate of [name of deceased] deceased’. A trustee or personal representative can grant an easement by virtue of s 33(1)(h) of the *Trusts Act* 1973.
- (b) A body corporate for a community titles scheme, the following words must be inserted ‘Body Corporate for [name of scheme] community titles scheme [scheme number]’, e.g. ‘Body Corporate for Seaview community titles scheme 1234’.
- (c) A minor (a person who has not yet reached the age of 18 years). A minor cannot be a grantor of an easement. However, this does not affect the court’s ability to order a statutory right of user over land where one of or the sole registered owner is a minor (s 180 of the *Property Law Act* 1994).
- (d) A mortgagee in possession, the mortgagee may grant an easement for right of way or drainage under s 83(1)(a) of the *Property Law Act* 1974 or as defined in the mortgage. A declaration as to default and service of a notice of demand would be required to accompany the Form 9.
- (e) A lessor (registered owner), the lessor may grant in a separate easement, to his/her lessee, an easement over land not covered by the lease.
- (f) A tenant in common, all tenants in common should join in one easement and not grant easements individually.

(g) A lessee of a registered lease, the name of the lessee should appear at Item 1.

A grantor may, by separate easements, grant the same or different easement rights over the burdened lot to any number of different benefited lots. However, each successive grant is subject to the rights of the prior grantees.

Item 2

[9-4030]

Servient Tenement (burdened land)

For an easement over part of a lot, or over part of a lease of land, or over part of a lease of a building, insert the description of the easement, e.g. 'Easement A on SP 145897'.

For an easement over the whole of a lot, or over a lease of the whole of the lot, insert only the description of the lot e.g. 'Lot 1 on SP123456'.

For information about completing Item 2 for an easement restricted in height or depth or between certain horizontal planes see [9-2070].

Dominant Tenement (benefited land)

For an easement other than an easement in gross insert description of benefited lot.

For an easement in gross insert 'Not applicable'.

Item 3

[9-4040]

Insert the interest being burdened, e.g. 'Fee Simple', Lease No [number] or 'State Tenure No [number]'.

Item 4

[9-4050]

Insert the interest being benefited, e.g. 'Fee Simple' or 'State Tenure No [number]' or 'Lease No [number]'.

Note: For an easement in gross, Item 4 must be marked 'Not applicable'.

Item 5

[9-4060]

Insert the full name and tenancy of the grantees for each benefited title.

The grantee may be any registered owner of land or a lessee of a freehold lease and this includes a minor (with execution by the legal guardian or solicitor for the legal guardian).

If the grantees are tenants in common, there must be only one grant in their favour. Easements cannot be granted to tenants in common individually.

The statutes are silent on the authority of a trustee to be a grantee under an easement. However, as the benefit accrues to the trust there is nothing to prevent a trustee acting in that capacity.

If a mortgage enables a mortgagee in possession to be the grantee of an easement, a declaration of default and service of notice of demand are required to accompany the Form 9.

Item 6**[9-4070]**

Insert the monetary or other consideration.

Item 7**[9-4080]**

Insert a short description of the purpose of the easement, e.g. right of way, drainage, cane railway etc. or, if this is not possible, indicate ‘see schedule for attachment of covenants and description of use’.

Item 8**[9-4090]**

The parties complete where indicated and execute as required.

See also part 60 – Miscellaneous, esp. ¶[60-0900] ff.

¶[9-6000] deleted

Case Law

***Re Broons* [1989] 1 Qd R 315**

[9-7000]

This case is authority for the proposition that tenants in common who are both grantors and grantees can grant easements to themselves which contain enforceable covenants.

¶[9-7010] deleted

***Re Ellenborough Park* [1956] 1 Ch 131**

[9-7020]

This case is the landmark case which established the essential characteristics of an easement.

Fees

[9-8000]

Fees payable to the land registry are subject to an annual review. See the current:

- *Land Title Regulation* 2005 – Schedule 2, item numbers 2(h), 2(k) and 2(m); and
- *Land Regulation* 2009 – Schedule 11, item numbers 1(v), 1(w), 2(e), 2(f), 10 and 12.

Cross References and Further Reading

[9-9000]

Part 10 – Surrender of Easement

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement.

Part 60 – Miscellaneous, esp ¶[60-0900] ff

Duncan and Vann, *Property Law and Practice*, Law Book Co Ltd (loose-leaf service)

Notes in text

[9-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.

¹Part 10 – Surrender of Easement

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¹Part 10 – Surrender of Easement

General Law

[10-0000]

In this part, unless otherwise stated, a reference to a lot means:

- a freehold lot;
- land granted in trust under the *Land Act* 1994; or
- non freehold land (including any lease of non-freehold land or sublease of non-freehold land) other than a road;

²For surrenders of easement under the provisions of s 90(5) of the *Land Title Act* 1994, the meaning of owner of a lot or lessee of lease means:

- the registered owner of the lot or registered lessee of the lease; or
- if the mortgagee of the registered owner of the lot or registered lessee of the lease is in possession – the mortgagee in possession.

For surrender of easements under the provisions of s 371 of the *Land Act* 1994, the State is taken to be the owner of unallocated State land and reserves (s 371(5) of the *Land Act* 1994).

³For surrenders of easement under the provisions of s 371(6) of the *Land Act* 1994, the meaning of owner of land includes:

- a registered owner; or
- a trustee of land granted in trust; or
- a lessee or licensee; or
- a mortgagee in possession.

An easement is wholly or partially extinguished by the registration of a surrender of that easement. Only the owner of the benefited lot has the power to execute a surrender of that easement. The owner of the burdened lot cannot, alone, effect the surrender of an easement. However, the owners of the benefited and burdened lots, acting together, can surrender an easement.

Lodgement fees are payable and a duty notation is required.

Practice

[10-2000]

Surrender Executed by Owner of Dominant Tenement and Servient Tenement

The owners of both the benefited (dominant tenement) and burdened (servient tenement) lots may together execute the Form 10 – Surrender of Easement.

Similarly, if either the dominant or servient tenements are a registered freehold lease, the lessee may execute the Form 10 – Surrender of Easement with the other party.

²The Certificates of Title (if issued) for both the dominant and servient lots must be deposited for cancellation or the production of the Certificate of Title be dispensed with by Form 17 – Request to Dispense with Production of Instrument. **Note:** The Certificate of Title for the lot is not required to be deposited if either tenement is a registered freehold lease.

Surrender Executed only by Owner of Dominant Tenement

A Form 10 – Surrender of Easement executed only by the owner of the lot that benefits from the easement (the dominant tenement) will be effective to surrender the easement.

Similarly, if the dominant tenement as identified at Item 3 of the Form 9 – Easement is a registered freehold lease, the lessee of the lease may alone execute the Form 10 – Surrender of Easement.

²Only the Certificate of Title (if issued) for the dominant tenement needs to be deposited for cancellation. **Note:** The Certificate of Title for the lot is not required to be deposited if the dominant tenement is a registered freehold lease.

Surrender of Public Utility Easement

In relation to public utility easements (easements in gross), the public utility provider must execute the surrender.

²As there is no lot/s for the dominant tenement, Certificate/s of Title will not exist or need to be deposited. However, the public utility provider must arrange deposit of the Certificate/s of Title (if issued) for the servient tenement/s or dispense with the production.

Lodgement fees are applicable to the application to dispense however advertising requirements are waived.

Partial Surrender of Easement

If the easement is to be only partly surrendered, the surrendered portion must be capable of precise definition. If the surrendered portion is not capable of precise definition, the area to be surrendered, or the area to remain in the easement, must be defined by a plan of survey drawn in accordance with direction 6 of the Registrar of Titles Directions for the Preparation of Plans. Alternatively the easement should be fully surrendered and a new easement created.

Consent of Mortgagee or Lessee to a Full or Partial Surrender of an Easement

The consent, in Form 18 – General Consent, of any registered mortgagees of the benefited lot (the dominant tenement) must also be lodged. Further, the consent of any lessee that receives a benefit from the easement is also required (ss 90(3) and (4) of the *Land Title Act 1994*).

The consent of all persons who have a registered interest in the land benefited by the easement ss 371(3) and (4) of the *Land Act 1994* is also required.

²Where a mortgagee has ‘consented’ to the surrender by lodging the Certificate of Title for cancellation, the Form 18 – General Consent is not required.

Similarly, if the dominant tenement as identified at Item 3 of the Form 9 – Easement is a registered freehold lease, the consent of any registered mortgagee or sublessee of the lease who receive the benefit of the easement must also be lodged.

²Surrender of Easement Affecting Common Property for a Community Titles Scheme

[10-2010]

When the body corporate executes a surrender of an easement either as a grantee or as a grantor a copy of the resolution from the relevant body corporate, in accordance with the scheme's regulation module, must be deposited with the instrument of surrender. Where the surrender has been signed by both the grantee and the grantor a resolution is required from each body corporate.

Forms

General Guide to Completion of Forms

[10-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



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1. Dealing number of easement being surrendered	Lodger (Name, address, E-mail & phone number)	Lodger Code
700001245	CONSTANTUS & LEE SOLICITORS 200 NORTH QUAY BRISBANE QLD 4000 mail@conlee.com.au (07) 3221 3429	99

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land) EASEMENT G ON RP176953	STANLEY	BULIMBA	13894001
*Dominant Tenement (benefited land)			
* not applicable if easement in gross			
LOT 4 ON RP176953	STANLEY	BULIMBA	14359147

3. Grantor PETER ROSS THOMPSON	4. Grantee MICHAEL ALLEN MARSDEN JOSEPHINE ELAINE MARSDEN
--	--

5. Surrender/Execution

***Full Surrender**

The Grantee surrenders the easement in item 1 so that the easement is extinguished.

***Partial Surrender**

~~The Grantee surrenders the easement in item 1 so that the easement is extinguished so far as the easement relates to:-~~

~~*part of the Dominant Tenement; or~~

~~*part of the Servient Tenement.~~

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

G I Constantus

.....signature

GUSTAVE IGOR CONSTANTUS

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

4/12/2007

Execution Date

M A Marsden

J E Marsden

Grantee's Signature

R E Lester

.....signature

ROBERT EDWARD LESTER

.....full name

JUSTICE OF THE PEACE (QUALIFIED) #13445

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

6/12/2007

Execution Date

P R Thompson

Grantor's Signature

Guide to Completion of Form 10

Item 1

[10-4010]

Insert the dealing number of the easement being surrendered (eg 602148090). If the easement is one that was registered while the land was State leasehold land, it may have two numbers:

- the dealing number given when the land was freeholded; **and**
- the original dealing number when first registered, which should be shown in brackets.

Item 2

[10-4020]

Insert the description of the easement, for the burdened lot/s or freehold lease e.g. Easement [identifier] on [plan reference], and the Lot [number] on [plan reference] for the benefited lot or lot the freehold lease is registered over. The county, parish and title reference for both tenements must also be inserted.

In the case of an easement in gross, the section of Item 2 relating to the benefited lot should be marked “Not applicable”.

Item 3

[10-4030]

Insert the full names of the grantor/s. The current registered owner of the burdened lot or lessee of the freehold lease may not necessarily be the same as the original grantor. The relevant name to be inserted is that of the current registered owner or lessee of the freehold lease.

Item 4

[10-4040]

Insert the full names of the grantee/s. The current registered owner of the benefited lot or lessee of the freehold lease may not necessarily be the person who was the original grantee of the easement. The relevant name to be inserted is that of the current registered owner or the lessee of the lease if the dominant tenement is a registered lease.

Item 5

[10-4050]

Both parties, grantor and grantee, or alternatively, only the grantee alone (ss 90(2)(b) and (c) of the *Land Title Act* 1994 or ss 371(2)(b) and (c) of the *Land Act* 1994) complete where indicated.

At Item 5, there are paragraphs applicable to a full and to a partial surrender. When completing the Form, the paragraph not applicable to the situation is to be ruled through.

The grantee alone may execute, or both the grantor and the grantee may execute, the surrender.

However, the grantor alone may not execute a surrender.

See also part 60 – Miscellaneous, esp ¶[60-0900] ff.

¶[10-6000] deleted

Case Law

[10-7000]

Nil.

Fees

[10-8000]

Fees payable to the land registry are subject to an annual review. See the current:

- *Land Title Regulation 2005* – Schedule 2, item numbers 2(h) and 2(m); and
- *Land Regulation 2009* – Schedule 11, item numbers 2(e) and 2(f).

Cross References and Further Reading

[10-9000]

Part 9 – Easement

Part 60 – Miscellaneous, ¶[60-0900] *ff*

Bradbrook and Neave, *Easements and Restrictive Covenants*, Butterworths, 1986

Notes in text

[10-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 11 – Caveat

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Part 11 – Caveat

General Law

Definitions

[11-0000]

A ‘caveat’ is a notice to the Registrar which, subject to some exceptions, has the effect of prohibiting the registration of an instrument or document, including a prior unregistered instrument or document (unless expressly excluded in the caveat) affecting the interest claimed by the caveator until the caveat is withdrawn, removed, lapses or is cancelled. The purpose of a caveat is to allow time for parties to apply to the court to enforce or determine an interest in a lot, or a lease, sub-lease, licence or an interest in a reserve under the *Land Act 1994*.

²However, as a caveat does not provide all of the benefits of the Torrens System and the *Land Title Act 1994*, it should not be seen as a viable alternative to registering the interest.

‘Caveator’, for a lot, or a lease, sub-lease, licence or an interest in a reserve under the Land Act over which a caveat has been lodged, means a person in whose favour the caveat is lodged (s. 4 of the Land Title Act or s. 3 of the Land Act).

‘Caveatee’, for a lot, or a lease, sub-lease, licence or an interest in a reserve under the Land Act over which a caveat has been lodged, means:

- a registered proprietor of the lot; or
- a lessee or sub-lessee of the lease or sub-lease; or
- a licensee of the licence; or
- the holder of an interest in a reserve;
- or someone (other than the caveator) who has an interest in the lot (s. 4 of the Land Title Act or s. 3 of the Land Act).

Requirements of a Caveat

[11-0010]

Sections 121(1) and (2) of the *Land Title Act 1994* and s. 389C (1) and (2) of the *Land Act 1994* provide that a caveat must be signed by or on behalf of the caveator and the caveat must state:

- the name of the caveator;
- an address where documents can be served on the caveator;
- ²unless dispensed with by the Registrar, the name and address of the registered owner of the lot affected by the caveat and anyone else having the right to deal with the lot affected by the caveat;
- ^{1,3}unless dispensed with by the Registrar, the name and address of the lessee or licensee affected by the caveat and anyone else having the right to deal with the lease or licence affected by the caveat;
- the registered interest affected by the caveat;

- ²if the caveat relates to only a part of the lot or part of a water allocation – a description of the affected part or in the case of a water allocation the number of megalitres affected;
- the interest claimed by the caveator; and
- the grounds on which the interest is claimed.

These requirements apply to all caveats under the Land Title Act and the Land Act other than a caveat prepared and registered by the Registrar under s. 17 of the Land Title Act or s. 389L of the Land Act (s. 121(3) of the Land Title Act or s. 389C (3) of the Land Act).

See further at ¶[11-2000] to ¶[11-2010].

Persons Who May Lodge Caveat

[11-0020]

²Part 7, Division 2 relating to interests in or over interests in freehold land and water allocations is the division of the *Land Title Act 1994* that generally deals with the lodgement of caveats. Pursuant to s. 122(1) of the Land Title Act a caveat may be lodged by:

- a person claiming an interest in a lot;
- the Registrar under s. 17;
- a registered owner of the lot;
- a person to whom an Australian court has ordered that an interest in a lot be transferred
- a person who has the benefit of a subsisting order of an Australian court in restraining a registered proprietor from dealing with a lot.

²Section 122(2) of the Land Title Act makes it clear that an equitable mortgagee can only lodge a lapsing caveat.

²Provision is also made for the lodgement of a caveat in the following circumstances:

- ¹by a person objecting to an application for adverse possession (s. 104 of the Land Title Act);
- pursuant to an order of the Supreme Court when a person applies for an order that another person be registered as proprietor of a lot (s. 114 of the Land Title Act); and
- by a purchaser under an instalment contract (s. 74 of the *Property Law Act 1974*); and
- by an interest holder in a water allocation who has given notice under s. 73(1)(b) of the *Water Act 2000* (s. 171(3) of the Water Act).

^{1,3}Chapter 6, Part 4, Division 11A of the *Land Act 1994* deals with the lodgement of caveats relating to interests in State land. Pursuant to s. 389D (1) of the Land Act a caveat may be lodged by:

- the Chief Executive under s. 389L(1); or
- a person to whom an Australian court has ordered that an interest in a lease or licence be transferred; or

- a person who has the benefit of a subsisting order of an Australian court in restraining a lessee from dealing with a lease or licensee from dealing with a licence.

²A Person Claiming an Interest in a Lot

[11-0030]

Pursuant to s. 122(1)(a) of the *Land Title Act 1994*, a person claiming an interest in a lot may lodge a caveat. The caveator must identify an interest in the lot in the caveat.

Section 122 of the Land Title Act replaces s. 98 of the *Real Property Act 1861*. Pursuant to s. 98 of the Real Property Act, a person with ‘an estate or interest in any land’ had a right to lodge a caveat. There are many cases which discuss exactly what constitutes ‘an estate or interest in land’.

In the drafting of the Land Title Act, the term ‘interest’ has been substituted for ‘estate or interest’ as used in s. 98 of the Real Property Act. The term ‘interest’ is defined in s. 36 of the *Acts Interpretation Act 1954* to mean, in relation to land or other property:

- ‘a legal or equitable estate in the land or other property; or
- a right, power or privilege over, or in relation to, the land or other property’.

It is likely that ‘an interest in a lot’ will not have a narrower meaning than ‘an estate or interest in any land’ and therefore, the case law in relation to s. 98 of the Real Property Act is of assistance in the interpretation of s. 122(1)(a) of the Land Title Act.

It is not within the scope of this manual to give an exhaustive list of caveatable and non-caveatable interests. The following are some examples of caveatable interests:

- That of a purchaser under a contract of sale of an estate in fee simple, water allocation or a lesser estate. A copy of the contract of sale is not required to be lodged with the caveat, however, the Registrar does require details of the contract, such as the date and names of parties, to be included on the caveat (in Item 4 of the Form 11).

While this represents a valid interest, the need for such a caveat has generally been superseded by priority notices (see Part 23 – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice).

- That of an unregistered mortgagee of an estate in fee simple, water allocation or of a lesser estate (i.e. an equitable mortgagee). An equitable mortgagee can only lodge a lapsing caveat (s. 122(2) of the Land Title Act). If the caveator is an equitable mortgagee, Item 4 of the Form 11 is to include details of the grounds to support the claim (e.g. agreement [date] and specific clause number of the agreement).

Mortgagees seeking the best protection available under the Torrens System should register their mortgage. An equitable mortgagee’s caveat lapses unless an action is commenced in a court of competent jurisdiction. Equitable mortgagees’ caveats are only appropriate if the mortgagee needs to commence a court action to enforce their mortgage.

- That of a transferee under an executed transfer, whether or not supported by a contract in writing (see also Part 23 – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice).
- That of a grantee of an option to purchase, but sufficient details of the option must be quoted in the caveat to support the claim (*Friedmann v Barrett; ex parte Barrett* [1962] Qd R 498).

- The right to set aside a contract (*Andel Pty Ltd v Century Car Care Pty Ltd* [1989] Q Conv R 54-315).
- That of a beneficiary of a constructive, resulting or implied trust.
- In some situations a unit holder in a trust may have a caveatable interest in land comprising trust property (*Costa & Duppe Properties Pty Ltd v Duppe and Ors* [1986] VR 90 and *Connell v Bond Corporation Pty Ltd* [1992] 8 WAR 352).
- A purchaser under a rescinded contract may have an equitable lien supportable by a caveat in respect of deposit and other money paid pursuant to the contract (*Ex parte Lord* [1985] 2 Qd R 198).
- That of a mortgagor seeking to impeach a sale by the mortgagee on the grounds that the mortgagee improperly exercised the power of sale (*Re Cross and National Australia Bank Limited* [1992] Q Conv R 54-433).
- Pursuant to s. 189AB of the *Bankruptcy Act 1966* (Cth), a statutory charge is created over the debtor's property in the amount of the debtor's unsecured debts when the debtor signs an authority under s. 188 of the Bankruptcy Act. This charge may be registered by the controlling trustee where a law of the Commonwealth, or of a State or Territory, provides for registration of a charge over the property.

Item 3 of the Form 11 should state, for example:

‘statutory charge of the fee simple’ or ‘statutory charge of the water allocation’

Item 4 of the Form 11 should state, for example:

‘pursuant to the provisions of s. 189AB (7) of the *Bankruptcy Act 1966* (Cth)’.

These are examples of caveats which only provide the caveator time to either register his/her interest or commence action in the Supreme Court to substantiate the interest claimed.

There have been numerous decisions in which the estate or interest of a caveator **did not** constitute an interest in land or otherwise failed to sustain a valid caveat. For example:

- A vendor's lien (for unpaid purchase money) is not capable of giving rise to any equitable lien on the lot (s. 191 of the Land Title Act).
- A registered owner of land who seeks the appointment of statutory trustees for the sale of the land, once having executed a Form 1 – Transfer to Trustees and divested himself/herself of the legal estate, has no caveatable interest as against the registered trustee (*Re Trapas Pty Ltd* [1991] Q Conv R 54-398).
- An agreement to share in the profits on resale of land (developed with the use of funds lent by the caveator) in the absence of an intention to give the caveator security over the land for its loan did not confer on the caveator an interest sufficient to support a caveat (*Simons v David Bengel Motors Pty Ltd* [1974] VR 585).
- A mere application under s. 196 of the *Property Law Act 1974* for relief where the caveator alleged that he mistakenly made improvements on the caveatee's land was held not to be a sufficient interest to support a caveat (*Ex parte Goodlet and Smith Investments Pty Ltd* [1983] 2 Qd R 792).
- A mere right of pre-emption was held not to be a sufficient interest to support a caveat (*Re Rutherford* [1977] 1 NZLR 405).

- A beneficiary under a discretionary trust does not have an interest in land owned by the trust that will support a caveat (*Walter v Registrar of Titles* [2003] VSCA 122).

The interest of the caveator may be for a lesser estate or interest than the fee simple or water allocation. In such circumstances, it is important that the caveat does not restrain dealings in relation to a greater interest in the land than necessary. If the caveat is too wide, the caveatee will be able, pursuant to s. 127 of the Land Title Act, to obtain an order from the Supreme Court that the caveat be removed.

See further ¶[11-2020].

²Registrar

[11-0040]

Pursuant to ss. 17(1) to (4) of the *Land Title Act 1994*, the Registrar may prepare and register a caveat over a lot or an interest in a lot, in favour of a person, to prevent a dealing with the lot that may prejudice:

- a State, the Commonwealth or a local government;
- a minor;
- a person who is intellectually or mentally impaired or is incapable of managing his/her own affairs;
- a person who is absent from the State;
- a person whose rights are endangered by a misdescription of the lot or its boundaries, or by fraud or forgery;
- a person to whom a notice has been given, or has been required to be given, under s. 30(3) of the Land Title Act;
- a person, other than a person mentioned in any of the above, who has an interest in the lot.

Also, the Registrar may act under this section in response to an order directed to the Registrar by a court of competent jurisdiction or upon the receipt of a submission in writing, provided it is supported by relevant evidence, from a person who is in a position to protect the interest, for example:

- the Attorney General in respect of the State or the Commonwealth;
- the guardian of a minor or some other person concerned about the rights of a minor;
- the Public Trustee or an administrator appointed for a person who has impaired capacity for a matter; or
- a person absent from the State or his/her solicitor.

In all cases, good reasons would have to be demonstrated before the Registrar would act.

The Registrar may only prepare or register a caveat under s. 17 of the Land Title Act in one of the circumstances set out in the Act.

A Registrar's caveat does not lapse (s. 126(1)(d) of the Land Title Act).

A Registrar's caveat may be removed by:

- voluntary withdrawal by the Registrar; or
- a court order.

The remedy available to the caveatee to apply to the Supreme Court under s. 127 of the *Land Title Act* for an order that the caveat be removed, applies equally to caveats lodged by the Registrar (*Re Caveat No. 735; Ex parte Davenport* (1872) 3 QSCR 95 held that s. 99 of the *Real Property Act 1861* applied to the caveats mentioned in s. 11 of that Act, as well as to caveats against dealings lodged under s. 98 of that Act).

^{1,3}Chief Executive

[11-0045]

Pursuant to ss. 389L(1) to (4) of the *Land Act 1994*, the Chief Executive may prepare and register a caveat over a relevant tenure in favour of the State, to prevent a dealing with the relevant tenure that may prejudice:

- a State, the Commonwealth or a relevant local government;
- a person who is intellectually or mentally impaired or is incapable of managing his/her own affairs;
- a person who is absent from the State;
- a person because of misdescription of the tenure, or by fraud or forgery;
- a person to whom a notice has been given, or has been required to be given, under s. 295(2) of the *Land Act*;
- a person, other than a person mentioned in any of the above, who has an interest in the relevant tenure.

The Chief Executive may also act under s. 389L(1) to prepare and register a caveat to prevent a dealing with a relevant tenure if the relevant tenure is to be extinguished; or to give effect to an order of a court of competent jurisdiction directed to the Chief Executive.

²Registered Owner

[11-0050]

The general rule is that a registered owner (irrespective of tenancy) is entitled to lodge a caveat which does not lapse (ss. 122(1)(c) and 126(1)(a) of the *Land Title Act 1994*). However, this does not entitle a registered owner to lodge a caveat without valid grounds to support it (*Sinclair v Hope Investments Pty Ltd* [1982] 2 NSWLR 870). The caveat will be requisitioned if valid grounds are not included to support the caveat. If details of the grounds are not then provided, the caveat will be rejected.

The exception to the general rule that a caveat lodged by a registered owner does not lapse is where the lot is subject to a mortgage and the grounds stated in the caveat relate to the actions of the mortgagee in relation to registration of the mortgage (if the mortgage is already registered) or in relation to the mortgagee's power of sale (s. 126(1A) of the *Land Title Act*). In these situations the caveat will be subject to the lapsing provisions of s. 126 of the *Land Title Act* (see ¶[11-0190]).

Section 124(2) of the *Land Title Act 1994* identifies instruments which are not prevented from being registered by lodgement of a caveat.

A joint tenant cannot, by caveat, prevent other joint tenants severing the joint tenancy.

Court Order**[11-0060]**

Section 122(1)(d) of the *Land Title Act 1994* and s. 389D(1)(b) of the *Land Act 1994* provide that a person to whom an Australian court has ordered that an interest in a lot, or an interest in a lease or licence under the Land Act be transferred, may lodge a caveat. For example, if the Family Court ordered that a person transfer his/her interest in the matrimonial home to his/her spouse, this would be an interest sufficient to support a caveat. However, a caveat may not be lodged on this ground if the court order does not order an interest transferred, but rather merely indicates that a spouse has an interest and can register a caveat.

Pursuant to s. 122(1)(e) of the Land Title Act and s. 389D(1)(c) of the Land Act, when an Australian court has given an order restraining a registered proprietor, or a lessee or licensee under the Land Act from dealing with a lot or interest, the person with the benefit of that order may lodge a caveat.

Order under the *Criminal Proceeds Confiscation Act 2002***Forfeiture Order****[11-0063]**

Sections 58 and 151 of the *Criminal Proceeds Confiscation Act 2002* provide that a court may issue a forfeiture order. If a forfeiture order is made, an interest sufficient to sustain a caveat in keeping with s. 122(1)(d) of the *Land Title Act 1994* and s. 389D(1)(b) of the *Land Act 1994* exists.

Either the Crime and Misconduct Commission or the Commissioner of Police may lodge a caveat if a forfeiture order is made and that caveat prevents registration of any instrument or document in keeping with s. 122(1)(d) of the Land Title Act and s. 389D(1)(b) of the Land Act.

An authorised officer of the Crime and Misconduct Commission or the Commissioner of Police may execute a caveat lodged pursuant to ss. 58 or 151 of the Criminal Proceeds Confiscation Act.

The Registrar will not inquire as to the authority of the person who executes these caveats.

No lodgement fee is payable by the State for the registration of the caveat (s. 264 of the Criminal Proceeds Confiscation Act).

Restraining Order**[11-0066]**

Under s. 31 of the *Criminal Proceeds Confiscation Act 2002*, a restraining order may be made in relation to property. If a restraining order is made under s. 31, an interest sufficient to sustain a caveat in keeping with s. 122(1)(e) of the *Land Title Act 1994* and s. 389D(1)(c) of the *Land Act 1994* exists (ss. 51(5) and 142(5) of the Criminal Proceeds Confiscation Act).

The Crime and Misconduct Commission or the Commissioner of Police or the Director of Public Prosecutions may lodge a caveat if a restraining order is made and that caveat prevents registration of any dealing in keeping with s. 122(1)(d) of the Land Title Act and s. 389D(1)(b) of the Land Act (ss. 51(5) and 142(5) of the Criminal Proceeds Confiscation Act).

The Registrar will not inquire as to the authority of the person who executes these caveats.

No lodgement fee is payable by the State for the registration of the caveat (s. 264 of the Criminal Proceeds Confiscation Act).

^{1,2}Adverse Possession**[11-0070]**

Section 104 of the *Land Title Act 1994* makes provision for a person who claims an interest in a lot to lodge a caveat over the lot at any time before the applicant (adverse possessor) is registered as owner of the lot.

If the Registrar assesses the caveator's claim to be valid, the Registrar will:

- refuse the adverse possessor's application (s. 107(1)(a) of the Land Title Act); or
- register the applicant as the holder of a lesser interest in the lot (s. 107(1)(b) of the Land Title Act); or
- if the caveator does not agree to the registration of the lesser interest, issue a written notice to the caveator of the Registrar's intention to register the lesser interest and the caveator then has one month in which to begin proceedings in the Supreme Court. The caveator must, within one month of receiving the Registrar's notice, give written notice to the Registrar, in the way the Registrar requires, that the proceeding has started. If the caveator fails to commence proceedings within this time, the caveat will lapse and the Registrar may proceed to register the applicant (ss. 107(2), (3), (3A) and (4) of the Land Title Act).

If the Registrar is not satisfied that the caveator has an interest in the lot, or is satisfied that the interest of the caveator has been extinguished under the *Limitation of Actions Act 1974*, the Registrar will issue a notice to the caveator to start proceedings to recover the lot within six months of the notice (s. 105(1) of the Land Title Act). The caveat will lapse six months after the notice is given unless the caveator commences proceedings and notifies the Registrar, in the way the Registrar requires, of this within this period (s. 105(2) of the Land Title Act).

In addition, s. 105(3) of the Land Title Act provides that the caveat will lapse if:

- the proceedings are withdrawn or dismissed;
- judgment is given against the caveator and the time for appeal has expired; or
- an appeal is dismissed or withdrawn.

While the applicant's application as adverse possessor is still current, a further caveat of the caveator can never be lodged in relation to the interest claimed on the same, or substantially the same, grounds unless the leave of the Supreme Court to lodge the further caveat has been granted (s. 106 of the Land Title Act). If a further caveat is lodged without leave of the Court, the caveatee may take action to have the caveat removed (s. 127 of the Land Title Act).

²Transmission by Death and Dispensing with Production of an Instrument**[11-0080]**

Upon request to the Registrar for the following:

- a transmission by death (see part 5, 5A, 6 – Transmission Applications); or
- ¹a request to dispense with the production of an instrument (see part 17 – Request for Substitute Instrument or to Dispense with Production of Instrument)

an applicant may be required by the Registrar to give public notice of the request (s. 18(2) of the *Land Title Act 1994*).

The Registrar may specify what the applicant is to include in the public notice (s. 18(4)(a) of the Land Title Act). For example, the Registrar may specify that the advertisement is to include a

date after which registration will take place unless a caveat is lodged before that date. In such a case, the provisions in Part 7, Division 2 of the Land Title Act would be applicable.

Any person with substantive grounds may, by caveat, oppose registration of any of these applications.

Pursuant to ss. 114(1) and (2) of the Land Title Act, certain persons may apply to the Supreme Court for an order that another person be registered as proprietor of a lot. In such a case, the Supreme Court may make an order that a caveat be lodged to protect a person's interest in the lot (s. 114(3)(c) of the Land Title Act).

²Purchaser under an Instalment Contract

[11-0090]

Section 74(1) of the *Property Law Act 1974* gives a purchaser under an instalment contract the right to lodge a caveat. Section 74(1A) of the Property Law Act specifically states that such a caveat is not taken to have been lodged under Part 7, Division 2 of the *Land Title Act 1994*. Therefore, it is a non-lapsing caveat (s. 126 of the Land Title Act). However, the caveat is limited to the duration of the instalment contract (*Re Moore's Caveat* [1985] 1 Qd R 310, followed in *Chettle v Brown* [1993] 2 Qd R 604).

Caveats lodged under s. 74(1) of the Property Law Act 'forbid the registration of any instrument affecting the land the subject of the contract until completion of the instalment contract', or until the caveat is removed or withdrawn (s. 74(2) of the Property Law Act). As a result of s. 74(1A) of the Property Law Act, the provisions of the Land Title Act in respect of caveats do not apply to caveats lodged under s. 74. Section 73 of the Property Law Act makes provision for sale or mortgage of the land the subject of the instalment contract with the consent of the purchaser. However, to allow any other transaction (e.g. a lease or easement), the caveat must be withdrawn and a further caveat lodged, as s. 129 of the Land Title Act does not apply. The exceptions to the prevention of registration in s. 124(2) of the Land Title Act do not apply to caveats lodged under s. 74 of the Property Law Act.

A caveat lodged under s. 74 of the Property Law Act must recite at Item 4 of the Form 11 – Caveat that it was lodged pursuant to s. 74 of the *Property Law Act 1974* and include the date of the instalment contract. The interest being claimed in Item 3 of the Form 11 may be specified as 'the interest of a purchaser under an instalment contract as defined by s. 71 of the *Property Law Act 1974*'. The Registrar requires a copy of the instalment contract to be lodged with the caveat. Item 7(a) of the Form 11 is to be amended to refer to the instalment contract.

Section 74(2) of the Property Law Act provides that instalment contract caveats lodged under s. 74 may be removed by interested parties. Removal follows proof to the satisfaction of the Registrar of Titles or the court that:

- the purchaser under the instalment contract has consented to the removal; or
- the instalment contract has been rescinded, determined or discharged by performance or otherwise; or
- other grounds exist that justify the removal.

Section 72 of the Property Law Act clarifies that an instalment contract is not determined immediately on default in the payment of an instalment by the purchaser. Before the contract may be determined, at least 30 days must have expired since service on the purchaser of a notice of default as prescribed in the Act.

2.3¹Interest Holder under a Notice Deposited under the *Water Act 2000***[11-0095]**

Under s. 171(3) of the *Water Act* (the Act) an interest holder in a water entitlement who has given the Chief Executive a notice under s. 73(1)(b) of the Act may, within 60 business days of the water allocation being recorded in the register under s. 121(1)(b) of the Act or before the interest mentioned in the notice is recorded in the register, lodge a caveat claiming an interest in the water allocation.

Once the caveat is lodged under s. 171 of the Act claiming an interest in the water allocation, the equivalent interest continues until the claimed interest is recorded on the register or the caveat lapses, is cancelled, removed or withdrawn (s. 171(3) of the Act).

Under s. 171(4) of the Act the Registrar may only register on a water allocation, a notice mentioned in s. 172(1) of the Act, until the caveat ceases to have effect in relation to the interest.

Effect of Caveat**[11-0100]**

Subject to some exceptions, the lodgement of a caveat prevents the registration of an instrument or document affecting the lot or interest from the date and time endorsed on the caveat by the Registrar at lodgement until the caveat is withdrawn, removed, cancelled, rejected or lapses (ss. 124(1) and (1A) of the *Land Title Act 1994* or ss. 389F(1) and (2) of the *Land Act 1994*).

¹Lodgement of a caveat, other than a caveat lodged pursuant to s. 171(3) of the *Water Act 2000*, does not prevent registration of the following:

- An instrument or document specified in the caveat as an instrument or document to which the caveat does not apply. The instrument or document may be identified by a dealing number if lodged prior to the caveat or by way of description if it is to be lodged subsequent to the caveat.
- An instrument or document to which the caveator has given written consent for its registration.
- An instrument or document executed by a mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute the instrument or document and the caveator claims an interest in the lot or lease under the *Land Act* as security for the payment of money or money's worth. This exception does not apply to a Registrar's caveat.
- A transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the caveat. This exception does not apply to a Registrar's caveat or to a caveat lodged by the registered owner.
- An instrument or document creating or affecting another interest that, if registered, would not affect the interest claimed by the caveator. For example, a release of mortgage or a change of name.
- a writ of execution lodged after the caveat.
- a writ of execution lodged before the caveat that is unregistered at the time of lodgement of the caveat.

However, the caveat will prevent registration of a Sheriff's transfer pursuant to a writ of execution. Lodgement of a caveat does not prevent a caveat by another caveator being lodged.

Notification of Caveat

[11-0110]

When a caveat is lodged, the Registrar must give written notice to each person whose interest or whose right to register an instrument or document is affected by the caveat (s. 123 of the *Land Title Act 1994* or s. 389E of the *Land Act 1994*).

See further ¶[11-2030].

²Caveatee's Notice to Caveator

[11-0120]

The caveatee may serve a notice on the caveator to commence a proceeding in a court of competent jurisdiction, within 14 days of service of the notice, to establish the interest claimed in the caveat (s. 126(2) of the *Land Title Act 1994*). For further information, see ¶[52-0020].

²Caveator's Notice to Registrar

[11-0130]

When a proceeding is commenced in a court of competent jurisdiction by the caveator, s. 126(4) of the *Land Title Act 1994* requires a notice of this fact to be given to the Registrar, in the way the Registrar requires. See further ¶[11-0170], [11-2040] and [52-0010].

Caveatee's Proceedings in the Supreme Court

[11-0140]

Pursuant to s. 127 of the *Land Title Act 1994* or s. 389H of the *Land Act 1994*, the caveatee may apply to the Supreme Court for an order that the caveat be removed.

While there is no specific requirement that the caveator 'show cause' as to why the caveat should not be removed, it is likely that the court would consider the same matters as were considered under s. 99 of the now repealed *Real Property Act 1861*. Accordingly, the case law on that section may still be of assistance.

Generally, on the basis of cases in relation to s. 99 of the *Real Property Act*, in an application for removal of a caveat, the caveator must first satisfy the court that his/her claim raises a serious question to be tried. Having established this, the caveator must go on to show that on the balance of convenience it would be better to maintain the status quo until trial of the action. The court applies similar principles to those applied in an application for an interlocutory injunction (*Re Jorss' Caveat* [1982] Qd R 458 and *Burman and Anor v AGC (Advances) Limited* [1994] 1 Qd R 123).

Further Caveat

[11-0150]

If a caveat (the original caveat) is lodged in relation to an interest, a further caveat with the same caveator can never be lodged on the same, or substantially the same, grounds as the grounds stated in the original caveat unless the leave of a court of competent jurisdiction to lodge the further caveat has been granted (s. 129 of the *Land Title Act 1994* and s. 389J of the *Land Act 1994*). Evidence of the leave of a court of competent jurisdiction to lodge the further caveat must be deposited with the further caveat. The Registrar will scrutinise previous caveats lodged by the caveator over the same title to determine whether the current caveat has been lodged on the same, or substantially the same grounds.

²Compensation

[11-0160]

Pursuant to s. 130(1) of the *Land Title Act 1994*, a caveator under a caveat lodged or continued without reasonable cause must compensate anyone else who suffers loss or damage as a result. Section 130(2) of the *Land Title Act* specifically provides that a court of competent jurisdiction, when determining the compensation in such a proceeding, may include a component for exemplary damages. It is presumed that a caveat has been lodged or continued without

reasonable cause until the person who lodged or continued it proves that there was reasonable cause (s. 130(3) of the Land Title Act).

²Lapsing of Caveat

[11-0170]

When a caveat lapses, the Registrar may remove it from the register (s. 126(7) of the *Land Title Act 1994*).

See further ¶[11-2050].

Pursuant to s. 126(1) of the Land Title Act, a caveat will not lapse if it is lodged:

- by the registered owner (except for when s.126(1A) of the Land Title Act applies) or if his/her consent is deposited when the caveat is lodged;
- pursuant to a court order mentioned in ss. 122(1)(d) or (e) of the Land Title Act;
- by the Registrar under s. 17 of the Land Title Act; or
- other than under Part 7, Division 2 of the Land Title Act, e.g. a caveat by a purchaser under an instalment contract.

By virtue of s. 122(2) of the Land Title Act, a caveat lodged by an equitable mortgagee lapses, even if the consent of the registered proprietor was deposited at the time of lodgement. (*Circuit Finance Australia Ltd v Registrar of Titles* [2005] QSC 283).

²Consent of Registered Owner

[11-0180]

If a person with an interest in the lot lodges a caveat with the consent of the registered owner, the caveat will not lapse. The consent of the registered owner in Form 18 – General Consent must be deposited with the caveat and not at a later date. Whether the dating of the registered owner's consent is concurrent with, prior to or subsequent to the execution of the caveat is immaterial, as long as it is deposited with the caveat and the caveator is not an equitable mortgagee (*Caveat No G496816 by AVCO Financial Services Ltd*, Supreme Court of Queensland, unreported, Connolly J, OS No 757 of 1981).

The consent of the registered owner renders a caveat non-lapsing. However, this does not mean that a person may lodge a caveat, whether or not he/she has an interest in the land, by relying simply on the consent (*Queensland Estates Pty Ltd v Collas* [1971] Qd R 75).

²Automatic Lapsing

[11-0190]

Section 126 imposes time limits on the duration of a caveat lodged under Part 7, Division 2 of the *Land Title Act 1994*, depending upon the action (or inaction) of the caveator and the caveatee after the caveat is lodged. The options are as follows:

- Pursuant to s. 126(2) of the Land Title Act, the caveatee may serve on the caveator a notice requiring the caveator to start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat. The caveatee must notify the Registrar, in the way the registrar requires, within 14 days of service of this notice upon the caveator (s. 126(3) of the Land Title Act) in the manner outlined in ¶[52-0020].
- If the caveator does not commence a proceeding in a court of competent jurisdiction within 14 days after the notice is served and notify the Registrar, in the way the registrar requires, within that 14 day period that the proceeding has been instituted, the caveat will lapse at the expiry of the 14 days (s. 126(5) of the Land Title Act). Therefore, even if the caveator commences a proceeding, but fails to inform the Registrar, the caveat

will lapse 14 days after the caveatee's notice was served (s. 126(4)(b) of the Land Title Act).

- If a proceeding is commenced and the Registrar is notified within the required period, the caveat will remain in force until the proceeding is determined by the court or the caveat is withdrawn.
- If the caveatee does not act, the caveator may start a proceeding in a court of competent jurisdiction to establish the interest claimed within three months of lodgement of the caveat and must notify the Registrar, in the way the registrar requires, within that period that a proceeding has been initiated in the manner outlined in [52-0010] (ss. 126(4)(a)(ii) and 126(4)(b) of the Land Title Act). In this case, the caveat will remain in force until the proceeding is determined by the court or the caveat is withdrawn. If a proceeding is not brought within three months, the caveat will lapse.

Note: Under s. 126(6) the caveator is taken to have complied with s. 126(4)(a) if before the caveat was lodged a proceeding has been started in a court of competent jurisdiction to establish the interest claimed under the caveat; and the proceeding has not been decided, discontinued or withdrawn.

Removal

[11-0200]

Pursuant to s. 127 of the *Land Title Act 1994* or s. 389H of the *Land Act 1994*, a caveatee may apply at any time to the Supreme Court for an order that a caveat be removed. The caveat remains in force until the matter is determined by the court or the caveat is withdrawn.

Withdrawal

Registered Caveat

[11-0210]

A registered caveat may be withdrawn by the caveator by lodging a Form 14 – Request to Withdraw (s. 125 of the *Land Title Act 1994* or s. 389G of the *Land Act 1994*).

See further ¶[11-2060].

Unregistered Caveat

[11-0220]

See ¶[11-2070].

Cancellation

[11-0230]

Pursuant to s. 128 of the *Land Title Act 1994* or s. 389I of the *Land Act 1994*, the Registrar may cancel a caveat upon receipt of a request to cancel if the Registrar is satisfied that:

- the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or
- the claim of the caveator has been settled by agreement or otherwise satisfied; or
- the nature of the interest claimed does not entitle the caveator to prevent registration of an instrument or document that has been lodged.

The Registrar must notify the caveator of the Registrar's intention to cancel the caveat at least seven days before it is cancelled (s. 128(2) of the Land Title Act or s. 389I(3) of the Land Act). If no response is received within the seven days, the caveat will be cancelled.

If an instrument or document that has been lodged will, on registration, give effect to the interest claimed in the caveat, the Registrar may remove the caveat immediately before registering the instrument (s. 128(3) of the Land Title Act or document s. 389I(4) of the Land Act).

See further ¶[11-2090].

Overriding of Caveat

[11-0240]

¹ Pursuant to s. 12(5) of the *Acquisition of Land Act 1967*, a resumption of land by the State, a local government or some other ‘resuming authority’ cancels any caveat over the land.

A transfer by a prior registered mortgagee exercising a power of sale overrides a caveat if

- the mortgagee has power under the mortgage to execute the transfer; and
- the caveator claims an interest in the lot; or lease under the *Land Act 1994*, as security for the payment of money or money’s worth (s. 124(2)(c) of the *Land Title Act 1994* or s. 389F(3)(c) of the Land Act).

However, this does not apply to caveats lodged by the Registrar.

Registration of a transfer of mortgage by a mortgagee whose interest was registered before the caveat is only prevented by a caveat of the Registrar or the registered owner (ss. 124(3) and (4) of the Land Title Act).

Legislation

[11-1000]

²Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1,3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

Requirements of a Caveat

General

[11-2000]

^{1,2}The Certificate of Title need not be deposited for cancellation with any caveat.

Rejection

[11-2010]

If a caveat is requisitioned pursuant to s. 156(1) of the *Land Title Act 1994* or s. 305(1) of the *Land Act 1994* and the requisition is not complied with within the rejection period specified in the requisition notice, the caveat may be rejected (s. 157(1) of the *Land Title Act* or s. 306(1) of the *Land Act*). However, a notice of intention to reject is generally given by the Registrar, allowing seven days for the lodger to respond prior to rejection. However, the failure to give a seven day courtesy notice does not give the caveator protection against rejection.

²Caveats lodged with the consent of the registered owner and caveats in cases where a notice of action has been deposited may be rejected if the requisition has not been complied with at the expiry of the rejection period.

Examination of Caveat or Caveatable Interest

[11-2020]

It is not the function of the Registrar to decide the rights and wrongs of any claim. Every caveat that has been properly completed and ‘on the face’ of the document (i.e. at Items 3 and 4 of the Form 11) shows a valid caveatable interest and substantive grounds will be accepted for lodgement.

Notification of Caveat

[11-2030]

When notifying the caveatee and interested parties of a caveat under s. 123 of the *Land Title Act 1994* or s. 389E of the *Land Act 1994*, the Registrar only relies on the information provided by the caveator.

The names and addresses of the persons upon whom notices are served, must be shown in Items 5 and 6 of the Form 11.

²Caveator’s Notice to Registrar

[11-2040]

If a caveator does not want a caveat to lapse the caveator must, under s. 126(4) of the *Land Title Act 1994*, start proceedings in a court of competent jurisdiction to establish the interest claimed under the caveat and notify the Registrar in the manner outlined in [52-0010], that proceedings have started.

²Lapsing of Caveat

[11-2050]

A lapsed caveat can be removed from the indefeasible title, whether registered or unregistered. No fee is payable for lapsing.

Lapsed caveats can be removed on production of a completed Form 14 – General Request requesting the removal.

Withdrawal

Registered Caveat

[11-2060]

A registered caveat may be withdrawn by the caveator by lodging a Form 14 – Request to Withdraw (s. 125 of the *Land Title Act 1994* or s. 389G of the *Land Act 1994*). This Form must be signed by a caveator or by the caveator's solicitor on the caveator's behalf.

^{1,2}The Certificate of Title, if issued, is not required to be deposited.

Unregistered Caveat

[11-2070]

An unregistered caveat may be withdrawn by way of a letter signed by the caveator or the caveator's current solicitor (s. 159 of the *Land Title Act 1994* or s. 308 of the *Land Act 1994*).

Removal by the Court

[11-2080]

A caveatee can, at any time, apply to the Supreme Court for an order that a caveat be removed (s. 127 of the *Land Title Act 1994* or s. 389H of the *Land Act 1994*). A copy of the order of the court must be lodged with a Form 14 – Request to Remove. There is no duty payable on the Request, however normal lodgement fees are payable.

^{1,2}The Certificate of Title, if issued, is not required to be deposited.

Cancellation

[11-2090]

Any person, including the caveatee, may utilise the provisions of s. 128 of the *Land Title Act 1994* or s. 389I of the *Land Act 1994* to cancel a caveat by lodging a Form 14 – Request to Cancel, setting out the grounds for cancellation. Normal lodgement fees apply. A Form 20 – Declaration, supporting the cancellation of the caveat, with relevant documentary evidence, is required.

Forms

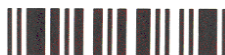
General Guide to Completion of Forms

[11-4000]

For general requirements for completion of forms see part 59 – Forms.

A document that is lodged as an electronic conveyancing document must be accompanied by a set of lodgement instructions identifying the nominated Responsible Subscriber and the order in which the documents are to be lodged. The lodgement instructions must be digitally signed by all subscribers to the transaction.

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Caveator full name and address for service JOHN THOMAS CLARE 29 ALBERT STEEET CAMP HILL QLD 4152	Lodger (Name, address, E-mail & phone number) SMITH & CO. 45 ADELAIDE STREET BRISBANE QLD 4000 info@smiths.com.au (07) 3224 5398	Lodger Code 858
2. Lot on Plan Description LOT 16 ON RP32361		Title Reference 15432099
3. Interest being claimed AN ESTATE IN FEE SIMPLE AS PURCHASER		
4. Grounds of claim CONTRACT OF SALE DATED 15/10/2007 BETWEEN JOHN IAN CLEWS AND JOHN THOMAS CLARE		
5. Registered owner full name and address JOHN IAN CLEWS 34 LONG STREET WYNNUM QLD 4178	6. Other parties full name and address (eg Mortgagees) XYZ BANKING CORPORATION 1200 QUEEN STREET BRISBANE QLD 4000	
7. Request/Execution a) The Caveator claiming as per item 3 on the grounds detailed in item 4 and subject to the <i>Land Title Act 1994</i> forbids the registration of any instrument affecting the land described in item 2 until: *this caveat is withdrawn by the Caveator *the completion of the instalment contract mentioned in item 4 (only if Caveat is pursuant to Section 74 of the Property Law Act 1974) #This caveat does not apply to the following instruments:- # Insert dealing number of lodged instrument or identify instrument type by date of execution and name of parties or delete if not applicable. OR b) The Caveator claiming as per item 3 on the grounds detailed in item 4 and subject to the <i>Land Title Act 1994</i> forbids the entering of the application for adverse possession.		

* delete if not applicable

R E Lee
ROBERT EDWARD LEE

20/10/2007
Execution Date

.....
Caveator's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Caveator

Guide to Completion of Form 11

Duty

[11-4010]

A duty notation is required on a caveat where the claim refers to a document creating a mortgage or charge and the document was first signed before 1 July 2008.

Item 1

[11-4020]

Insert the full name and postal address of the caveator.

If there is more than one caveator, reference should be made in the address to ‘both of’ or ‘all of’, if such be the case, or individual addresses should be shown.

A Form 20 – Enlarged Panel should be used if there is insufficient space.

Item 2

[11-4030]

^{1,2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

eg	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

^{2,3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg	Lot on Plan Description	Title reference
	WA 27 on AP 7900	46012345

^{1,3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for crown plans).

eg	Lot on Plan Description	Title reference
	Lot 27 on CP LIV1234	40567123

^{1,2}If the caveat is against only part of the land, that part must be capable of precise identification and will require the inclusion of a sketch plan, otherwise the quantum of the caveat may be too large, rendering it defective as to form (*Powell’s Caveat* [1966] QWN 9).

^{1,2}A caveat against a lot on a plan which has not yet been lodged will be accepted with a sketch plan identifying the land, however, the description in Item 2 should be as per the title.

^{1,2}If the plan has been lodged but not yet registered, the description should be as per the plan and the number of the plan should be included in Item 7 to indicate that the caveat does not apply to it.

^{2,3}If a caveat is against only part of a water allocation, that part must be described by indicating the number of megalitres affected.

Item 3

[11-4040]

The nature of the claim must be precisely and clearly expressed and must relate to the fee simple, a lease, sub-lease, licence or an interest in a reserve under the *Land Act* 1994, or a water allocation where applicable. For example, in the case of the purchaser: ‘an equitable interest as purchaser of an estate in fee simple or water allocation’; or in the case of an equitable mortgagee: ‘an equitable share or interest as mortgagee of an estate in fee simple or water allocation’.

Item 4

[11-4050]

Insert the grounds of the claim. The grounds on which the claim is being made must be clear, and wherever possible, supported by reference to some documentary evidence. The grounds upon which the claim is based should include the date and particulars of any writings upon which the caveator bases the claim, for example:

- ²in the case of a purchaser ‘pursuant to a contract/agreement in writing dated [date] between [registered owner] as vendor and [caveator] as purchaser’
- ²in the case of an equitable mortgagee:
 - ‘pursuant to an unregistered mortgage in registrable form dated [date] executed by [registered proprietor] to secure to [caveator] the money therein stated’; or
 - ‘pursuant to clause number [number] in agreement between [name of parties] dated [date] charging the property to secure to [caveator] the money therein stated’.

²If the caveat is pursuant to s. 74 of the *Property Law Act 1974*, the wording of Item 7(a) should reflect this. A copy of the instalment contract must be deposited with this type of caveat.

While the Registrar does not presume to adjudicate a claim, he/she is not obliged to automatically register any caveat presented to him/her, even if it is lodged with the consent of the registered proprietor (*Queensland Estates Pty Ltd v Collas* [1971] Qd R 75).

Item 5

[11-4060]

Insert in this item:

- the full name of every registered owner of the lot affected by the caveat; and
- the postal address of every registered owner of the lot affected by the caveat .

Item 6

[11-4070]

Insert the full name/s and postal address/es of any other person, company, institution, etc, having an interest in the land or State tenure that may be affected by the caveat (eg, the mortgagee).

Item 7

[11-4080]

Delete the paragraph and sentences that are not applicable to the type of caveat being dealt with and execute as required.

Instruments or documents to which the caveat does not apply must be identified by dealing number if they are lodged prior to the caveat. If the dealings are to be lodged subsequently, they must be identified by description, eg ‘Transfer from A to B dated [date]’ or ‘any lease by X as lessor’.

Item 7 (Electronic Form) – The requirements for the execution and certification are contained in the Participation Rules (Queensland) issued for electronic conveyancing.

¶[11-6000] to [11-6040] deleted

Case Law

Persons Who May Lodge a Caveat

²A Person Claiming an Interest in a Lot

[11-7000]

See ¶[11-0030].

- *Friedmann v Barrett; ex parte Barrett* [1962] Qd R 498.
- *Andel Pty Ltd v Century Car Care Pty Ltd* [1989] Q Conv R 54-315.
- *Ex parte Lord* [1985] 2 Qd R 198.
- *Re Cross and National Australia Bank Limited* [1992] Q Conv R 54-433.
- *Re Trapas Pty Ltd* [1991] Q Conv R 54-398.
- *Simons v David Benge Motors Pty Ltd* [1974] VR 585.
- *Ex parte Goodlet and Smith Investments Pty Ltd* [1983] 2 Qd R 792.
- *Re Rutherford* [1977] 1 NZLR 504.
- *Re Pile’s Caveats* [1981] Qd R 81.
- *Costa & Duppe Properties Pty Ltd v Duppe and Ors* [1986] VR 90.
- *Connell v Bond Corporation Pty Ltd* [1992] 8 WAR 352.
- *Re Henderson’s Caveat* [1993] Q Conv R 54-450.

²Registrar

[11-7010]

See ¶[11-0040].

- *Re Caveat No. 735; Ex parte Davenport* (1873) 3 QSCR 95.

²Registered Owner

[11-7020]

See ¶[11-0050].

- *Sinclair v Hope Investments Pty Ltd* [1982] 2 NSWLR 870.
- *McKean’s Caveat* [1988] Qd R 524.

- *Re Cross v National Australia Bank Ltd* [1992] Q Conv R 54-433.
- *Mir Bros Projects Pty Ltd v 1924 Pty Ltd* [1980] 2 NSWLR 907.
- *Websdale v S & J Investments Pty Ltd* (1991) 24 NSWLR 573.

²Purchaser under an Instalment Contract

[11-7030]

See ¶[11-0090].

- *Re Moore's Caveat* [1985] 1 Qd R 310.
- *Chettle v Brown* [1993] 2 Qd R 604.

Proceedings in the Supreme Court

[11-7040]

See ¶[11-0140].

- *Re Jorss' Caveat* [1982] Qd R 458.
- *Burman and Anor v AGC (Advances) Limited* [1994] 1 Qd R 123.

Lapsing of Caveat

²Consent of Registered Owner

[11-7050]

See ¶[11-0180].

- *Circuit Finance Australia Ltd v Registrar of Titles* [2005] QSC 283.
- *Caveat No. G496816 by AVCO Financial Services Ltd*, Supreme Court of Queensland, (unreported) Connolly J, OS No 757 of 1981.
- *Queensland Estates Pty Ltd v Collas* [1971] Qd R 75.

Fees

[11-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1, 2}Land Title Regulation;
- ^{1, 3}Land Regulation; or
- ^{2, 3}Water Regulation.

Cross References and Further Reading

[11-9000]

Part 2 – Mortgage (National Mortgage Form)

Part 5, 5A, 6 – Transmission Applications

Part 14 – General Request

Queensland Conveyancing Law and Practice, CCH Australia Limited (loose-leaf service)

Duncan and Vann, *Property Law and Practice*, Law Book Company Limited (loose-leaf service)

Lindsay, S, *Caveats Against Dealings in Australia and New Zealand*, The Federation Press, 1995

Notes in text

[11-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land

Part 12 – Request to Register Writ of Execution

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Part 12 – Request to Register Writ of Execution

General Law

[12-0000]

Where an unsatisfied judgment or order of a court exists for the payment of a sum of money by a defendant (enforcement debtor) to a plaintiff (enforcement creditor), enforcement proceedings may be taken to sell interests in real property owned by the debtor and to have the proceeds of the sale applied to the satisfaction of the judgment or order.

Under the *Land Title Act 1994* and *Land Act 1994*, the term ‘writ of execution’ means a writ or warrant of execution after judgment in any court, and includes an enforcement warrant. An enforcement warrant includes an enforcement warrant under s 828 of the *Uniform Civil Procedure Rules 1999* or under s 63 of the *State Penalties Enforcement Act 1999*.

A writ of execution provides the means to compel an involuntary sale of the debtor’s property for the satisfaction of the judgment or order. The normal procedure for enforcement is the registration of a writ of execution against the real property interests of the debtor and for the property to be sold by the relevant enforcement officer of the court that issued the writ of execution.

The Registrar is authorised by s 116 of the *Land Title Act 1994* or s 386 of the *Land Act 1994* to register the writ of execution against the title to the land or other interest described in the request, subject to:

- the lot, lease or sublease under the *Land Act 1994* or other interest the subject of the writ of execution being registered in the name of the debtor/s at the time of lodgement or registration; and
- the writ of execution being issued within the previous 12 months or, if issued for more than 12 months, lodgement of court evidence of its extension.

Registration of a writ of execution against a lot or a lease or sublease under the *Land Act 1994* binds the lot or lease or sublease under the *Land Act 1994* as regards the interests of purchasers, lessees, mortgagees and creditors (*Land Title Act 1994*), or buyers, sublessees, mortgagees and creditors (*Land Act 1994*) during the binding period of six months from lodgement and any extended time allowed by the court, but only if the writ of execution is executed by the delegated court officer by selling the lot or a lease or sublease under the *Land Act 1994* during that period.

Legislation

[12-1000]

^{2,3}Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of ss 150(1) and 151 of the *Water Act 2000*, subject to the exceptions provided in ss 150(2) and 151(1) of the *Water Act 2000*, the *Land Title Act 1994* applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act* 2000 an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act* 1994 and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act* 1994:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act* 2000; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

^{1,3}Reference to the Chief Executive in the *Land Act* 1994

The functions of the Chief Executive under the *Land Act* 1994 relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s 393 of that Act.

Practice

General

[12-2000]

It is not the responsibility of the Registrar to enquire into the nature of a writ of execution. Within Queensland, a writ of execution can be issued by the following:

- High Court of Australia
- Federal Court of Australia
- Supreme Court of Queensland
- District Court
- Magistrates Court
- Registrar of the State Penalties Enforcement Registry (SPER)
- Family Court of Australia.

An interstate judgment may be enforced in Queensland by registration of the interstate judgment in the relevant Queensland court, whereupon a writ of execution is issued by the relevant State court in Queensland. Interstate judgments are registered and enforced under the provisions of the *Service and Execution of Process Act* 1992 (Cth).

In Queensland judgments obtained in foreign courts to which the *Foreign Judgments Act* 1991 (Cth) applies may be registered in the Supreme Court.

Upon registration, the foreign judgment has the same force and effect as if it were a judgment of the Supreme Court of Queensland.

A money judgment may be enforced by the same means of execution as is available under the law of the place of registration.

A writ of execution issued on a judgment against an enforcement debtor in their own right cannot be entered against land or any interest which is held in a representative capacity or vice versa.

Currency of the Writ of Execution

[12-2010]

Court Issued Writ of Execution

A writ of execution issued by a court is valid for a period of 12 months from the date of issue (s 820 of the *Uniform Civil Procedure Rules* 1999). However, a writ of execution may state that it ends at an earlier time (s 92 of the *Supreme Court of Queensland Act* 1991). The date of issue of the document will be shown on the face of the writ of execution, regardless of the court which has issued the document. The writ of execution may be extended for a further period of 12 months by order of the court and normally that extension is endorsed upon the face of the writ of execution.

The Registrar must not register a writ of execution if it has been lodged more than 12 months after it was issued by the court and has not been further extended by order of that court.

Writ of Execution issued by Registrar of the State Penalties Enforcement Registry

A writ of execution issued by the Registrar of the State Penalties Enforcement Registry (SPER) is current for up to six months from the date of issue as stated on the writ of execution.

The Registrar of SPER may renew the writ of execution for a period of not more than six months at any one time before the writ of execution ends. However to bind the register a new Form 12 together with a copy (see ¶[60-1030]) of the renewed writ of execution must be lodged.

A writ of execution issued by the Registrar of the State Penalties Enforcement Registry may not be extended.

General Request to Record Extension of a Writ of Execution

[12-2020]

In seeking to record an extension of a writ of execution, the following matters must be attended to:

- a Form 14 – General Request must be lodged;
- no fee is payable in respect of the lodgement of the Form 14;
- all items on the Form 14 must be appropriately completed;
- the affected lot or interest in the lot, or the lease or sublease under the *Land Act* 1994 must be identical to that which is contained in the writ of execution;

- a copy of the court issued order, (see ¶[60-1030]) extending the binding time for the writ of execution to comply with s 117(b) of the *Land Title Act* 1994 or s 387(b) of the *Land Act* 1994 must be deposited with the Form 14; and
- the writ of execution must not have been cancelled.

²The certificate of title (if issued) is not required to be deposited.

If a writ of execution has been cancelled and a Form 14 – General Request to record extension of the writ of execution is subsequently lodged, it cannot be registered. The appropriate documentation is another Form 12 –Request to Register the Writ of Execution with copies of the:

- original writ of execution; and
- court issued order extending the time.

Effect of the Writ of Execution

[12-2025]

A registered writ of execution binds the interest of the enforcement debtor as regards purchasers, mortgagees, lessees and creditors from him/her for a period of six months from the date of lodgement or such extended time that is allowed by the court and notified to the Registrar. This allows the authorised court officer (generally the Bailiff or Sheriff) to auction the lot, a lease or sublease under the *Land Act* 1994 or other interest and to execute a transfer to the purchaser. Any dealing other than those by purchasers, mortgagees, lessees and creditors lodged after the writ of execution and during the initial or extended binding period may be registered.

Any prior unregistered dealings are not affected by the lodgement of a writ of execution.

On registration of a transfer executed by the Bailiff or Sheriff, the transferee becomes the registered owner of the lot, or a lessee of a lease or sublessee of a sublease under the *Land Act* 1994, only subject to registered interests (s 120(2)(a) of the *Land Title Act* 1994 or s 325(1)(b) of the *Land Act* 1994), and also for a lot, any equitable mortgages notified by caveat lodged before registration of the writ of execution (s 120(2)(b) of the *Land Title Act* 1994. ^{1,2}Note: this provision is only capable of application to equitable mortgages notified by non-lapsing caveats lodged under s 30A of the *Real Property Act* 1877.)

If a lot or a lease or sublease under the *Land Act* 1994 is sold by an authorised court officer under a registered writ of execution, the authorised officer is empowered to execute a Form 1 – Transfer to the purchaser under the seal of the court. Officers who affix the seal of the court must show their official designation or position adjacent to their signature.

^{1,2}If the land is subdivided after the issue of the writ of execution, but the plan is lodged prior to the writ of execution, a declaration identifying the new lots (excluding road and public use land) as being the same land as that referred to in the writ of execution is required.

¶[12-2030] deleted

Request to Register Writ of Execution

[12-2040]

To register a writ of execution, a Form 12 – Request to Register Writ of Execution or Warrant of Execution needs to be completed and lodged, together with a copy (see ¶[60-1030]) of the court issued writ of execution. If the writ of execution (other than that issued by the Registrar of

State Penalties Enforcement Register (SPER)) has been previously deposited for registration is still within its 12 month currency, it may be exhibited as evidence for the lodgement of a further writ of execution.

Separate writs of execution under different writs may be registered against a lot.

Where an enforcement debtor under a writ of execution issued by SPER has incurred multiple fines for different offences the Registrar of SPER may issue multiple writs of execution. In such instances, it is acceptable for multiple writs of execution to be lodged with one Form 12.

The following items must be attended to in the registration of a writ of execution:

- all items on the Form 12 must be appropriately completed;
- the lodgement fee must be paid;
- a copy of the court issued writ of execution (or copy issued by the Registrar of SPER), must be deposited (see ¶[60-1030]) with the writ of execution;
- the lot, lease or sublease under the *Land Act* 1994 or other interest described in the Form 12 must be in the name of the enforcement debtor shown in the writ of execution.

^{1,2}The certificate of title (if issued) is not required to be deposited.

Removal of Writ of Execution

General

[12-2050]

Writs of execution expire; they do not lapse in the same manner as caveats.

A writ of execution issued from a court may be removed from the register by:

- lodging a Form 14 – Request to Record Discharge or Satisfaction of a Writ of Execution at any time after payment of the debt in full;
- lodging a Form 14 – Request to Cancel a Writ of Execution for a writ of execution which has expired and has not been put into force and effect;
- withdrawing an unregistered writ of execution by letter from the enforcement creditor or their solicitor.

For further information see part 14 – General Request, esp. ¶[14-2125].

¶[12-2060] to ¶[12-2090] deleted

Withdrawal of Unregistered Writ of Execution

[12-2100]

An unregistered writ of execution may be withdrawn by a letter from the enforcement creditor or their solicitor to the Registrar (s 159 of the *Land Title Act* 1994 or s 308 of the *Land Act* 1994).

Rejection

[12-2110]

If a writ of execution is requisitioned pursuant to s 156(1) of the *Land Title Act* 1994 or s 305(1) of the *Land Act* 1994 and the requisition is not complied with within the specified period, the writ of execution may be rejected (s 157(1) of the *Land Title Act* 1994 or s 306(1) of the *Land Act* 1994). Generally, a notice of intention to reject is given by the Registrar allowing seven days for the lodger to respond prior to rejection. However, the failure to give a seven-day courtesy notice does not give the enforcement creditor protection against rejection.

Overriding a Writ of Execution

[12-2120]

The following will be operative, notwithstanding the lodgement of a writ of execution:

- ¹A sale of a lot, or a sale of a lease or sublease under the *Land Act* 1994, or an application by a local government, under Chapter 4 Part 12 Division 3 of the *Local Government Regulation* 2012 overrides a writ of execution.
- ¹A resumption of land or a lease under the *Land Act* 1994 pursuant to s 12(5) of the *Acquisition of Land Act* 1967 by the State, a local government, or authorised constructing authority overrides a writ of execution.
- ²A caveat with a notice of action prevents registration of a transfer under a writ of execution.
- Actions taken under statutory charges by the Commonwealth or State e.g. land tax charge may take precedence over a writ of execution.
- A transfer by mortgagee exercising power of sale, executed on or after 7 June 2001, overrides a writ of execution, provided the mortgage under which the power is exercised was registered prior to the registration of the writ of execution.
- ^{1,3}A transfer of a lease under the *Land Act* 1994 sold by the Chief Executive pursuant to Chapter 5, Part 4, Division 3A, Subdivision 4 of the *Land Act* 1994 overrides a writ of execution.

Transfer under a Writ of Execution

[12-2130]

See part 1, esp. ¶[1-2530] and ¶[1-2540].

Forms

General Guide to Completion of Forms

[12-4000]

For general requirements for completion of forms see part 59 – Forms.

**REQUEST TO REGISTER WRIT/
WARRANT OF EXECUTION**



Dealing Number

OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

Lodger (Name, address, E-mail & phone number)

ACE LEGAL SERVICES
89 EDWARD STREET
BRISBANE QLD 4000
info@acelegalservices.com.au
(07) 3227 9947

**Lodger
Code**
858

1. Lot on Plan Description	County	Parish	Title Reference
LOT 77 ON RP94912	MARCH	GYMPIE	10946033

2. Registered Proprietor/Lessee	3. Interest being bound or affected
LEONARD LLEWELLYN JONES	FEE SIMPLE

4. Applicant	5. Particulars of Writ/Warrant
SMITH AND SMITH PTY LTD A.C.N. 123 123 123	Writ/Warrant of Execution No. 106 of 2007 Court – SUPREME COURT, BRISBANE Enforcement Debtor – L L JONES

6. Request

- a) The applicant makes this application as the enforcement creditor.
- b) The Writ/Warrant has not been wholly satisfied. An office copy of the Writ/Warrant is attached.
- c) The registered Owner/Lessee of the interest is identical with the enforcement debtor in the Writ/Warrant.
- d) It is requested that the particulars of the Writ/Warrant be registered.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

(seal) *MW Smith*
Mark Wayne Smith
Director
or

.....Signature (name of company and A.C.N.)
.....full name
.....qualification

JD Smith
John David Smith
Director/Secretary

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

6/12/2007
Execution Date

.....
Applicant's Signature

Note: A Solicitor cannot execute on behalf of an applicant

Guide to Completion of Form 12

Item 1

[12-4010]

^{1,2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on RP 204939	Stanley	South Brisbane	11223078

^{2,3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg	Lot on Plan Description	County	Parish	Title reference
	WA 27 on AP 7900			46012345

^{1,3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘CP’ for crown plans).

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on CP LIV1234	Livingstone	Cawarral	40567123

Item 2

[12-4020]

Insert the full name of the registered proprietor/lessee/sublessee. If the title for the lot, lease or sublease under the *Land Act* 1994 or other interest is in the name of more than one registered proprietor or lessee or sublessee under the *Land Act* 1994, but the writ was issued against only one of them, then only the name of the registered proprietor or lessee or sublessee under the *Land Act* 1994 against whom the writ of execution was issued should be shown. If there is a discrepancy between the name on the writ of execution and the name on the title, identification should be provided in Item 6(c).

Item 3

[12-4030]

Insert ‘Fee simple’, type of State tenure e.g. State lease, ‘Water Allocation’ or ‘Lease No. [number]’.

Item 4

[12-4040]

Insert the name of the enforcement creditor as shown in the writ of execution.

Item 5**[12-4050]**

Insert the particulars from the writ of execution.

Item 6**[12-4060]**

Where the enforcement creditor is a natural person the request must be made by the enforcement creditor personally and Item 6(a) must be completed as follows 'The applicant makes this application as the Enforcement Creditor'. The signature of the enforcement creditor must be witnessed by a qualified person.

Where the Enforcement Creditor is an entity (other than a natural person) that has the capacity to hold an interest (e.g. a corporation):

- if the execution is made by the Enforcement Creditor in its own name, Item 6(a) must state 'The applicant makes this application as the Enforcement Creditor'. The execution must be by the corporation in a manner permitted by law (e.g. affixing of the seal of the corporation or stating its name and Australian Company Number and showing the designations of the signatories).
- if the execution is made by an authorised officer of the Enforcement Creditor corporation, Item 6(a) must state 'The applicant makes this application as an authorised officer of the Enforcement Creditor'. The officer's title/position within the corporation must be shown in the execution. The execution must be witnessed by a qualified person.

Where the Enforcement Creditor named on the Enforcement Warrant is an entity that does not have the capacity to hold an interest (e.g. a firm, a business or a trading name), Item 6(a) must state 'The applicant makes this application as an authorised officer of the Enforcement Creditor'. The execution must be by an authorised officer of the Enforcement Creditor and show the officer's title/position within the firm for example 'Partner' or 'Authorised officer'. The execution must be witnessed by a qualified person.

Duty**[12-4070]**

There is no duty payable on a Form 12 – Request to register writ of execution.

¶[12-6000] deleted

Case Law

***Hoy and Anor v AAA Home Loans Pty Ltd and Others* [1985] VR 281**

[12-7000]

In this case, it was held that successive copies of a writ of execution may be served on the Registrar. These copies have the effect of giving priority for the binding period (under the *Land Title Act* 1994, six months) after the service of such writ of execution. However, the lodgement of a successive writ of execution is not effective against instruments lodged in the binding period (under the *Land Title Act* 1994, six months).

¶[12-7010] to [12-7040] deleted

Fees

[12-8000]

Fees payable to the registries are subject to an annual review. See the current:

- ^{1,2}*Land Title Regulation* 2005 – Schedule 2, item numbers 2(g), 2(h) and 2(m);
- ^{1,3}*Land Regulation* 2009 – Schedule 11, item numbers 2(e), 2(f) and 14; and
- ^{2,3}*Water Regulation* 2002 – Schedule 16, item numbers 8, 9 and 13.

Cross References and Further Reading

[12-9000]

Part 1 – Transfer, esp ¶[1-2530] to ¶[1-2540]

Cairns, C, *Australian Civil Procedure*, 3rd edn, Law Book Company Limited, 1992, esp Chapter 19

Ryan Weld & Lee, *Queensland Supreme Court Practice*, Volume 1, Butterworths (loose-leaf service)

Wiley, *District Court Practice and Procedure*, Butterworths (loose-leaf service)

Tronc & Gribbin, *Civil Procedure Magistrates Court Queensland*, Law Book Company Limited (loose-leaf service)

Robertson, *Australian High Court and Federal Court Practice*, CCH Australia Limited (loose-leaf service)

Judiciary Act 1903 (Cth)

Rules of the Federal Court of Australia (Cth)

Uniform Civil Procedure Rules 1999

Notes in text

[12-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest

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Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest

General Law

[13-0000]

Under the provisions of the *Land Title Act 1994* and the *Land Act 1994*, amendments to registered leases, easements, covenants, mortgages, profits a prendre and Building Management Statements may be registered. Form 13 is the appropriate form in each case. A Form 20 – Schedule setting out the amendment may be attached to the Form 13.

Amendment of Lease

[13-0010]

Unless otherwise stated in this numbered section, a reference to a lease means a lease or sublease of freehold land or a water allocation, or a sublease or trustee lease under the *Land Act 1994*.

Section 67 of the *Land Title Act 1994* and ss. 57A and 336 of the *Land Act* provide that a registered lease may be amended by registering an amendment of lease. However, the amendment must not:

For a lease or sublease of freehold land or a water allocation:

- increase or decrease the area leased; or
- add or remove a party to the lease; or
- be lodged after the lease's term has ended.

For a sublease or trustee lease under the *Land Act 1994*:

- increase or decrease the area leased or
- add or remove a party to the lease; or
- increase the term of the lease; or
- be lodged after the sublease's term has ended.

²Section 67(5) of the *Land Title Act* provides that the procedure for amendment set out in s. 67 of the *Land Title Act* is in addition to any other rights, provided that they are not inconsistent with the Act.

¹Amendment of Easement

[13-0020]

Section 91 of the *Land Title Act 1994* and s. 370 of the *Land Act 1994* provide that a registered easement (other than a high-density development easement under Part 6 Division 4AA of the *Land Title Act*) may be amended by registering an amendment of easement. However, the amendment must not:

- change the location of the easement; or
- increase or decrease the area of land affected by the easement; or

- change a party to the easement.

The Land Title Act and the Land Act specifically provide that s. 181 of the *Property Law Act 1974* applies to registered easements (s. 92 of the Land Title Act and s. 373 of the Land Act). Section 181 of the Property Law Act allows a person interested in the land to apply to the Supreme Court for an order that an easement be modified or wholly or partially extinguished. The court may, amongst other things:

- direct that a survey of the land be conducted and a plan of survey be prepared;
- order any person to execute any instrument or document to give effect to the order; and
- order the deposit of any other documentation to give effect to the order. (see [14-2430]).

Amendment of Mortgage

[13-0030]

Section 76 of the *Land Title Act 1994* and s. 343 of the *Land Act 1994* provide that a registered mortgage may be amended by registering an amendment of mortgage. However, the amendment must not:

For a mortgage of freehold land or a water allocation:

- increase or decrease the area of land or the number of water allocations charged by the mortgage; or
- add or remove a party to the mortgage.

For a mortgage of a lease or sublease under the Land Act:

- add or remove a party to the mortgage

¶[13-0040] deleted

¹Amendment of Covenant

[13-0041]

Section 97C of the *Land Title Act 1994* and s. 373C of the *Land Act 1994* provide that a registered covenant may be amended by registering an amendment of covenant. However the amendment must not:

- increase or decrease the area of land which is the subject of the covenant; or
- add or remove a party to the covenant.

¹Amendment of Profit a Prendre

[13-0050]

Section 97K of the *Land Title Act 1994* and s. 373N of the *Land Act 1994* provide that a profit a prendre may be amended by registering an amendment of a profit a prendre. However, the amendment must not:

- increase or decrease the area of land which is the subject of the profit a prendre; or
- add or remove a party to the profit a prendre.

¹Amendment of Building Management Statement

[13-0060]

Section 54E of the *Land Title Act 1994* and s. 294F of the *Land Act 1994* provide for the registration of an amendment of building management statement. However the amendment must not:

- change the lots to which the statement applies.

¹Amendment of Carbon Abatement Interest

[13-0070]

Section 97S of the *Land Title Act 1994* and s. 373X of the *Land Act 1994* provide that a carbon abatement interest may be amended by registering an amendment of a carbon abatement interest. However, the amendment must not:

- increase or decrease the area of land which is the subject of the carbon abatement interest; or
- add or remove a party to the carbon abatement interest.

Legislation

[13-1000]

²Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the *Water Act*, the *Land Title Act* applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the *Land Title Act* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1,3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the *Land Act* relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

Amendment of Lease

[13-2000]

Unless otherwise stated in this numbered section, a reference to a lease means a lease or sublease of freehold land or a water allocation, or a sublease or trustee lease under the *Land Act 1994*.

A registered lease may be amended by registering a Form 13 – Amendment of Lease. However, the amendment **cannot**:

For a lease or sublease of freehold land or a water allocation:

- (a) increase or decrease the area leased; or
- (b) add or remove a party to the lease; or
- (c) be lodged after the lease's term has ended

For a sublease or trustee lease under the *Land Act 1994*:

- increase or decrease the area leased or
- add or remove a party to the lease; or
- increase the term of the lease; or
- be lodged after the lease's term has ended.

If a lease is to be amended in any of the ways above, then it will be necessary to surrender the existing lease and to enter into a new lease (see part 8 – Surrender of Lease).

A lease may be amended more than once.

^{1,3}Before an amendment of a trustee lease or a sublease under the Land Act is registered, the amendment must be endorsed with, as appropriate, either the Minister's approval under s. 57A(1) or s. 332 of the Land Act, or the Minister's general authority to amend under s. 333 of the Land Act.

^{1,3}However, the Minister's approval is not required if the trustee lease is:

- a trustee lease (construction); or
- a construction trustee sublease; or
- a trustee lease (State or statutory body); or
- a sublease of a trustee lease (State or statutory body) (s. 57A(2) of the Land Act).

An amendment of a freehold lease, a lease of a water allocation or a sublease under the Land Act executed after the registration of a mortgage is not valid against the mortgagee unless the mortgagee consents to the amendment before it is registered (s. 66 of the *Land Title Act 1994* and s. 338 of the Land Act). The Registrar will register the amendment of lease even if the lot or interest is mortgaged and the consent of the mortgagee is not included. However, registration will not give validity to the amended lease against the mortgagee as a matter of law.

It is in the lessee's interest to obtain the consent of any mortgagee of the fee simple, a sublease under the *Land Act* 1994 or a water allocation to an amendment of lease (s. 66 of the *Land Title Act* and s. 338 of the *Land Act*); however it is not a prerequisite for registration.

An amendment of lease does not require the consents of any sublessees in order to be registered, even if the covenants in the (head) lease are being amended.

²An amendment may increase or decrease the term of the lease. However, an amendment to increase the term must be lodged during the term of the lease as defined in s. 67(3) of the *Land Title Act*. An amendment to extend the second or subsequent option period can only be registered if the preceding option period is the subject of a registered amendment.

²An amendment of lease can create, cancel, extend or shorten a period of a further term available under an option.

An amendment of lease **cannot** amend the commencement date of a lease that has commenced.

If the amendment of lease decreases the term, it must be for a term which is longer than the term, including those available under options, of any sublease of the lease. ²Conversely, any increase in the term, including those available under options in a sublease must not exceed the term of the head-lease. **Note:** Only the initial term and first unexercised option period of the lease are recorded on the relevant title.

²If the amendment extends the term and the lessor is a trustee, the new term, including further terms available under options, should not exceed 21 years (s. 32(1)(e) of the *Trusts Act 1973*) unless the trust deed authorises leases for a greater term.

^{1, 2}If a lease is over part of the land and the term is extended, the approval of the local government is required if the new term, including further terms available under options, is for a period of over ten years (s. 65(3A) of the *Land Title Act* and s. 6 (Schedule 2) of the *Planning Act 2016* – reconfiguring a lot).

²Given the nature of a lease the Registrar will not enquire whether all titles subject to the lease are included in the Form 13 – Amendment of Lease.

Refer to the following table for duty requirements. The table has been compiled in consultation with the Office of State Revenue (OSR).

Amendment of Lease	
Any Form 13 that:	Duty notation required
Increases the term (where the amendment of the lease term commenced prior to 1 January 2006)	Yes
* Increases the term (where the amendment of the lease term commenced on or after 1 January 2006)	No
Increases the rental (where the amendment of the lease rental commenced prior to 1 January 2006)	Yes
* Increases the rental (where the amendment of the lease rental commenced on or after 1 January 2006)	No
Amends the covenants only	No

* **Note** – From 1 January 2006 lease duty was abolished by the *Revenue Legislation Amendment Act 2005*.

Lodgement fees are payable.

^{1, 2}The Certificate of Title, if issued, must be deposited. However, if the amendment relates to a sublease and the registered owner is not a party to the transaction, the Certificate of Title is not required to be deposited.

For further information see part 7 – Lease.

¶[13-2010] to [13-2030] deleted

¹Amendment of Easement

[13-2035]

A registered easement (other than a high-density development easement under Part 6 Division 4AA of the *Land Title Act 1994*) may be amended by registering an amendment of the easement in Form 13 (s. 91(1) of the *Land Title Act* and s. 370(1) of the *Land Act 1994*). However, the amendment must not:

- (a) change the location of the easement; or
- (b) increase or decrease the area of land affected by the easement; or
- (c) change a party to the easement.

An amendment may replace, delete and/or insert provisions to the easement. If the covenants are inserted or replaced they should be included on a Form 20 – Schedule. The Form 20 need only refer to the particular clause(s) to be deleted, amended or inserted for the purpose of the amendment.

Due to the nature of an easement, all titles subject to an easement must be included in the Form 13 – Amendment of Easement.

For duty requirements refer to the following table, which has been completed in consultation with the Office of State Revenue.

Easements	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes
Amends the purpose	No
Amends the covenants	No

Lodgement fees are payable (see ¶[13-8000]).

^{1, 2}The Certificates of Title for both tenements, if issued, must be deposited or a request made to dispense with production.

¶[13-2040] to [13-2050] deleted

Amendment of Mortgage

[13-2055]

A registered mortgage may be amended by registering an amendment of the mortgage in Form 13 (s. 76 of the *Land Title Act 1994* and s. 343 of the *Land Act 1994*). However, the amendment must not:

For a mortgage of freehold land or a water allocation:

- (a) increase or decrease the area or the number of water allocations charged by the mortgage; or

- (b) add or remove a party to the mortgage.

For a mortgage of a lease or sublease under the Land Act:

- add or remove a party to the mortgage.

The covenants to be amended must be included on a Form 20 – Schedule. The covenants may be amended by deleting a particular clause, amending a particular clause or inserting a new clause. The Form 20 – Schedule need only refer to the particular clause(s) to be deleted, amended or inserted for the purpose of the amendment.

If the purpose of the amendment is a variation in accordance with s. 79 of the *Property Law Act 1974*, usually prepared prior to the commencement of the Land Title Act, the terms of the variation in the appropriate form under the Property Law Act should be deposited with a Form 13.

Given the nature of a mortgage, when an amendment of mortgage is lodged the Registrar will not enquire as to whether all the lots in the mortgage are included in the amendment.

A duty notation is not required. Lodgement fees are payable.

Section 11A of the Land Title Act and s. 288A of the Land Act places an onus on **ALL** mortgagees to adopt appropriate *due diligence* practices prior to lodging for registration any amendment of mortgage. The provisions under s. 11A of the Land Title Act and s. 288A of the Land Act apply to **ALL** amendments of mortgage lodged for registration in Queensland, whether or not the mortgagee has other business relationship with the mortgagor. For more information see [2-2005].

^{1,2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

¶[13-2060] to ¶[13-2100] deleted

¹Amendment of Covenant

[13-2110]

A registered covenant may be amended by registering an amendment of the covenant provided the amendment is validly executed by all parties to the covenant (i.e. the current registered owner or lessee and the State, a statutory body representing the State or a local government). If non-freehold land is involved, written approval of the amendment by the Minister is required.

An amendment of covenant must not:

- (a) increase or decrease the area of land which is the subject of the covenant; or
- (b) add or remove a party to the covenant.

Due to the nature of a covenant an amendment of covenant must include all of the titles to which the covenant relates.

A duty notation is not required. Lodgement fees are payable.

²The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

¹Amendment of Profit a Prendre

[13-2130]

An amendment of profit a prendre must not:

- (a) increase or decrease the area of land which is the subject of the profit a prendre; or
- (b) add or remove a party to the profit a prendre.

Given the nature of a profit a prendre the Registrar will not enquire whether all titles subject to the profit a prendre are included in the Form 13 – Amendment of Profit a Prendre.

For duty requirements refer to the following table, which has been completed in consultation with the Office of State Revenue.

Profit a prendre	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes
Amends the covenants	No

Lodgement fees are payable.

²The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

¶[13-2140] deleted

¹Amendment of a Building Management Statement

[13-2150]

A Form 13 that amends a building management statement (BMS) must:

- (a) include in Item 2 of the form all lots (and common property if applicable) affected by the BMS; and
- (b) be signed by:
 - the registered owners or lessees under the *Land Act 1994* of all lots to which it applies; or
 - ²the body corporate where lots affected by the BMS form part of a community titles scheme. A certified copy of the resolution agreeing to the amendment of the BMS must be deposited with the amendment; or
 - both of the abovementioned, if relevant.

Lots may not be added to or removed from a building management statement by an amendment.

A duty notation is not required. Lodgement fees are payable.

²Certificates of Title, if issued, for lots that are within a community titles scheme are not required to be deposited provided evidence the Registrar reasonably requires to allow registration is given, for example, a certified copy of the notice of a meeting and a certified copy of the minutes of the meeting, including a record of a resolution agreed to at the meeting.

²Certificates of Title, if issued, for lots that are not within a community titles scheme must be deposited.

¹Amendment of Carbon Abatement Interest

[13-2160]

A registered carbon abatement interest may be amended by registering a Form 13 – Amendment of Carbon Abatement Interest provided the amendment is validly executed by all parties to the carbon abatement interest.

If non-freehold land is involved, the Minister administering the Act must consent to the amendment on a Form 18 – General Consent. Alternatively, if the State is a party to the Amendment of the Carbon Abatement Interest (i.e. a grantor), the consent on a Form 18 is not required.

An amendment of carbon abatement interest must not:

- (a) increase or decrease the area of land which is the subject of the carbon abatement interest; or
- (b) add or remove a party to the carbon abatement interest.

Given the nature of a carbon abatement interest, when an amendment of a carbon abatement interest is lodged the Registrar will not enquire as to whether all the lots in the carbon abatement interest are included in the Form 13 – Amendment of Carbon Abatement Interest.

For duty requirements refer to the following table, which has been completed in consultation with the Office of State Revenue.

Carbon Abatement Interest	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes
Amends the carbon abatement interest	No

Lodgement fees are payable.

²The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

Forms

General Guide to Completion of Forms

[13-4000]

For general requirements for completion of forms see part 59 – Forms.

Example 1 – Amendment of Easement

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

AMENDMENT

Duty Imprint

FORM 13 Version 6
Page 1 of 2

Dealing Number

**OFFICE USE ONLY****Privacy Statement**

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Type/Dealing No of Instrument/Document being amended		Lodger (Name, address, E-mail & phone number)	Lodger Code
Type of Instrument/Document	EASEMENT	D A McCALLUM	
Dealing Number	700004070	1 OCEAN DRIVE	
		SURFERS PARADISE QLD 4217	
		(07) 5202 1495	
2. Lot on Plan Description		Title Reference	
LOT BURDENED		11462065	
LOT BENEFITED		12356047	
3. Grantor/Mortgagor/Lessor			
ANDREW DOUGLAS BARTON			
4. Grantee/Mortgagee/Lessee			
DOUGLAS ANGUS McCALLUM			
5. Amendment of Lease Details (Only to be completed for an amendment of the term and/or option of lease)			
Expiry date: / / AND/OR Event:			
Option/s#:			
# Insert <i>nil</i> if no option or insert option period (eg 3 years or 2 x 3 years etc)			
6. Request/Execution			
The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:- *item 5; *item 5 and attached schedule; *attached schedule.			
* delete if not applicable			
Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994			
<i>A D Lein</i>signature ARNOLD DOUGLAS LEINfull name JUSTICE OF THE PEACE (C.DEC) #27345qualification		11/11/2007 Execution Date	<i>A D Barton</i> Grantor's/Mortgagor's/Lessor's Signature
Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner JP, C Dec)			
<i>P J Writ</i>signature PETER JOHN WRITfull name SOLICITORqualification		17/11/2007 Execution Date	<i>D A McCallum</i> Grantee's/Mortgagee's/Lessee's Signature
Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP,C Dec)			

Title Reference [11462065]

(Changes to clauses of the easement to be set out here)

Example 2 – Amendment of Lease

QUEENSLAND TITLES REGISTRY

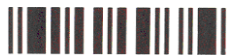
Land Title Act 1994, Land Act 1994 and Water Act 2000

AMENDMENT**FORM 13** Version 6

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Duty Imprint

Dealing Number

**OFFICE USE ONLY****Privacy Statement**

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website..

1. Type/Dealing No of Instrument/Document being amended		Lodger (Name, address, E-mail & phone number)	Lodger Code
Type of Instrument/Document	LEASE	SACHS & CO. SOLICITORS	102
Dealing Number	601447298	5 ALBERT STREET BRISBANE QLD 4000 mail@sachs.com.au (07) 3227 4149	
2. Lot on Plan Description		Title Reference	
LOT 42 ON RP99332		13131166	
3. Grantor/Mortgagor/Lessor			
SUBURBAN SHOPPING CO PTY LTD ABN 20 685 742 321			
4. Grantee/Mortgagee/Lessee			
PARKER JAMES SCHRIVNER and AQUILLA NEIL SCHRIVNER			
5. Amendment of Lease Details (Only to be completed for an amendment of the term and/or option of lease)			
Expiry date: 31/12/2013		AND/OR Event: ON THE DEATH OF THE LESSEE	
Option/s#: NIL			
# Insert <i>nil</i> if no option or insert option period (eg 3 years or 2 x 3 years etc)			
6. Request/Execution			
The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:- *item 5; *item 5 and attached schedule ; *attached schedule .			
* delete if not applicable			
Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994			
.....signature		J Thomas, Director JOHN PETER THOMAS	
.....full name		P Dean, Secretary PAUL IAN DEAN	
.....qualification		
Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner JP, C Dec)	4/9/2007 Execution Date	Grantor's/Mortgagor's/Lessor's Signature	
E E Shield			
.....signature			
EGERTON ELI SHIELD		P J Schrivner	
.....full name		A N Schrivner	
JUSTICE OF THE PEACE (QUALIFIED) #39145	5/9/2007 Execution Date	Grantee's/Mortgagee's/Lessee's Signature	
.....qualification			
Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)			

Title Reference [13131166]

(Changes to clauses of the lease to be set out here)

Guide to Completion of Form 13

Item 1

[13-4010]

Insert the dealing number of the document being amended.

¶[13-4020] deleted

Item 2

[13-4021]

^{1,2}Freehold Description

The description of the relevant lot/s should always read “Lot [no.] on [plan reference]”. Plan references must contain the appropriate prefix (eg “SP” for a survey plan, “RP” for a registered plan, “BUP” for a building units plan, “GTP” for a group titles plan or the relevant letters for crown plans).

eg	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

For an amendment of an easement the descriptions of both the lot/s benefited and lot/s burdened must be shown.

^{2,3}Water Allocation Description

A water allocation should be identified as “Water Allocation”, “Allocation” or “WA”. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg	Lot on Plan Description	Title reference
	WA 27 on AP 7900	46012345

^{1,3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for a crown plan).

eg	Lot on Plan Description	Title reference
	LOT 27 on CP LIV1234	40567123

Item 3

[13-4030]

Insert the full name of the grantor/mortgagor/lessor.

Item 4

[13-4040]

Insert the full name of the grantee/mortgagee/lessee.

Item 5

[13-4050]

^{1, 2}This item is to be completed only where the term and/or the option in a lease is being amended. Insert the date or event on which the amended term is to expire. The details of all relevant option/s must be completed. Where option/s do not apply, insert Nil.

This item is not to be completed for an amendment of a mortgage, easement, profit a prendre, building management statement, covenant, carbon abatement interest or a lease where the term and/or option is not being amended.

Item 6**[13-4055]**

Complete where indicated. The amendment document or a completed Form 20 that sets out the amendments must be attached.

Execute as required.

¶[13-4060] deleted

¶[13-4070] deleted

¶[13-6000] deleted

Case Law**[13-7000]**

Nil.

Fees**[13-8000]**

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1,2}Land Title Regulation;
- ^{1,3}Land Regulation; and
- ^{2,3}Water Regulation.

Cross References and Further Reading**[13-9000]**

Part 2 – Mortgage (National Mortgage Form)

Part 3 – Release of Mortgage

Part 7 – Lease

Part 8 – Surrender of Lease

Part 9 – Easement

Part 10 – Surrender of Easement

Part 14 – General Requests (Removal of Profit a prendre)

Part 29 – Profit a prendre

Part 31 –Covenants

Part 32 – Building Management Statements

Part 33 – Release of Covenant/Profit a prendre

Part 34 – Extinguishment of Building Management Statement

Part 36 – Carbon Abatement Interest

Part 48 – State Land

Queensland Conveyancing Law and Practice, CCH Australia Limited (loose-leaf service)

Property Law and Practice, Duncan and Vann, Law Book Company Limited (loose-leaf service)

Notes in text

[13-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 14 – General Request

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Part 14 – General Request

General Law

[14-0000]

A General Request is used to notify the Registrar of certain matters that impact on the registries.

Form 14 is the prescribed form for General Requests or for where no other specific form has been approved. Some of the many uses of this Form are outlined in this Part.

^{1,2}Body Corporate and Community Management Requests

[14-0100]

The *Body Corporate and Community Management Act 1997* provides for the establishment, operation and management of community titles schemes.

^{1,2}Reservation of Name

[14-0110]

On receipt of an application, the Registrar may reserve a name for a proposed community titles scheme. The proposed scheme land must be properly identified in the application. The period of reservation is two years, however, that may be extended for a further one year if the person who reserved the name applies during the initial two year period. The reservation ends if the person withdraws the reservation or the community titles scheme is established.

^{1,2}Community Management Statement

[14-0120]

A ‘first’ Community Management Statement (CMS) must accompany a plan of subdivision to establish a community titles scheme and takes effect when it is recorded in the Land Registry.

A ‘first’ CMS may only be recorded if it is endorsed by the local government. However, a ‘new’ CMS may either be noted by the local government or endorsed by the body corporate as follows:

‘not applicable – see s. 60(6) of the Body Corporate and Community Management Act 1997.’

A CMS cannot be amended. It can only be replaced by a totally ‘new’ CMS that has the endorsement and consent of the body corporate. A ‘new’ CMS may also only be recorded if it has been consented to by the body corporate and is lodged within three months after the **relevant event** happens (s. 65(1) and (3) of the Body Corporate and Community Management Act).

A CMS is not an instrument under the *Land Title Act 1994*. However, s. 115K(3) of the Land Title Act provides that a request to the register a CMS is an instrument. Section 115L(2) of the Land Title Act also provides that the recording of a CMS in the registry does not guarantee that it is valid or enforceable. The Registrar is not obliged to, but may, examine a CMS before it is recorded.

^{1,2}Change of address of Body Corporate

[14-0130]

The *Body Corporate and Community Management Act 1997* stipulates that notices, legal processes and documents are served on the body corporate for a community titles scheme if served personally on the secretary or another member of the committee if the secretary is absent. It also stipulates that the address for service of the body corporate is the address recorded on the indefeasible title for the common property as notified to the Registrar from time to time.

The address of the original owner as shown on the first CMS for the scheme is the address for service of the body corporate if the Registrar has not been advised otherwise. Similarly, the address for service of an owner of a lot in the scheme is either the address in the records of the body corporate or the address of the lot if no address has been recorded by the body corporate.

The address of a body corporate that is recorded by the Registrar can be changed by making a formal application to have it changed.

For further information see ¶[14-2700].

Legislation

[14-1000]

²Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act the Land Title Act applies to the registration of an interest or dealing for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1,3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

Request to Record Correction or Change of Name

[14-2000]

A name on a title may be recorded incorrectly, due to an error by either the lodging party or the registry. In other situations, the name of a party may have changed. Other than for departmental errors, a Form 14 – General Request is the correct form to use to change or correct names recorded on a title. Throughout this topic, this Form is also referred to as a Form 14 – Request to Change Name or a Form 14 – Request to Correct Name.

While no duty notation is required on this Form 14 – General Request, lodgement fees apply.

The Registrar allows a change or correction of the registered proprietor or holder of an interests name of multiple secondary interests (for example, a mortgage or a lease) by registration of a

single Form 14, rather than a separate form for each interest, provided the parties are the same and a lodgement fee is paid for each interest.

^{1,2}Where a Certificate of Title has been issued, it must be deposited for cancellation, or a request made to dispense with production.

Natural Person

[14-2010]

To correct or change the name of a natural person, a Form 14 – General Request must be lodged with a Form 20 – Declaration (statutory) setting out the circumstances that warrant a change or correction of name.

However, where an error was made by the registry, an internal request under s. 15 of the *Land Title Act 1994* or s. 291 of the *Land Act 1994* will be used to correct the name.

When a person or persons acquire an interest in a lot or a State tenure, the Registrar assumes that the name(s) provided is/are the legal name(s) of the proprietors or holders of the interest. The Registrar makes no inquiry to ascertain whether the name supplied is the legal name.

On marriage or entering into a civil partnership a person has the choice as to whether he or she will:

- (a) retain his or her previous legal name (e.g. birth name); or
- (b) adopt the surname of his or her partner.

For example, if Mary Green marries Tom Brown:

- Mary can choose to retain the surname of Green; or
- Mary can adopt the surname of Brown;
- Tom can choose to retain the surname of Brown;
- Tom can adopt the surname of Green;
- Mary and/or Tom may adopt a surname of Green-Brown as his/her/their legal name;
- Mary and/or Tom may adopt a surname of Brown-Green as his/her/their legal name.

Conversely, when a person who adopted his or her partner's surname after marriage or entering into a civil partnership and had title to an interest in a lot or a State tenure registered in that name and subsequently divorces his or her partner or ends the civil partnership, he or she may revert to his or her previous legal name as his or her legal name.

To the knowledge of the Registrar, apart from marriage, entering into a civil partnership or divorce the only mechanisms whereby a person can change his/her name are by:

- 1 Deed Poll, if the name was changed prior to 1 February 2004, or
- 2 on or after 1 February 2004, a request to change name registered in the Registry of Births, Deaths and Marriages, which is the formal means by which a change of name is recorded, or
- 3 by assumption of a name and use of that name in keeping with common law.

Persons who use other than their legal names when acquiring interests in a lot or a State tenure could experience difficulty when attempting to deal with that interest as a result of the provisions of the Land Title Act or Land Act relating to ‘obligations of witnesses for individuals’.

Section 162 of the Land Title Act and s. 311 of the Land Act provide, in part, that ‘a person who witnesses an instrument or document executed by an individual must:

- (a) first take reasonable steps to ensure that the individual is the person entitled to sign the instrument or document; and
- (b) have the individual execute the document in the presence of the person...’.

Witnesses may find it impossible to fulfil their obligation of ‘ensuring that the individual is the person entitled to sign the instrument or document’ if the person is not registered as the proprietor in their legal name.

When totally different names are used as aliases, it will be extremely difficult, if not impossible, to satisfy a witness’s requirements to subsequently register an instrument or document.

On making a request to change or correct the name of a registered proprietor or holder of an interest, evidence that the new name is the registered proprietor’s legal name will be required to be deposited.

Generally, acceptable proof of legal name is:

- a copy of a birth certificate; or
- a copy of a certificate of marriage (to adopt a different surname as a result of marriage);
- a copy of a civil partnership certificate (to adopt a different surname as a result of registering a civil partnership)
- a copy of a certificate of change of name; or
- a copy of a Court issued recorded Deed Poll; or

Note – Where an office copy is required the copy must be certified by the issuing authority. For further information on depositing supporting evidence see part 60 – Miscellaneous, esp. ¶[60-1030].

- comprehensive documentation to the satisfaction of the Registrar evidencing the change of name by assumption based on use of that name. The following documentation generally will be required:
 1. a statutory declaration by the applicant that states:
 - their previous and current names;
 - the applicant is the owner/holder of the registered interest;
 - the duration of exclusive use of the current name;
 - it is the intention of the applicant to use only the current name in all matters;
 - they are aware of the potential privacy issues associated with private documentation being deposited in a publicly accessible register; and

- they are aware that all evidence deposited in support of the application will remain a part of the public register and will be available to any interested party that searches the register.
2. evidence of exclusive use of a new name (e.g. driver licence, passport, etc.); and
 3. if relevant (i.e. hyphenated name comprising previous name and partner's surname), copy of a marriage certificate or civil partnership certificate; and
 4. sufficient supporting documentary evidence to satisfy that the new name is used exclusively (e.g. local government rates notice, receipts for mortgage and/or home insurance payments, etc.); and
 5. a statutory declaration by a reliable, independent person in a position to state that they knew the applicant prior to the adoption of their new name and are able to corroborate that the owner of the registered interest is the same person as the applicant (e.g. bank manager).

If there is more than one correction to be made on a title (e.g. where two registered owners hold as joint tenants and both their names are incorrect or have changed), only one Form 14 – General Request is required.

If only one registered proprietor's or holder's name requires correction, the Request may only be made by that person.

A registered proprietor or holder of an interest whose name requires correction (e.g. due to a misspelling) and change (e.g. due to marriage/entering into a civil partnership) need only lodge one document. The Request must be to change the name and a statutory declaration, together with documentary evidence (e.g. copies of a birth certificate and certificate of marriage/civil partnership certificate certified by the Registrar-General of Births, Death and Marriages), must be provided concerning the correction and the change of name.

Example 1 — Request to correct name (Natural Person) supported by a declaration from the solicitor's firm that prepared the original instrument or document.

Example 1A — Request to correct name (Natural Person) supported by a declaration by the registered owner.

Example 2 — Request to change name.

Corporation

[14-2020]

A Form 14 – General Request is lodged to record the change or correction of a name of a corporation. Where an incorrect name is recorded due to an error by the registry, an internal request will be used to correct the name.

Where a corporation desires to record a change of name which has already been effected under the *Corporations Act 2001* (Cth), a Form 14 – General Request should be used.

Either an office copy of the certificate of change of name certified by the Australian Securities and Investments Commission (ASIC) or a search extracted from the ASIC database through an authorised information broker must be deposited with the Form 14.

Where a corporation's name has been changed in compliance with or by legislation, no evidence is required, provided the relevant Act is cited in the Request. A lodgement fee is payable unless an exemption is included in the legislation.

When an amalgamation of companies creates a new company, a change of name is not the proper instrument to record such a transaction. A Form 1 – Transfer should be used in this case.

Where a company has had several changes of name, the Form 14 – General Request need only identify the present name as the new name and the name on the title as the former name. However, documentary evidence is required to illustrate the chain of changes of name.

See Example 3.

Documents to be Deposited When Requesting Change or Correction of Name

[14-2025]

Documentation required to be deposited with a Form 14 – Request to Change or Correct Name is as follows:

- Where the ownership of a fee simple, a water allocation or a State tenure is concerned:
 - ^{1,2}Certificate of Title, if issued or a request made to dispense with production; and
 - **For a corporation:**
 - (a) a copy of the certificate of change of name; or
 - (b) a search from the ASIC database that shows both the current name and the former name (**Note:** For an update of a registered power of attorney to record a change of a company name, the evidence provided must contain the date the change of name of the company was effective from, as this date is required to be entered into the power of attorney register (see ¶[14-2800]);
 - **For a natural person:**
 - (a) a statutory declaration declaring the facts; and
 - (b) documentary evidence in support of the change of name, e.g. certificate of marriage certified by relevant issuing agency (see ¶[14-2010]).

For more information about depositing supporting documentation see ¶[60-1030].

However, if a statutory declaration, made by a lawyer, is deposited stating that:

- 1 the error was made in the document that recorded the owner's or the holder's name/s; and
- 2 the document was prepared by him/her,

then no further evidence is required.

- Where a lessee's interest is concerned the same evidence as shown above as well as the following requirements:
 - ^{1,2}If the applicant is the lessee under a freehold lease, the Certificate of Title need not be deposited. However, if the lessor has, in any way, joined in the Form 14 by way of consent, then the Certificate of Title must be deposited or a request made to dispense with production.

- A request to record the correction or change of name of a lessee, which is executed after the initial term of the lease has expired, will not be registered unless a Form 13 – Amendment of Lease is lodged prior to the Form 14 – Request to Change Name of the lessee.

Incorporated Association

[14-2030]

Where an incorporated association has changed its name, a Form 14 – General Request must be lodged. The Form 14 should be lodged with:

- a. a certified copy of the certificate of incorporation in the new name of the association; or
- b. (if applicable) a search from the Australian Government Business Register that shows both the current name and the former name (**Note:** For an update of a registered power of attorney to record a change of an incorporated association name, the evidence provided must contain the date the change of name of the associated corporation was effective from, as this date is required to be entered into the power of attorney register (see ¶[14-2800]).

After lodgement, land held by the association will be recorded as being held by the association in its new name. For further information about depositing supporting documentation see ¶[60-1030].

See Example 3.

For the manner of execution or the recording of vestings in incorporated associations, see [14-2360].

¶[14-2040] deleted

Transition from an Incorporated Association to a Company Registered under the *Corporations Act 2001* (Cth)

[14-2035]

Part 11A of the *Associations Incorporation Act 1981* and Part 5B.1 of the *Corporations Act* provide for an incorporated association to transition to a company registered under the *Corporations Act*.

A Form 14 – General Request to Record Change of Name, with appropriate evidence must be lodged to record the transition. Appropriate evidence will consist of:

- a. a copy of the notice of authority to transfer incorporation provided by the chief executive under s. 106E of the *Associations Incorporations Act*; and
- b. a copy of the certificate issued by ASIC pursuant to s. 601BD of the *Corporations Act*, or a search from the ASIC database that shows the current name of the corporation.

For further information about depositing supporting information see ¶[60-1030].

Item 6 of the Form 14 – General Request to Record Change of Name should include wording similar to the following:

- I hereby request that the change of name of the registered owner from XYZ Inc. to XYZ Pty Ltd A.C.N. 001 311 711 be recorded following the transition from an incorporated association to a company registered under the *Corporations Act 2001* (Cth) pursuant to Part 11A of the *Associations Incorporation Act 1981* and part 5B.1 of the *Corporations Act 2001* (Cth) be recorded.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

^{1,2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

Request to Remove Expired Lease from Title

[14-2045]

See part 7 – Lease, esp ¶[7-2200]. See Example 4.

Request to Register Merger of Interest

[14-2050]

A merger of interest may occur in the following circumstances:

- ²merger of mortgage see [14-2060];
- ²merger of lease see [14-2070];
- ¹merger of easement see [14-2080]; and
- ^{1,2}merger of profit a prendre.

The merger of an interest with the fee simple or water allocation cannot occur where the two interests are held by the same party in different capacities. For example, a lessee of the freehold may hold the interest as a trustee for another and may then become the registered owner of the fee simple in his/her own right, i.e. not as trustee. In that situation, the leasehold interest cannot merge with the freehold interest.

²Merger of Mortgage

[14-2060]

Where a mortgagee becomes the registered owner of the land over which the mortgagee holds a mortgage, s. 63(2) of the *Land Title Act 1994* requires that the Registrar register the mortgagee as the registered owner free from the mortgage. Upon registration (of the transfer to the mortgagee), the mortgage ceases to exist. In this situation a Form 14 – General Request is **not** required to merge a mortgage with the freehold or water allocation.

Where a transferee and mortgagee are **not** one and the same person (i.e. where their names are the same, but they are different people such that no merger is taking place), a statutory declaration of identity should be lodged with the Form 1 – Transfer stating that the transferee and the mortgagee are not the same person. Without such declaration, a merger will be automatically recorded.

However, the mortgagee may request, pursuant to s. 63(3) of the *Land Title Act*, that the two interests not be merged. If such a request is made, the Registrar cannot cancel the mortgage. This request is to be made when the mortgagee lodges the transfer for registration by including in Item 5 of the Form 1 the words ‘do not cancel Mortgage No. [number]’.

If the mortgagee decides to merge the mortgage after previously advising the Registrar not to merge the mortgage in accordance with s. 63(3) of the Land Title Act, a Form 14 – General Request will be required to merge the mortgage.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

^{1,2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

²Merger of Lease

[14-2070]

Where a lessee becomes the registered owner of:

- a lot; or
- ¹part of the lot;

the lessee may lodge a Form 14 – General Request to merge the two interests. The lease is then cancelled. The merger of the two interests does not occur automatically.

Where a lessee's interest in a lease merges with the fee simple or water allocation and there is a sub-lease registered over the land, the sub-lease remains in place and becomes the head-lease (s. 115 of the *Property Law Act 1974*). The consent of the sub-lessee is not required.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

¹The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

See Example 5.

Where the lease being merged with the fee simple or water allocation is mortgaged under a registered mortgage, the consent of the mortgagee in Form 18 is required to effect the cancellation of the mortgage or, alternatively, a Form 3 – Release of Mortgage may be lodged.

¹Merger of Easement (Extinguishment under s. 87A of the *Land Title Act 1994* or s. 368(2) of the *Land Act 1994*)

[14-2080]

When the dominant tenement (the land benefited by the easement) and the servient tenement (the land burdened by the easement) come into the ownership of the same party, the easement may be merged. If the registered owner or a trustee, lessee or licensee under the *Land Act 1994* requires the easement to be merged, a Form 14 – General Request requesting the merger should be deposited. Once the Request is registered, the easement is extinguished.

See Example 6.

Merger of an easement is not automatic, as the registered owner or a trustee, lessee or licensee under the Land Act may subsequently transfer their interest, either in the dominant or servient tenement. The easement would then continue to exist. However, where a plan of survey has the effect of amalgamating the dominant and servient tenements so that they are both contained in the one lot, the easement is automatically merged as there are no longer two separate titles necessary to support the easement. A merger of this type is the subject of internal documentation.

Withdrawal of Caveat and Discharge, Satisfaction, Cancellation and Withdrawal of Writ of Execution

[14-2090]

A caveat that has been registered over a title may be withdrawn, whereas a registered writ of execution issued from a Court may be discharged, satisfied or cancelled. A registered writ of execution issued by the Registrar of the State Penalties Enforcement Registry may be withdrawn.

Withdrawal, Removal and Cancellation of Caveat

[14-2100]

A caveat may be withdrawn by a caveator or removed by a caveatee. In the former case, the Form 14 – Request to Withdraw Caveat can be signed by the caveator or by the caveator's current solicitor.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

²The Certificate of Title, if issued, is not required to be deposited.

The caveatee may apply to the Supreme Court for an order that the caveat be removed (s. 127 of the *Land Title Act 1994* or s. 389H of the *Land Act 1994*). If successful, the caveatee lodges the court order with a Form 14 – Request to Remove Caveat. See Example 8.

Unregistered caveats may be withdrawn by way of letter signed by the caveator or the caveator's current solicitor (s. 159 of the *Land Title Act* or s. 308 of the *Land Act*).

Lapsed caveats may be removed by a Form 14 – Request to Remove Caveat (no fee applies).

Under s. 128 of the *Land Title Act* or s. 389I of the *Land Act* a party may, by a Form 14 – General Request, request that a caveat be cancelled, where the party can show:

- that the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or
- that the claim of the caveator has been settled by agreement or otherwise satisfied; or
- that the nature of the interest claimed does not entitle the caveator to prevent registration of an instrument that has been lodged.

Strong evidence will be required to be lodged with the Form 14 – General Request to cancel, including a Form 20 – Declaration setting out the grounds supporting the Request for cancellation.

The Registrar is obliged to notify the caveator of the intention to cancel the caveat seven days before cancelling it (s. 128(2) of the *Land Title Act* or s. 389I (3) of the *Land Act*).

Partial Withdrawal of Caveat

[14-2110]

A partial withdrawal of a caveat may occur:

- where the caveat is registered over several lots, or leases or licences under the *Land Act 1994* contained in separate titles and is subsequently withdrawn in relation to one or more, but not all, of the lots, or leases or licences under the *Land Act*; or
- ¹where the caveat is registered over one title that contains more than one lot and the withdrawal is for less than all the lots in that title.

The parcels or the part of the title over which the caveat is to be withdrawn must be clearly identified.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

^{1,2}The Certificate of Title, if issued, is not required to be deposited.

²Instalment Contract Caveat

[14-2120]

A caveat lodged to protect a purchaser's interest under an instalment contract pursuant to s. 74 of the *Property Law Act 1974*, may be removed or withdrawn by a Form 14 – General Request. Lodgement fees are payable, however, a duty notation is not required.

¹The Certificate of Title, if issued, is not required to be deposited.

Discharge, Satisfaction or Cancellation of Writ of Execution

[14-2125]

Discharge

A Form 14 – General Request to Record Discharge of Writ of Execution must be used by an enforcement creditor to remove the writ where it has been satisfied by payment of the debt and appropriate costs or otherwise satisfied.

If the Form 14 is executed by:

- (a) the enforcement **creditor** personally, no evidence of satisfaction of the debt is required to be deposited; or
- (b) a solicitor on behalf of the enforcement creditor, either evidence of satisfaction of the debt or a letter from the enforcement creditor's solicitor (on the solicitor firm's letterhead) confirming that the solicitor is acting on behalf of the enforcement creditor in discharging the writ, must be deposited.

Appropriate evidence must be:

- (a) a certificate of search issued by the Court that issued the writ; or
- (b) a statutory declaration stating that the debt, costs and interest have been repaid in full together with a copy of the original receipt(s) for the repayment. The copy of the receipt must comply with one of the options in [60-1030].

All items on the Form 14 must be appropriately completed. Applicable lodgement fees must be paid. See Example 7.

^{1,2}The certificate of title (if issued) is not required to be deposited.

Satisfaction

Where the enforcement creditor cannot be contacted or refuses to provide a request to record a discharge the enforcement debtor may lodge a Form 14 – General Request for Satisfaction of Writ of Execution to have the writ removed from the title. Evidence of satisfaction of the debt must be deposited with the Form 14.

Appropriate evidence must be:

- (a) a certificate of search issued by the Court that issued the writ; or

- (b) a statutory declaration stating that the debt, costs and interest have been repaid in full together with a copy of the original receipt(s) for the repayment. The copy of the receipt must comply with one of the options in [60-1030].

All items on the Form 14 must be appropriately completed. Applicable lodgement fees must be paid. See Example 9.

^{1,2}The certificate of title (if issued) is not required to be deposited.

Cancellation

A writ of execution can be removed by anyone by lodgement of a Form 14 – Request to Cancel a Writ of Execution. The following criteria must be satisfied:

- Six months (and any appropriate extension time as notified to the Registrar) must have expired.
- The request must be accompanied by evidence of non-enforcement. The evidence must be:
 - (a) for the Supreme Court or District Court a certificate of search issued by the Court that issued the writ.
 - (b) for the Magistrates Court either:
 - (i) a certificate of search issued by the Court that issued the writ; or
 - (ii) if the Court refuses to issue a certificate of search, the Registrar of Titles will accept a statutory declaration stating that the Court refused to issue a certificate of search and that a search of the Court has been completed and the result of the search revealed that the time for the writ has expired or has not been executed.

All items on the Form 14 must be appropriately completed. No lodgement fees are payable.

^{1,2}The certificate of title (if issued) is not required to be deposited.

Withdrawal of Writ of Execution Issued by the Registrar of SPER

[14-2127]

To withdraw a registered writ of execution issued by the Registrar of the State Penalties Enforcement Registry (SPER) a Form – 14 General Request signed by the Registrar of SPER or a delegate must be registered. The term ‘discharge’ may be used in lieu of ‘withdrawal’.

^{1,2}The certificate of title (if issued) is not required to be deposited.

Lodgement fees are not applicable.

Partial Discharge, Satisfaction or Cancellation of Writ of Execution

[14-2130]

Partial discharge, satisfaction or cancellation of a writ of execution may occur:

- where a writ of execution is registered over several lots, or leases or licences under the *Land Act 1994* contained in separate titles and is subsequently discharged in relation to one or more, but not all, of the lots, or leases or licences under the Land Act; or
- ^{1,2}where a writ of execution is registered over a number of lots in one title and the discharge is for less than all of the lots.

²Where a writ of execution is registered over a lot which is subsequently subdivided, the writ then affects the new titles created by the:

- ¹plan of subdivision for freehold land; or
- ³subdivision of a water allocation;

and can be discharged, satisfied or cancelled so far as relates to individual lots.

Lodgement fees are payable, however, there is no duty notation required.

See Example 7.

¶[14-2140] deleted

Extension of Writ of Execution

[14-2150]

Refer to part 12, esp ¶[12-2010] and ¶[12-2020]. See Example 10.

Standard Terms Document Forming Part of Instrument/Document

[14-2160]

Section 169 of the *Land Title Act 1994* or s. 318 of the *Land Act 1994* enables standard terms documents to be registered.

A registered standard terms document sets out the provisions, covenants and conditions of other instruments or documents, such as mortgages, leases, statutory covenants and easements.

Referring to a registered standard terms document removes the need to repeat all the provisions, covenants and conditions in instruments or documents to be lodged. For example, a mortgagee may register a standard terms document setting out its common mortgage covenants. For each subsequent mortgage, it need only prepare and lodge a *National Mortgage Form* which refers to the dealing number of the standard terms document.

Section 171(1) of the *Land Title Act* or s. 320(1) of the *Land Act* provides that, in addition to incorporating the terms of a standard terms document, an instrument or document may incorporate other terms into the instrument or document.

Under s. 168A of the *Land Title Act*, references to standard terms documents in ss. 170 and 171 include a standard terms document that has been or is taken to be registered under the *Land Act*.

Under s. 317A of the *Land Act*, reference to standard terms documents in ss. 319 and 320 include a standard terms document that has been or is taken to be, registered under the *Land Title Act*.

A Form 20 is used to set out the content of a standard terms document which must include the class of instrument or document to which it applies. A completed Form 14 – General Request to Register a Standard Terms Document must be lodged accompanied by the Form 20.

Practitioners and financiers are encouraged to register standard terms documents in instances where the terms and/or conditions and/or covenants are the same or very similar for multiple instruments or documents that they will lodge.

No fees are payable for lodgement.

See Example 11.

Request to Record Transmission by Bankruptcy

[14-2170]

Where a registered owner of a lot or the holder of an interest becomes bankrupt, that lot or interest will immediately vest in that person's trustee in bankruptcy. The person's trustee in bankruptcy will be a registered trustee where he/she has consented to act as the trustee in bankruptcy or, if no registered trustee has so consented, the trustee in bankruptcy will be the Official Trustee. The trustee in bankruptcy will deal with the lot or interest in accordance with the *Bankruptcy Act 1966* (Cth) to try to satisfy the bankrupt's creditors. A bankrupt cannot hold or deal with land or an interest in land in their personal capacity. See sections 58(1)(a), 58(1)(b) and 58(6) of the *Bankruptcy Act*.

Note: In accordance with ss. 160 and 161 of the *Bankruptcy Act*, the prescribed name for a private trustee is "The Trustee (or Trustees) of the Property of [Name of Bankrupt], a Bankrupt"; or if the property vests in the Official Trustee in Bankruptcy, the prescribed name is "Official Trustee in Bankruptcy".

A Form 14 – General Request must be lodged to register a transmission by bankruptcy pursuant to s. 115 of the *Land Title Act 1994* or s. 381 of the *Land Act 1994*. An extract from the National Personal Insolvency Index that is dated less than two weeks before, or any time after, execution of the Form 14, that evidences that the trustee has been appointed must be deposited with the request (see [60-1030]). Upon the transmission occurring, it is recorded on the title that the lot or interest is vested in the trustee in bankruptcy.

Throughout this topic, this Form is also referred to as a Form 14 – Request to Record Transmission by Bankruptcy.

Under the *Bankruptcy Act*, a transmission may be sought by:

- a trustee in bankruptcy (whether it be a registered trustee or the Official Trustee);
- a trustee in bankruptcy of a deceased debtor.

Lodgement fees are applicable and a duty notation is required.

Where the bankruptcy of a joint tenant severs a joint tenancy, a tenancy in common is created.² However, a separate title is not created unless it is required or evidenced by payment of the relevant fee by the trustee.

Where a trustee is registered on the title in the registry and a new trustee has been appointed but not registered on title, a new Form 14 – Request to Record Transmission by Bankruptcy to the new trustee must be lodged to precede a dealing with the bankrupt's interest by the new trustee. An extract from the National Personal Insolvency Index that is dated less than two weeks before, or any time after, execution of the Form 14, that evidences that the trustee has been appointed must be deposited with the request (see [60-1030]). This is supported by s. 58(2) of the *Bankruptcy Act* which is taken to mean that the trustee must be registered on title before they may deal with the property. Until registered, the trustee only has an equitable interest and therefore has no authority to deal with the property. This is also in line with s. 181 of the *Land Title Act* and s. 301 of the *Land Act*.

Bankruptcy of Debtor or Deceased Debtor's Estate

[14-2180]

A person may become bankrupt:

- On the acceptance of their own petition (Debtor's Petition) by the Official Receiver through the Insolvency and Trustee Service Australia (s. 55; s. 56A; and s. 57 of the *Bankruptcy Act 1966* (Cth)).

- When the court makes a sequestration order on the application of a creditor (Creditor's Petition) (s. 52 of the Bankruptcy Act).
- When the court makes a sequestration order on the application of a trustee or a creditor of a Part IV Composition or Arrangement (s. 76B); Part IX Debt Agreement (s. 185Q(5)); or a Part X Personal Insolvency Agreement (ss. 221(1), 222(10) and 222C(5) (from 1 December 2004). Prior to 1 December 2004 there were three types of Part X arrangements (Compositions, Deeds of Assignment or Deeds of Arrangement). An application for a sequestration order in these cases is equivalent to filing a creditor's petition.
- An administration order may be made by the court against the estate of a deceased debtor on the application of a creditor or a person administering the estate of a deceased person (s. 244 and s. 247 of the Bankruptcy Act).

The operation of s. 58 of the Bankruptcy Act serves to transfer or 'vest' the bankrupt's or deceased person's property in the trustee of the bankrupt (subject to exceptions detailed in s. 116(2) of the Bankruptcy Act). All property acquired by or devolved on bankrupts after the date of their bankruptcy and before being discharged from bankruptcy also vests in the trustee of the bankrupt (subject to s. 116(2) of the Bankruptcy Act). The vested property is 'divisible property' and includes any interest in fee simple, a water allocation or a lease, sublease or licence under the *Land Act 1994* where the person entitled to the interest is bankrupt.

The trustee of a bankrupt may be the Official Trustee in Bankruptcy or a private bankruptcy trustee or 'registered trustee'.

The names and contact details for all registered trustees are available from the Insolvency and Trustee Service Australia internet site.

The Official Trustee in Bankruptcy (Official Trustee) is a body corporate created by s. 18 of the *Bankruptcy Act 1966* (Cth)). It has perpetual succession; may acquire, hold and dispose of real and personal property; and may sue and be sued in its corporate name. The Official Trustee has a seal.

An Official Receiver is a natural person who holds a statutory position under s. 15 of the Bankruptcy Act.

The Official Receiver for the Bankruptcy District of the State of Queensland may delegate all or any powers and functions of the Official Receiver, e.g., to a Deputy Official Receiver.

The Official Receiver or delegate exercises powers and performs functions of the Official Trustee that relate to matters originating in the District including execution of documents in the name of the Official Trustee, e.g., execution of a transfer by affixing the seal of the Official Trustee.

The National Personal Insolvency Index (NPII) is an Index of natural persons who have been subject to a proceeding or administration under the Bankruptcy Act. It is maintained by Official Receivers through the Insolvency and Trustee Service Australia (ITSA) pursuant to Part 13 of the Bankruptcy Regulations 1996 (Cth). The Index contains names, status of administration and the current trustees.

The content of an extract of the National Personal Insolvency Index includes:

- type of administration or proceeding;
- date of administration or proceeding;

- petition type (Debtor or Creditor Petition);
- identification number;
- full name of the debtor, including aliases;
- date of birth of the debtor;
- name of the trustee or controlling trustee; and
- the current status, e.g. a statement that the debtor is bankrupt or has been discharged from bankruptcy.

The types of administration or proceedings reported on an extract of the Index are:

- interim receiving orders;
- bankruptcy;
- post bankruptcy scheme or composition;
- Part X s. 188 authority;
- Part X Personal Insolvency Agreements (from 1 December 2004);
- Part X deed or composition (prior to 1 December 2004);
- Part IX debt agreement – proposal/acceptance; and
- Part XI deceased estate.

In the absence of proof to the contrary, the information extracted from the Index is evidence of the truth of the information (r 13.10 of the Bankruptcy Regulations).

A Form 14 – General Request must be lodged to register a transmission by bankruptcy based upon a debtor’s petition, sequestration order or administration order, together with the following:

- ^{1, 2}if issued, either the Certificate of Title or a request to dispense with its production;
- an extract from the NPII current at the time of execution of the Form 14;
- a statutory declaration by the trustee identifying the bankrupt as the registered owner or holder of the interest;
- ^{1, 2}if a trustee of a bankrupt estate seeks to enter a transmission by bankruptcy over property affected by the *Defence Service Homes Act 1918* (Cth), a certified copy of the approval given by the Secretary of the Department of Veterans’ Affairs must also be lodged (s. 45A of the *Defence Service Homes Act*).

See Examples 12 and 13.

¶[14-2190] to ¶[14-2200] deleted

Trustee by Part IV Composition or Arrangement, Part IX Debt Agreement or Part X Personal Insolvency Agreement [14-2210]

A person who desires to make non-divisible property available to a trustee to be dealt with under Part IV, Div 6 – Composition or Arrangement with Creditors may, pursuant to a composition proposal or scheme of arrangement, assign that property to a registered trustee or the Official Trustee in Bankruptcy (s. 73(1) of the *Bankruptcy Act 1966* (Cth)). Acceptance of the composition or scheme of arrangement by creditors annuls the bankruptcy.

A person who desires that their affairs be dealt with under Part IX (debt agreement) or Part X (personal insolvency agreement) of the Bankruptcy Act may assign their property to a registered trustee, or the Official Trustee in Bankruptcy or any other person referred to as an administrator. In either case the property may be assigned to another party (s. 185C; s. 188A of the Bankruptcy Act). Agreements under Part IX and Part X avoid bankruptcy or sequestration.

On acceptance by creditors of a composition proposal or scheme of arrangement under Part IV, a debt agreement under Part IX or a personal insolvency agreement under Part X the specified property is capable of being transferred to the trustee or administrator. Alternatively the agreement with creditors under these provisions may authorise for the property to be transferred to a purchaser under direction from the trustee or the property may be transferred directly from the debtor to a creditor again under direction from the trustee.

If the property is sold to a third party under direction from the trustee/administrator the debtor may be required to execute all documents relating to property as directed by the trustee/administrator. In any transfer executed by the debtor, the consideration clause should indicate that the purchase moneys were paid to the trustee/administrator under the agreement reached with creditors, e.g.:

- for a Part X

‘[Amount] paid to [name] as trustee of [name] (a debtor) under a deed of personal insolvency agreement pursuant to s. 188A of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee’.

- for a Part IV Composition or Scheme

‘[Amount] paid to [name] as trustee of [name] (a debtor) under a composition pursuant to s. 73 of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee’.

- for a Part IX debt agreement

‘[Amount] paid to [name] as trustee of [name] (a debtor) under a debt agreement pursuant to s. 185C of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee’.

A copy of the composition, scheme of arrangement, debt agreement or personal insolvency agreement must be deposited.

A consent and direction by the trustee in Form 18 – General Consent is also required.

Bankruptcy Legislation Amendment Act 2004 (Cth)

[14-2220]

The Bankruptcy Legislation Amendment Act introduced significant changes to Part X of the Bankruptcy Act taking effect from 1 December 2004. From that date authorities given under

s. 188 by a debtor result in just one type of matter known as a personal insolvency agreement (PIA). Unlike a bankruptcy or a Deed of Assignment under the pre-1 December 2004 provisions property does not vest automatically by operation of law in the trustee of a PIA. So there is no transmission of title, however PIAs are flexible arrangements negotiated with creditors and may involve the debtor assigning property to the trustee or third parties.

Authorities executed by debtors prior to 1 December 2004 may have resulted in one of three types of arrangements:

- A deed of assignment which resulted in the vesting of the debtor's property in the trustee and which may require transmission.
- A composition which typically involved the periodic payments to the trustee from the debtor's income but could also include the assignment of property.
- A deed of arrangement which could involve the assignment of property.

Part X arrangement entered into prior to 1 December 2004

[14-2225]

On the execution of a deed of assignment or composition proposal under Part X of the *Bankruptcy Act 1966* (Cth), all of the debtor's divisible property vests in the trustee of the deed of assignment.

If a trustee needs to be recorded on a title, they will be registered as 'The trustee of the property of [name]'.

A Form 14 – General Request must be lodged with the following:

- ^{1, 2}if issued, either the Certificate of Title or a request to dispense with its production;
- an extract from the NPII current at the time of execution of the Form 14;
- a statutory declaration by the trustee identifying the debtor as the registered owner or holder of the interest.

If a trustee under a Part X deed of assignment or composition proposal does not seek to be registered on the title, s. 268(2)(f) of the *Bankruptcy Act* requires the debtor to execute all documents relating to property assigned by the deed of assignment or its disposal as directed by the trustee or by order of a court of competent jurisdiction. In any transfer executed by the debtor, the consideration clause should indicate that the purchase moneys were paid to the trustee under the deed of assignment pursuant to s. 214 of the *Bankruptcy Act*, e.g.:

'[Amount] paid to [name] as trustee of [name] (a debtor) under deed of assignment executed pursuant to s. 214 of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee'.

The deed of assignment must be deposited.

A consent and direction by the trustee in Form 18 – General Consent is also required.

Controlling Trustee under Part X of the *Bankruptcy Act 1966* (Cth)

[14-2230]

A person who does not want their estate to be sequestrated may enter into a deed of assignment or arrangement or a composition under Part X of the *Bankruptcy Act*. The person may sign an authority in favour of a trustee or solicitor in accordance with Form 13 (Administrative Forms) of the *Bankruptcy Regulations 1996* (Cth). That authority empowers the trustee, solicitor or the Official Trustee to call a meeting of their creditors and to take control of their property (s. 188

of the Bankruptcy Act). Once the authority becomes effective the trustee or solicitor becomes a controlling trustee by force of s. 188(6) of the Bankruptcy Act.

The controlling trustee may deal with the debtor's property in any way that is in the interest of the creditors (s. 190(2)(d) of the Bankruptcy Act). The controlling trustee has the same powers as a duly constituted attorney of the debtor.

Any instrument or document executed by the controlling trustee under this section will be treated as if the controlling trustee had been appointed by the debtor as their lawful attorney (s. 190(4) of the Bankruptcy Act).

²Section 189AB of the Bankruptcy Act creates a statutory charge. That charge is a caveatable interest and a caveat may be lodged (see part 11, esp ¶[11-0030]).

Powers of a Trustee

[14-2240]

Section 134 of the *Bankruptcy Act 1966* (Cth) authorise the trustee of a bankrupt or a debtor to sell, lease or mortgage property or to execute a power of attorney.

¹While there are no specific provisions to grant or accept an easement, this is regarded as acceptable if it improves the value of the property.

The Registrar will register these instruments or documents without enquiry.

Transfers by trustees to themselves are improper without leave of the court (s. 165 of the Bankruptcy Act).

Annulment of Bankruptcy

[14-2250]

Where a bankruptcy is annulled, the property which has not been sold by the trustee in bankruptcy reverts to the bankrupt, subject to any order of the court directing that the property should vest in an appropriate person.

The former bankrupt or the person in whom the property is vested by the court order must lodge a Form 14 – General Request, accompanied by:

- ^{1, 2}the Certificate of Title, if one has been issued, or a request to dispense with its production; and
- an extract from the NPII current at the time of execution of the Form 14.

See Example 15.

If the trustee of a bankrupt or their solicitor executes the Form 14 no further evidence is required to be deposited.

If the former bankrupt or their solicitor executes the Form 14, the following evidence must also be deposited:

- (i) A Form 18 – General Consent to the instrument or document, executed by the trustee; or
- (ii) A statutory declaration, by the trustee, stating that the former bankrupt is entitled to be registered as owner or holder of the property.

Disclaimer

[14-2260]

Disclaimer of Freehold Land under the *Land Title Act 1994* or a Lease or Licence under the *Land Act 1994* by a Trustee of a Bankrupt

Pursuant to s. 133 of the *Bankruptcy Act 1966* (Cth), notwithstanding the trustee of a bankrupt (trustee) has or has not become the registered owner of land or the holder of a lease or licence of a bankrupt under the Land Act, the trustee may disclaim freehold land or a lease or licence under the Land Act which is unsaleable or not readily saleable or burdened with onerous covenants.

If the trustee is disclaiming freehold land or a lease or licence under the Land Act, the trustee must notify the Registrar by lodging a Form 14 – General Request (deposited as an Administrative Noting Miscellaneous). This request must be signed by the trustee or a solicitor for the trustee and supported by a notice of the disclaimer pursuant to s. 133 of the Bankruptcy Act.

Evidence by way of a current National Personal Insolvency Index extract that is dated less than two weeks before, or any time after execution of the Form 14 to validate the trustee's right to disclaim must be deposited.

The administrative advice will alert interested parties that all rights, interest and liabilities of the bankrupt in the freehold land or the lease or licence under the Land Act are terminated.

Lodgement fees are not applicable. A duty notation is not required.

^{1,2}The Certificate of Title, if issued, must be deposited or a request should be made to dispense with the production.

Disclaimer of a Freehold Lease or a Sub-Lease under the *Land Act 1994* by a Trustee of a Bankrupt

A trustee of a bankrupt (trustee) may disclaim a freehold lease or a sub-lease under the Land Act, which is unsaleable or not readily saleable or burdened with onerous covenants, without the leave of the court only if:

- the trustee has given written notice of the intention to disclaim the freehold lease or the sub-lease under the Land Act to the lessor and any sub-lessees; and
- the notified persons have not, within 28 days of the notice, required the trustee to apply to the court for leave to disclaim the freehold lease or the sub-lease under the Land Act.

To give effect to s. 133(2) of the *Bankruptcy Act 1966* (Cth), a Form 14 – General Request to register the disclaimer must be lodged. The request may be made by the lessor.

The following must be deposited with the request:

- Evidence by way of a current National Personal Insolvency Index extract that is dated less than two weeks before or any time after execution of the Form 14 to validate the trustee's right to disclaim.
- A statutory declaration where the trustee declares that:
 - 1 the bankrupt is one and the same person as the registered lessee of the freehold lease or sub-lessee of the sub-lease under the Land Act being disclaimed;
 - 2 the trustee has given notice of intention to disclaim the freehold lease or the sub-lease under the Land Act to all interested parties pursuant to s. 133(4) and regulation 6.10 of the Bankruptcy Act, and

- 3 no interested party has, within 28 days of the notice to disclaim, served notice requiring the trustee to apply to the court for leave to disclaim the freehold lease or the sub-lease under the Land Act.

Lodgement fees are applicable.

A duty notation is required if the term of the lease commenced prior to 1 January 2006.

^{1,2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

Disclaimer of Freehold Land under the *Land Title Act 1994* or a Lease or Licence under the *Land Act 1994* by a Company Liquidator

If the company liquidator is disclaiming freehold land or a lease or licence under the Land Act, the liquidator may notify the Registrar by lodging a Form 14 – General Request (deposited as an Administrative Noting Miscellaneous), supported by a copy of the Notice of Disclaimer (a Form 525 under the Corporations Regulations 2001 (Cth)).

A statutory declaration by the liquidator as to the service of notice of the disclaimer and any response received (s. 568A(1)(b) of the *Corporations Act 2001* (Cth)) must be deposited with the Form 14.

The administrative advice will alert interested parties that all rights, interest and liabilities of the company in the freehold land or the lease or licence under the Land Act are terminated.

Lodgement fees are not applicable. A duty notation is not required.

^{1,2}The Certificate of Title, if issued, must be deposited or a request should be made to dispense with the production.

Disclaimer of a Freehold Lease under the *Land Title Act 1994* or a Sub-Lease under the *Land Act 1994* by a Company Liquidator

If a company liquidator is disclaiming a freehold lease or a sub-lease under the Land Act, a Form 14 – General Request, supported by a copy of the Notice of Disclaimer (a Form 525 under the Corporations Regulations 2001 (Cth)) must be lodged to notify the Registrar of the disclaimer. The request may be made by the lessor.

A statutory declaration by the liquidator as to the service of notice of the disclaimer and any response received (s. 568A(1)(b)) of the *Corporations Act 2001* (Cth)) must be deposited with the Form 14. A lessor may make this declaration if the liquidator is unwilling to do so provided the relevant lease has no affected interests e.g. mortgages and sub-leases.

Where a lease being disclaimed has an affected interest, evidence that the Notice of Disclaimer was served on that party is also required to be deposited. A period of 14 days from when the Notice of Disclaimer was served is required to have elapsed before registration of the Form 14 under s. 568C(3) of the Corporations Act.

Lodgement fees are applicable.

A duty notation is required if the term of the lease commenced prior to 1 January 2006.

^{1,2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

Note: A notice under s. 443B (Form 509B) of the Corporations Act by a person acting in the capacity of an administrator does not serve to disclaim a lease under the Corporations Act. If the

lessor is unable to obtain a Form 525 from a person acting in the capacity of liquidator, then a copy of the Form 509B may be used as part of the basis for determining the lease instead.

Court Order to vest Disclaimed Freehold Land under the *Land Title Act 1994* or a Lease or Licence under the *Land Act 1994*

The court may order that freehold land or a lease or licence under the Land Act disclaimed by a trustee of a bankrupt or a company liquidator (s. 568F(1) of the *Corporations Act 2001* (Cth)) is vested in a person considered to be entitled. The freehold land or a lease or licence under the Land Act is vested by lodging a Form 14 – General Request supported by a copy of the court order vesting the property (see [60-1030]). The applicant must be the person in whom the court has ordered that the property be vested.

Lodgement fees are applicable. A duty notation is required.

^{1, 2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

Charge under s. 139ZN or 139ZR of the *Bankruptcy Act 1966* (Cth)

[14-2270]

A request to register a charge under s. 139ZN or 139ZR of the Bankruptcy Act is required to be lodged in Form 14.

The certificate required under ss. 139ZN(4) or 139ZR(4) that identifies the property the subject of the charge and the name of the current appointed Trustee of the Bankrupt must be deposited with the request.

The applicant must be the current appointed Trustee identified in the certificate. An extract from the National Personal Insolvency Index that is dated less than two weeks before, or any time after, execution of the Form 14 that evidences that the applicant is the trustee for the bankrupt referred to in the certificate must be deposited with the request (see [60-1030]).

Lodgement fees are payable, however, a duty notation is not required.

^{1, 2}Interest for Life

[14-2280]

To record that the holder of an interest for life has died or relinquished all rights, a completed Form 14 - General Request must be registered. On registration of the Request, the trust created for the life of the beneficiary ends and the title reverts to the registered owner.

Death of life tenant

Where the holder has died, the request must be completed to advise of the death and a copy of the death certificate deposited (see [60-1030] for information about depositing supporting documentation).

Lodgement fees are payable.

See Example 16.

Relinquishment

Where the holder relinquishes all rights, the request must be completed to advise the details of the relinquishment and a copy of the executed document of relinquishment deposited (see [60-1030] for information about depositing supporting documentation).

Lodgement fees are applicable and a duty notation is required.

^{1,2}Application for Title by Adverse Possession

[14-2290]

In certain circumstances, a party may claim title to land, although that party is not the registered owner.

The authority to make an application for title by adverse possession and the provisions governing it are to be found in ss. 98 to 108B (Division 5 of Part 6) of the *Land Title Act 1994*.

Reference material regarding the common law requirements for adverse possession include the following texts (or later editions of these texts):

- (1) Megarry & Wade *The Law of Real Property*, 6th edn, Thomson Sweet & Maxwell, 2003.
- (2) Butt, P, *Land Law*, 5th edn, Thomson Lawbook Co, 2005.
- (3) Bradbrook, A, MacCallum, S and Moore, AP, *Australian Real Property Law*, 4th edn, Thomson Lawbook Co, 2007.
- (4) Wallace et al, *Real Property Law in Queensland*, 4th edn, Thomson Reuters, 2015.

The time for bringing an action to recover a lot is 12 years from the accrual of the right of action where the person entitled to recover possession is *sui juris* (s. 13 of the *Limitation of Actions Act 1974*) and where such person is not *sui juris*, six years from his or her ceasing to be under a disability, up to a maximum of 30 years from the accrual of the right of action (s. 29 of the *Limitation of Actions Act*). If the true owner's identity is not established it will not expire until 30 years after the adverse possessor went into possession.

In this regard s. 29 of the *Limitation of Actions Act* simply extends the limitation period until any possible claim to true ownership has been barred. See *Re Johnson* [2000] Qd R 502.

Therefore, in most cases, due to the operation of s. 29 of the *Limitation of Actions Act* an applicant for title by adverse possession will have to establish that he or she has been in adverse possession of the lot for 30 years.

An applicant must demonstrate that the common law requirements for adverse possession are satisfied.

In general it is possible to determine if possession is adverse from the circumstances under which possession was taken, the acts of user relied upon by the applicant and the intention of the adverse possessor. This latter consideration is important, especially where the acts relied upon as constituting adverse possession are equivocal. A person claiming to have taken adverse possession must be more than a persistent trespasser.

The control exercised over the land must be continuous and uninterrupted for the whole of the limitation period. If this is not the case, the limitation period ceases to run against the person to whom it accrues (s. 19(2) of the *Limitation of Actions Act*).

Acts of control include the payment of rates, the construction of improvements, the erection of fencing and the carrying out of maintenance.

The applicant's statutory declaration in support of the Form 14 – General Request should declare to the following facts, giving sufficient detail to allow an assessment to be made as to whether the common law requirements for adverse possession are met:

- (1) The particulars of the possession upon which the application is based.

- (2) The manner and extent to which the land has been used and occupied.
- (3) The nature of all improvements of the land.
- (4) The extent and manner in which the land is enclosed.
- (5) The acts of ownership upon which the adverse possession is based.
- (6) The time when the improvements and fencing were erected and by whom and the persons who maintained such improvements, fencing etc.
- (7) Whether the applicant has been assessed as owner and/or paid the rates on the land.
- (8) Whether there are any documents or evidence of title affecting the said land under the control or possession of the applicant other than those listed in an attached schedule.
- (9) That no person other than the registered owner has any claim, estate or interest at law or in equity in the said land, save and except those mentioned in an attached schedule.
- (10) The names and addresses of the owners and occupiers of all lands contiguous to the subject land as far as is known to the applicant in an attached schedule.

The application should be supported by:

- (1) A statutory declaration by at least two disinterested persons who are familiar with the history of the land for the required period setting out, from their own knowledge and observation, the actual use and occupation of the land by the applicant and his/her predecessors in title during the period.
- (2) A letter from the local authority stating in whose name the rates were assessed and by whom the rates were paid for the period in question, or other documentary evidence of payment of rates for that period. If the documentary evidence consists of rates notices and/or receipts, the information should also be summarised in the form of a table showing rating periods, amounts and payment dates in chronological order.

Lodgement fees apply to the Request and any **successful application** executed after 1 March 2002 will require a notation of the payment of transfer duty before it can be registered. To facilitate this requirement a notification will be forwarded to the lodger of the application during the advertising period to allow for a transfer duty notation to be endorsed.

Before registering the applicant as an adverse possessor, the Registrar requires the applicant to give public notice of their request. For information about advertising see [60-0830].

A successful application requires the creation of an indefeasible title in the applicant's name and the prescribed fee for the creation of the new title is payable.

A person claiming an interest in a lot which is the subject of an application by adverse possessor may lodge a caveat pursuant to s. 104 of the Land Title Act.

See Example 17.

Deregistered Company

[14-2300]

^{1,2}Company Deregistered Prior to the *Companies Act 1961*

Pursuant to s. 300 of the Companies Act, when a company was dissolved, all property and rights whatsoever vested in the company immediately before its dissolution shall be ‘deemed to be *bona vacantia*, and shall accordingly belong to the Crown’.

However, during this period the Crown could not hold freehold land or an interest in freehold land. It was not until the *Queensland Government Land Holding Amendment Act 1992*, which inserted s. 15A into the *Real Property Act 1861*, that “The Crown in right of the State may, under this Act, acquire, hold and deal with land under the name ‘Queensland Government’.”

When dealing with the property of a company that was deregistered prior to 1 July 1962, a Form 14 – General Request executed by a person authorised to sign on behalf of the Crown, together with evidence of the dissolution, may be lodged to vest the property in the name of the State of Queensland (represented by the Department of Justice and Attorney General).

Upon registration the title is fully cancelled and the property becomes unallocated State Land under the *Land Act 1994*.

The Certificate of Title must be deposited, if issued, or a request made to dispense with production.

Lodgement fees are not applicable.

When dealing with the lease of a company that was deregistered prior to 1 July 1962, see part 8, esp ¶[8-2040].

Company Deregistered under the Australian Securities and Investments Commission (ASIC)

The property of a deregistered company vests in ASIC pursuant to s. 601AD of the *Corporations Act 2001* (Cth). If it is intended that the vesting be recorded on the title, a Form 14 – General Request is lodged to notify the Registrar. The property is then registered in the name of the ASIC. Upon registration, ASIC has power to deal with the property in any way (s. 601AE of the Corporations Act).

When dealing with the property of a deregistered company that has vested in ASIC, an instrument may be lodged which disposes of the property of the company, executed by ASIC, together with evidence that the company is deregistered, without the necessity of vesting the property in the name of ASIC on the title. Lodgement fees are payable.

^{1, 2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

²Foreclosure and Vesting

[14-2310]

A mortgagee, upon default by the mortgagor under the mortgage, may, subject to the terms of the mortgage, take possession of the land. This is known as foreclosing on the mortgage. A mortgagee can only foreclose after obtaining a court order authorising the foreclosure. The order vests the title in the mortgagee and the mortgagor is prevented from repaying the balance of money owing.

The mortgagee then lodges a Form 14 – General Request (also called a Request to Vest), together with a copy of the court order. A duty notation is required and lodgement fees are payable.

¹The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

See Example 18.

^{1,2}**Dedication of Road by Notice**

[14-2315]

Section 54(1) of the *Land Title Act 1994* allows for the dedication of the whole of a lot as a road for public use, by registration of a dedication notice. The form of a dedication notice is by way of a Form 14 – General Request.

Part of a lot may **not** be dedicated as a road for public use under s. 54 of the Land Title Act.

Item 6 of the Form 14 must request that ‘the within land be dedicated as road pursuant to s. 54(1) of the Land Title Act. The form must be executed by registered owner or their solicitor.

A dedication notice (Form 14) must be accompanied by the approval of the relevant planning body, and typically this will be by way of a Form 18 – General Consent. Alternatively a letter on the appropriate letterhead from the relevant planning body may be deposited with the Form 14.

If the land to be dedicated is subject to any interests e.g. easements, leases, profits, etc., consent by way of a Form 18 – General Consent of the grantee/lessee of that interest is also required to be deposited with the Form 14.

The dedication of the lot as road takes effect from the day the dedication notice is registered.

Lodgement fees apply. A duty notation is not required.

A constructing authority having acquired fee simple land for road purpose under s. 12B of the *Acquisition of Land Act 1967* may dedicate a lot as road by registering a dedication notice. A dedication notice must be made on a Form 14 – General Request and be for the whole of a lot.

Item 6 of the form must request that ‘the within land be dedicated as road pursuant to s. 12B of the *Acquisition of Land Act 1967*’. The form must be executed by the constructing authority or their solicitor.

Lodgement fees do not apply. A duty notation is not required.

¹**Resumption**

[14-2320]

Generally

A constructing authority, within the meaning of the *Acquisition of Land Act 1967* has power to take land or an interest in land (for example, an easement) for a purpose stated in the schedule of the Act.

If a resumption relates to only part of a lot or the interest being taken cannot be described by reference to an existing description, a plan identifying the land or interest is required to be registered.

Registration of the Form 14 – General Request records the resumption of land or interest in the freehold land register or the relevant State land register.

The consent of any registered proprietor e.g. mortgagee whose interest is affected by a resumption is not required.

Lodgement fees apply to forms except where the constructing authority is the State (s. 6(7)(a) of the Land Title Regulation 2015 or s. 62(5) (a) of the Land Regulation 2009). The form must have a duty notation.

^{1, 2}The Certificate of Title is not required to be deposited.

Resumption of an Easement

A Form 14 – General Request to record the resumption and a copy of the taking of easement notice are required to be lodged.

Where an interest in land, being an easement is resumed and the resumed easement intersects or follows an existing easement registered under the *Land Title Act 1994* or *Land Act 1994*, the prior registered easement continues to exist and the resumed easement is subject to the former's covenants.

²Resumption of Freehold Land by a Constructing Authority

A Form 14 – General Request to record a resumption of freehold land and a copy of the taking of land notice (gazette notice) are required to be lodged.

Once land has been resumed, there may be a following action to dedicate the land as road.

The publishing in the gazette of the taking of land notice cancels all registered interests in the land including mortgages, leases and easements and identifies the land taken and the manner in which the land is to be held by the constructing authority.

If, for example the wording of the taking of land notice states:

‘the land is taken by [Name of Department] as constructing authority for the State of Queensland for [a public purpose] as from [Date] and vests in the State of Queensland’

the lot becomes unallocated State land and is no longer recorded in the Freehold Land Register. Or, if for example the wording of the taking of land notice states:

‘the land is taken by [Name of Department] as constructing authority for the State of Queensland for [a public purpose] as from [Date] and vests in the State of Queensland’ for an estate in fee simple’

the lot taken will be recorded in the Freehold Land Register in the name of the State with reference to the representative department.

³Resumption of a Lease under the *Land Act 1994*

A Form 14 – General Request to record the resumption of a lease under Chapter 5 Part 3 Division 1 of the Land Act and a copy of the taking of leasehold interests in land notice (gazette notice) are required to be lodged.

Once the lease has been resumed the land becomes unallocated State land.

The publishing in the gazette of the taking of leasehold interests in land notice cancels all registered interests in the land including mortgages, leases and easements.

Revocation of Resumption

A revocation can only be considered if compensation has not been determined or paid.

A resumption may be revoked by publishing a revocation proclamation in the government gazette. To give effect to the revocation in the register, a Form 14 – General Request by the constructing authority to request revocation of resumption must be registered. A copy of the revocation notice must be deposited with the request.

See Example 19.

Vesting Order

By Proclamation

[14-2330]

A proclamation may vest land in the State, a statutory body representing the State or a local government. A Form 14 – General Request to Vest the land in the name identified in the proclamation is required to be lodged together with a copy of the proclamation.

^{1, 2}For a Request to Vest in favour of a local government, the Certificate of Title, if issued, must be deposited or a request made to dispense with production.

¹²The Certificate of Title, if issued, is not required to be deposited for a Request to Vest in favour of the State or a statutory body representing the State (s. 154(g) of the *Land Title Act* 1994).

The Form 14 must have a duty notation.

Registry lodgement fees are payable unless exempted by the legislation that authorises the vesting.

By Order of the Court

[14-2332]

A Court may order a lot or an interest be vested in a person other than the registered owner or holder. A Form 14 – General Request to Vest the lot or interest in the person named in the court order is required to be lodged with a copy of the order certified by the Court.

The applicant must be the person in whom the lot or interest is vested by the court order.

^{1, 2}The certificate of title, if issued, must be deposited unless the order specifically states that its deposit is not required. If it cannot be deposited for valid reasons, the applicant must formally request dispensation with the requirement.

The Form 14 must have a duty notation.

Registry lodgement fees are payable.

Vesting in a Trustee

[14-2335]

A Request to Vest in a Form 14 – General Request may be lodged to give effect to a vesting order made under the *Trusts Act 1973* or another Act. A copy of the vesting order and any other documentation giving details of the trust, subject to which the interest is vested in the trustee, must be deposited with the Request. For information about depositing supporting documentation see [60-1030].

¶[14-2340] deleted

Request for Determination of Lease

[14-2350]

In this numbered section a reference to a lease is taken to include a reference to a lease or sublease under the *Land Title Act 1994* or a sublease or sub sublease under the *Land Act 1994*.

Under s. 124 of the *Property Law Act 1974*

Usually, a lessor has an express power granted in the lease to re-enter and take possession of the premises where the lessee has defaulted under the terms of the lease. Section 107 of the Property Law Act implies into the lease a provision that the lessor may re-enter. Section 68 of the Land Title Act or s. 339 of the Land Act may also be invoked for this purpose. A Form 14 – General Request for Determination of the lease is required to be lodged to remove the lease from the title.

Proof of the re-entry and taking of possession by the lessor must be provided to the Registrar.

If a court order for re-entry and possession has been issued, a copy of the order must be deposited with the Form 14. If court action has not been taken, a declaration by the lessor or a person authorised by the lessor is required, together with evidence of the lessee's default under the lease and the demand for remedy of that default. Appropriate evidence is a photocopy of the completed Form 7 under the Property Law Act – Notice to Remedy Breach of Covenant. The declaration must set out the circumstances of repudiation by the lessee or the facts and circumstances of the re-entry and possession.

^{1, 2}If issued, either the Certificate of Title must be produced or a request made to dispense with production.

The Request must have a duty notation if the lease commenced before 1 January 2006. Lodgement fees are applicable.

The interests of existing sub-lessees or sub-sub lessees may also be determined by being included in the same Request, providing the relevant evidence is deposited.

Company Deregistered under the Australian Securities and Investments Commission (ASIC)

If the lessor re-enters and takes possession of premises leased to a company that has been deregistered, a Form 14 – General Request should be lodged to record the re-entry, supported by a Form 20 – Declaration detailing the facts and circumstances of the default; including:

- the lessee has defaulted;
- the lessor has re-entered and taken possession;
- the lessee company is deregistered; and
- notices have been served on the ASIC.

Copies of notices served on ASIC and a search from ASIC evidencing the defunct status of the lessee company are also required to be deposited.

Note – The unreported decision of Dowsett J in the matter of the *Corporations (Queensland) Act 1990 and Hassell Holdings Pty Ltd* (Supreme Court of Queensland, No 20 of 1994) held that a mortgagee exercising a power of sale could serve notice of default on ASIC.

Lodgement fees are payable. The Request must have duty notation if the lease commenced before 1 January 2006.

^{1, 2}The Certificate of Title must be deposited, if issued, or a request made to dispense with production.

Re-entry by Lessor by Repudiation

A request to record the re-entry by the lessor for repudiation is made in Form 14 – General Request. Item 6 of the Form 14 should state the lease is determined for common law repudiation. The request must be supported by statutory declaration/s, which must clearly:

- 1 State that the lease was determined for common law repudiation and not pursuant to a right of re-entry in the lease.
- 2 Provide evidence of the conduct of the lessee that amounted to a repudiation (for example, the lessee left the premises (in the case of land) or abandoned the water allocation on a particular date without consent and has not returned. The lessee may have also removed or abandoned some or all of its fixtures, fittings and stock).
- 3 Provide evidence of the conduct of the landlord that amounted to an acceptance of the repudiation (for example the lessor re-took possession of the premises or water allocation on a particular date after the lessee abandoned. The lessor may have also relet premises or water allocation/s to a new lessee etc.).

Lodgement fees are payable. The Request must have duty notation if the lease commenced before 1 January 2006.

^{1, 2}The Certificate of Title must be deposited, if issued, or a request made to dispense with production.

There is no requirement to provide a copy of a notice of default under s. 124 of the Property Law Act to the Registrar where the lease is determined for repudiation at common law.

Recording Vesting in an Incorporated Association

[14-2360]

A Form 14 – General Request is lodged in relation to incorporated associations in the following situations:

- Where land or an interest formerly held by trustees is to be vested in the name of an incorporated association under the *Associations Incorporation Act 1981* (as amended) a Form 14 – General Request is required.

See Example 24 and notations.

- Where two or more incorporated associations amalgamate, a Form 14 – General Request is lodged by the secretary of the new association requesting that the land or interest held by the previous associations be vested in the name of the new association. The Form 14 – General Request is executed by the secretary of the new association and is lodged, together with a certified copy of the certificate of incorporation of the new, amalgamated association. Land or interests previously held by the prior associations will now be recorded as being in the name of the new association. A duty notation is not required.
- Where a body which holds letters patent under the (now repealed) *Religious Educational and Charitable Institutions Act 1861* (repealed by No 74 of 1981, s. 4, sch 1) incorporates, a request to vest the land or interest so held in the association is lodged. The Form 14 – General Request is executed by the secretary of the association and is lodged with a certified copy of the certificate of incorporation of that body. A duty notation is not required.

- Where an incorporated association is cancelled, a Form 14 – General Request is lodged requesting the property of the association to be vested in the Public Trustee of Queensland. The Form 14 – General Request is lodged with a copy of the Order in Council vesting the property in the Public Trustee. Alternatively, the Governor in Council may, by an Order in Council, vary the trusts and vest the property in another body or party. In this case, a Form 14 – General Request is lodged, together with a copy of the Order in Council. A duty notation is not required in either case.
- Where a receiver and manager appointed by a mortgagee executes an instrument or document for an association under the Associations Incorporation Act, a copy of the deed of appointment certified by a solicitor is required as evidence of the appointment.

Recording Vesting under the Returned & Services League of Australia (Queensland) Branch) Act 1956

[14-2365]

The Returned & Services League of Australia (Queensland Branch) Act provides that upon the passing of a resolution by any district branch or sub-branch adopting the Act, any land held by that district branch or sub-branch or by any person/s on behalf of the district branch or sub-branch becomes vested in the branch or sub-branch in the name of ‘Trustees of the Returned & Services League of Australia, (Queensland Branch) [name of sub-branch/district branch, as the case may be] Sub-Branch/District Branch [as the case may be]’. To record such a vesting, a Form 14 – Request to Vest must be lodged, together with a certificate that a resolution adopting the Act has been passed by the district branch or sub-branch, showing the **date of adoption** of the Act and signed by the president and secretary of the district branch or sub-branch (s. 3 of the Returned & Services League of Australia (Queensland Branch) Act).

No lodgement fees are payable and a duty notation is not required.

¶[14-2370] and ¶[14-2380] deleted

Trustee

[14-2390]

A lot or an interest can be held by a registered owner or holder as trustee for one or more other parties. If no appointment of a new trustee is involved, the instruments or documents required to be lodged for registration in the registry in certain circumstances are as follows:

- where a trustee dies: a Form 4 – Record of Death (see part 51 – Trusts, esp. ¶[51-2060] to ¶[51-2090]); and
- where a trustee retires or is discharged: a Form 14 – General Request to record retirement or discharge, together with documentary evidence, see Example 22.

Lodgement fees apply.

^{1, 2}The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

A duty notation is required on a retirement or discharge.

If the appointment of a new trustee is to be simultaneously recorded, the appropriate instrument or document is a Form 1 – Recording of New Trustee (see part 1 – Transfer, esp. ¶[1-2400] to ¶[1-2420]).

Legal and Beneficial Interests Merge

[14-2400]

From time to time the situation will arise where a person (A), being registered on the title as ‘devisee in trust’ or ‘personal representative’, is also the sole beneficiary under the will of the deceased or is the only person entitled to the deceased’s estate under the rules of intestacy.

Where A has discharged all required executorial duties, other than having effected the transfer, then the property is held by A as trustee. The law is well settled that one cannot be a trustee for oneself, and so the doctrine of merger operates to merge the beneficial and legal estates.

Where A is registered as ‘devisee in trust’ or ‘personal representative’ and is alive, but is the sole beneficiary under the will and is entitled to be registered as ‘devisee’, the property may be dealt with in the following manner:

A Form 14 – Request to Record a Merger of estates should be lodged, supported by a declaration by A to the effect that he/she (as ‘personal representative’) has effected all executorial duties in respect of the administration of the estate of the deceased proprietor, but has not effected a transfer to himself/herself. See Example 23. A duty notation is required.

When A is registered as ‘devisee in trust’ or ‘personal representative’ and is deceased, but is the sole beneficiary under the will and is entitled to be registered as ‘devisee’ a Transmission Application must be lodged (see Part 5 [5-2030]).

¹Application by Local Government under Chapter 4 Part 12 Division 3 of the Local Government Regulation 2012

[14-2410]

Where land, or a lease under the *Land Act 1994* with overdue rates is:

- submitted for sale by auction but the land is not sold, the land is taken to have been sold to the local government; or
- valueless or not worth selling;

a local government can apply to be registered as owner of the land, or holder of the lease under the Land Act.

An application to register land, or a lease under the Land Act in the name of a local government must be in a Form 14 – General Request.

²The Certificate of Title, if issued, is not required to be deposited (s. 144(5) of the Local Government Regulation).

Lodgement fees are payable and a duty notation is required.

²If the application is over the whole of the land, a new indefeasible title will not be created. However, if the land is held in separate titles by tenants in common, or is part of an existing indefeasible title, a new indefeasible title must be requested and applicable fees paid.

²If the local government requires a Certificate of Title, a Form 19 – Application for Title must be lodged.

See Example 25.

¹Change of Department Representing the State of Queensland

[14-2420]

A change of a title from one representative department to another, within the State of Queensland, is **not** a transfer of title. As no interest is passing, a Form 1 – Transfer is **not** appropriate.

A Form 14 – General Request to record a change of the department representing the State is the appropriate form even where there is a shift of responsibilities to a different department.

The address for service of notices to the applicant must be inserted in Item 5.

Item 6 of the Request must provide the full circumstances of the change and include where applicable:

- a reference to the relevant legislative authority, if the change is by way of a statutory vesting; or
- details of relevant Administrative Arrangements Order(s), if the change is by way of a machinery of government change; or
- details of any agreement, the payment of money or other arrangement, if there is a shift of responsibilities to a different department.

Lodgement fees are not applicable. A duty notation is required for only a statutory vesting.

¹Removal of a Profit a prendre

[14-2425]

If the specified period of time has expired or the event upon which it is based has happened, then a profit a prendre may be removed under the provision of s. 97L(3) of the *Land Title Act 1994* or s. 373O(3) of the *Land Act 1994*.

The removal is lodged in a Form 14 – General Request. Any interested party can apply. If the removal is based upon the happening of an event then evidence that clearly establishes the occurrence of that event must be deposited.

Lodgement fees are not applicable. A duty notation is not required.

See Example 26.

¹Order of the Court Modifying or Extinguishing an Easement

[14-2430]

If the court makes a direct order for the extinguishment of an easement or modification of the covenants to an easement, without requiring the participation of the parties to the court application to execute appropriate documentation to give effect to the order (pursuant to s. 181 of the *Property Law Act 1974*), the appropriate instrument or document to be lodged is a Form 14 – Request to Record an Order of the Court, made by either the grantor or the grantee of the easement.

²The Certificates of Title, if issued, for both the benefited and burdened lots must be deposited with the Request or a request made to dispense with production. A copy of the order of the court must also be deposited.

1, 2Request to Record Reservation of Name for a Community Titles Scheme

1, 2Reservation of Name for Community Titles Scheme

[14-2500]

A plan for a community titles scheme may not be accepted for lodgement if the name has been reserved or used for another community titles scheme.

An application to reserve, extend or withdraw a reservation of name for a proposed community titles scheme must be made by lodging a Form 14 – General Request. Only one name is to be reserved over any one parcel of land unless the Registrar is satisfied that an appropriate reason is given for example, the names being reserved are for a layered scheme. However, a name may be recorded over more than one parcel if all the parcels are to be included in the same scheme.

The Request may be made by the registered owner of the land or by another party on behalf of the proposed development. It must specify the name to be reserved for the proposed scheme and should also clearly identify the parcels to be included in the scheme land.

Prior to applying for reservation of a name for a community titles scheme, a search of previously reserved and registered names should be undertaken to ensure the envisaged name is available for reservation.

The reservation period is initially two years from the date of lodgement, however, it may be extended by a further one year if an application for extension is lodged during the initial two year period. A reservation ends if the applicant withdraws the reservation or a community titles scheme is established on the scheme land using the reserved name.

See Example 27.

¶¶[14-2510] to [14-2520] deleted

1, 2Duplication of Names

[14-2530]

Names may be duplicated or similar only with the prior written approval of the Registrar. Depending on the circumstances, approval may be given subject to either:

- the written consent of the body corporate of the existing scheme; or
- a declaration stating that:
 - the name for the scheme being reserved is not in the same locality as the existing scheme, i.e. not in the same town or city or is not within 100 kilometres of the existing scheme; and
 - the existing scheme has been established for some time and is not currently being marketed.

The circumstances may also require other special conditions to be complied with before approval is given.

1, 2Extension of Reservation of Name

[14-2540]

The period of reservation of name for a proposed scheme may be extended for a further period of one year provided the request to extend the reservation of name is lodged before the expiry of the term of the original reservation of name.

The request to extend reservation of a name must be made by the person who originally requested reservation of that name.

If the period of time for the original reservation of a name has expired a new request for reservation of the name may be lodged using the name previously reserved, providing a scheme has not been established using that name.

^{1,2}Withdrawal of Reservation of Name

[14-2550]

A name that has been reserved for a proposed community titles scheme may be withdrawn. The person who originally requested that the name be reserved must be the applicant for the request to withdraw the reservation of that name.

Request to Record Community Management Statement

¹²Community Management Statements

[14-2600]

The following items are required to be lodged to record a CMS:

- Form 14 – General Request;
- the CMS in the appropriate form;
- Schedules A to E that have been completed as they apply to the community titles scheme; and
- the relative plan of subdivision.

A Request to Record a ‘First’ CMS must show the name of the community titles scheme in the following style: ‘Brighton Villa community titles scheme’. A Request to Record a ‘New’ CMS must show the name of the community titles scheme including the community titles scheme number in the following style: ‘Brighton Villa community titles scheme 1246’.

It is very important that each CMS is accurate, complete and reliable for the benefit of the owners and other interested parties. As community management statements are important, the Registrar will examine them diligently to ensure they comply with the *Body Corporate and Community Management Act 1997* and the regulations that apply under the Act. The schedules comprise an integral part of the CMS and their compliance will also be examined thoroughly. Stringent checking may be relaxed when the Registrar is satisfied the industry has had the opportunity to familiarise itself with the requirements.

There are a number of variations in the appropriate information to be provided in a Form 14 – Request to Record a First or New CMS explained below.

When completing Item 2 in the Request to Record First CMS, the ‘Lot [number] on [Plan reference]’ and ‘Title Reference(s)’ of the lots being surveyed to create the scheme and any other lot/s intended to become scheme land must be inserted. However, for a ‘new’ CMS, the Request to Record New CMS is recorded only on the title for the common property for the scheme land which should be referred to in Item 2 as follows: ‘Common property of Brighton Villa community titles scheme 1246’ followed by the title reference only. However, if additional lots are being added to the existing scheme land, the full description and title reference of the additional lots must also be shown.

Both the registered owner(s) and the applicant in a request to register a ‘first’ CMS are the owner(s) shown on the titles for the scheme land shown in Item 2 of the Request. However, in a ‘new’ CMS, the body corporate for the community titles scheme is the registered owner and the

applicant and should be shown as follows: ‘Body corporate for Brighton Villa community titles scheme 1246’.

The request to record a ‘first’ CMS must also include the address for service of notices on the body corporate. This is not required in a new CMS unless the address is also being changed. The wording of the request in a ‘first’ CMS should be as follows:

‘I hereby request that the first community management statement deposited herewith be recorded as the community management statement for (for example) Brighton Villa community titles scheme and that... (insert full address and postcode)... be recorded as the address for service on the body corporate for the scheme.’

For a request to record a ‘new’ CMS, the request should be stated as follows:

‘I hereby request that the new community management statement deposited herewith which amends schedule(s)... and/or Item 2 regulation module of the existing community management statement be recorded as the community management statement for (for example) Brighton Villa community titles scheme 1246.’

Where a request to record a change of address is included in a request to record a ‘new’ CMS an additional current regulated fee is also payable.

The CMS and all sheets that comprise schedules to it must be numbered sequentially beginning with the CMS as ‘Page 1 of ... pages’. More than one schedule may be contained on a sheet. With the exception of any sketch plans that are included and which may be prepared on international A3 paper folded to A4 size, the CMS must conform to the requirements set out in part 59 esp ¶[59-2000] to ¶[59-2060]. See part 45 for detail of CMS, esp ¶[45-2140] to ¶[45-2320].

See also Example 28.

¶[14-2610] deleted

Request to Record Change of Address for a Community Titles Scheme

^{1,2}Change of Address of Body Corporate

[14-2700]

This address for service of the body corporate is an integral component of every Request to Record First CMS that is lodged for a community titles scheme. The address disclosed in the First CMS is recorded on the indefeasible title for the common property.

That address may be changed by the body corporate lodging either a Request to Record Change of Address for Body Corporate in a Form 14 – General Request or as part of a request to record a new CMS.

A lodgement fee is applicable; however, there is no additional fee for lodging through the post.

See Examples 29, 30 and ¶[14-2600].

Update of a Registered Power of Attorney

[14-2800]

A registered power of attorney may require updating following a change of name of a principal and/or an attorney, or following a change to the description of the property identified in the power of attorney. For an update of a registered power of attorney to record a change of a company name, the evidence provided must contain the date the change of name of the company was effective from, as this date is required to be entered into the power of attorney

register. Updating the power of attorney will facilitate prompt registration of later transactions signed under the power of attorney.

Note: *Changed* names of attorneys resulting from incorrectly prepared documentation cannot be corrected. A new Power of Attorney must be lodged. The incorrect power of attorney should be revoked.

A power of attorney may be updated by the registration of an instrument or document to record the change. Form 14 – General Request is appropriate for the purpose. Copies of supporting evidence certified by the issuing agency must be deposited with the request. For information about options for deposit of supporting evidence see [60-1030]. If an update is required to be recorded against more than one registered power of attorney, separate requests are required to update each registered power of attorney. Evidence that has already been deposited in the registry may be referred to in item 5 in the following manner ‘Certificate of change of name [or other evidence] deposited with dealing number [number]’.

A lodgement fee applies for each power of attorney being updated. A duty notation is not required.

See Example 31.

^{1,2}Charge under the *Land Tax Act 2010*

[14-2810]

Section 60 of the Land Tax Act provides that unpaid land tax is a first charge on land and has priority over all other encumbrances. The Commissioner of State Revenue may lodge and register a charge under Part 4, Division 5 of the *Taxation Administration Act 2001*.

Under s. 47B of the Taxation Administration Act, a Form 14 – General Request executed by the Commissioner or delegate must be lodged. A certificate of the Commissioner stating there is a charge over the land for a stated outstanding amount of tax must be deposited with the request.

A duty notation is not required however lodgement fees are applicable.

The certificate of title, if issued, is not required to be deposited.

^{1,2}Removal of Charge under the *Land Tax Act 2010*

[14-2820]

A charge under s. 60 of the Land Tax Act registered against an indefeasible title may be removed only by lodgement of a Form 14 – General Request to remove the charge executed by the Commissioner of State Revenue or delegate.

A duty notation is not required however lodgement fees are applicable.

The certificate of title, if issued, is not required to be deposited.

¹Statutory Charge under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

[14-2825]

Under the provisions of s. 53AX of the South-East Queensland Water (Distribution and Retail Restructuring) Act, the Northern SEQ Distributor-Retailer Authority, the Central SEQ Distributor-Retailer Authority and the Southern SEQ Distributor-Retailer Authority may record a charge over land for overdue water and sewerage charges.

Form 14 – General Request is appropriate for the purpose and should be executed by an authorised delegate of the relevant Distributor-Retailer Authority or a solicitor.

A certificate signed by the Chief Executive Officer stating the distributor-retailer's charge exists over the land must accompany the charge.

A duty notation is not required however lodgement fees are applicable.

The Certificate of Title, if issued, is not required to be deposited.

¹Removal of Statutory Charge under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

[14-2827]

A charge under s. 53AX of the South-East Queensland Water (Distribution and Retail Restructuring) Act registered against a title may be removed only by the lodgement of a Form 14 – General Request to remove the charge executed by an authorised delegate of the relevant Distributor-Retailer Authority or a solicitor.

A certificate signed by the Chief Executive Officer stating the amount has been paid must be deposited with the release of the charge.

A duty notation is not required however lodgement fees are applicable.

The Certificate of Title, if issued, is not required to be deposited.

^{1,2}Statutory Charge under the *Retirement Villages Act 1999*

[14-2830]

Creation of Statutory Charge over Retirement Village Land

Section 116 of the Retirement Villages Act (the Act) provides for the creation of a statutory charge over the whole of retirement village land immediately the chief executive of the department administering the Act registers a retirement village.

The provisions require the chief executive to give written notice of the registration of a retirement village to the Registrar. Section 116(4) of the Act requires that the Registrar must record the charge in the register under the *Land Title Act 1994*.

The charge once recorded in the registry will not be removed from the indefeasible title without lodgement of appropriate documentation. This includes cases where retirement village land the subject of a charge is subdivided to create indefeasible titles for new lots.

Form 14 – General Request is appropriate for the purpose of recording the statutory charge. The Form 14 must identify the retirement village land and be executed by the chief executive or delegate.

No lodgement fees are payable and a duty notation is not required.

The certificate of title, if issued, is not required to be deposited.

Additional Retirement Village Land

Section 117 of the Act provides that when any new land becomes retirement village land additional to the original retirement village land the charge over the original land is released and a charge is created over the original land and the new land. The chief executive as soon as practical after receiving notice by the scheme operator of the change to retirement village land must notify the Registrar of Titles.

A request to release the charge over the original land and a request to register a new charge over all land must be lodged. Form 14 – General Request is appropriate for each purpose. The

request to register the new charge must identify all the retirement village land and the day on which the new land became retirement village land. The chief executive or delegate must execute each instrument.

No lodgement fees are payable and a duty notation is not required.

The certificate of title, if issued, is not required to be deposited.

^{1,2}Release of Statutory Charge under the *Retirement Villages Act 1999*

[14-2840]

A statutory charge under s. 116 of the Retirement Villages Act registered against an indefeasible title may only be removed by lodgement of a Form 14 – General Request to remove the charge. The chief executive or delegate must execute the request to remove the charge.

No lodgement fees are payable and a duty notation is not required.

The certificate of title, if issued, is not required to be deposited.

¹Charge under the *First Home Owners Grant Act 2000*

[14-2850]

Section 48 of the First Home Owners Grant Act provides for the Commissioner of State Revenue to recover an amount of money paid in error to an applicant or a former applicant for a first home owner grant. Section 49 authorises the Commissioner of State Revenue to register a charge over an interest in the land on which the home, for which the grant was sought, is fixed.

Form 14 – General Request is appropriate for the purpose and must be executed by the Commissioner or delegate. A certificate, issued by the Commissioner of State Revenue or delegate, stating that there is a charge over the land under s. 49 of the First Home Owners Grant Act and the amount owed in relation to the charge must be deposited as evidence of the charge.

Lodgement fees apply but a duty notation is not required.

The certificate of title, if issued, is not required to be deposited.

¹Removal of Charge under the *First Home Owners Grant Act 2000*

[14-2860]

A charge under s. 49 of the First Home Owners Grant Act registered against a title may only be removed by lodgement of a Form 14 – General Request to remove the charge. A certificate, issued by the Commissioner of State Revenue or delegate, stating the amount owed in relation to the charge over the land has been paid must be deposited as evidence of the payment of the charge. The Commissioner of State Revenue or delegate must execute the request.

Lodgement fees apply but a duty notation is not required.

The certificate of title, if issued, is not required to be deposited.

Charge under the *Duties Act 2001*

[14-2870]

Section 198 of the Duties Act provides that the Commissioner of State Revenue may register a charge over land owned by a corporation to pay outstanding land rich duty payable by a land rich corporation.

Form 14 – General Request is appropriate for the purpose and must be executed by the Commissioner or delegate. A certificate, issued by the Commissioner of State Revenue or

delegate, stating that there is a charge under s. 198 of the Duties Act and the amount of land rich duty owed in relation to the charge over the land must be deposited as evidence of the charge.

Lodgement fees apply but a duty notation is not required.

^{1,2}The certificate of title, if issued, is not required to be deposited.

Removal of Charge under the *Duties Act 2001*

[14-2880]

A charge under s. 198 of the Duties Act registered against a title may only be removed by lodgement of a Form 14 – General Request to remove the charge. The Commissioner of State Revenue or delegate must execute the request.

Lodgement fees apply but a duty notation is not required.

^{1,2}The certificate of title, if issued, is not required to be deposited.

^{1,2}Charge by utility service provider under the *Body Corporate and Community Management Act 1997*

[14-2890]

Section 197 of the Body Corporate and Community Management Act (the BCCM Act) provides for a utility service provider, other than the Urban Land Development Authority or a local government, to ask the Registrar to register a charge for unpaid fees for services delivered to a body corporate. The unpaid amount is payable proportionately by each lot owner according to the contribution schedule lot entitlement for the lot and under the BCCM Act the amount payable by a lot owner is a charge on the lot.

Form 14 – General Request is appropriate for the purpose and the applicant must be the utility service provider. The request may be signed in accordance with the execution requirements for the applicant or by a solicitor for the applicant. A certificate signed by the utility service provider stating that there is a charge on all the lots under s. 196(10)(b) of the BCCM Act must be deposited with the request.

Any certificates of title, if issued, are not required to be deposited (s. 154(2)(e) of the *Land Title Act 1994*).

Normal lodgement fees apply but a duty notation is not required.

^{1,2}Removal of Charge by utility service provider under the *Body Corporate and Community Management Act 1997*

[14-2900]

Immediately after the amount secured by a charge registered pursuant to s. 197 of the Body Corporate and Community Management Act is paid the utility service provider must remove the charge. The charge may only be removed by lodgement of a Form 14 – Request to remove charge and must be removed from all the lots in the scheme. A partial removal of a charge is not permitted. The applicant must be the utility service provider and the request may be signed in accordance with the execution requirements for the applicant or by a solicitor for the applicant.

Any certificates of title, if issued, are not required to be deposited (s. 154(2)(e) of the *Land Title Act 1994*).

Normal lodgement fees apply but a duty notation is not required.

^{1,2}Request for separate indefeasible title for a lot

[14-2910]

Under provisions of s. 40 of the *Land Title Act 1994*, where the Registrar has created a single indefeasible title for two or more lots, the registered owner may request the Registrar to create separate indefeasible titles for any of the lots. A Form 14 – General Request is the appropriate form and must be signed by all of the registered owners.

The Certificate of Title must be produced, if issued, or a request made to dispense with production.

A duty notation is not required on the Request. Lodgement and creation of indefeasible title fees are applicable.

The Registrar will only create an indefeasible title for two or more lots in special circumstances and it is appropriate for the lots to have a single indefeasible title (s. 39 of the *Land Title Act*).

Where multiple parcels of land are compulsorily held in one title only by virtue of a condition of a local government consent on a plan, separate titles may be issued if the appropriate local government grants approval to the removal of the conditional consent and submits this decision in writing to the Registrar.

Prior to 1948 there was no legislative authority for local governments to conditionally consent to a plan of subdivision. The *Local Government Act 1936* was amended in 1948 to add s. 34A(3) (12 Geo. VI No 49, 1948, assented to and commenced 9 December 1948), and provide this authority. Accordingly, conditions placed on plans prior to 1948 are invalid. A common noting on these plans was ‘lots to be held in the one ownership’.

Where an application is lodged requesting separate indefeasible titles for lots over a plan that bears a notation of this nature the Registrar will:

- On plans with the local government approval dated on or after 9 December 1948, require local government consent before the titles can be issued. As a minimum, the council will have to provide their consent in writing on paper that contains their letterhead. The plan will then be noted that the conditional consent no longer applies.
- On plans with the local government approval dated before 9 December 1948, issue the titles with no further action.

²Request for separate title for a tenant in common

[14-2915]

A tenant in common of a share in a lot may request the Registrar to create a separate title for the share. A Form 14 – General Request is the appropriate form and must be signed by the tenant in common.

¹The Certificate of Title must be produced, if issued, or a request made to dispense with production.

A duty notation is not required on the Request. Lodgement and creation of new title fees are applicable.

¹Local government charge

[14-2920]

Section 95 of the *Local Government Act 2009* provides that a local government may register a charge over land or a lease under the *Land Act 1994*, for the payment of overdue rates or charges.

¹Registration of a charge**[14-2930]**

To register a charge a Form 14 – General Request is appropriate for the purpose and must be executed by the local government or by a lawyer. A certificate signed by chief executive of the local government stating that there is a charge over the land or the lease under the *Land Act 1994* must be deposited with the request.

A charge registered pursuant to s. 95 of the *Local Government Act 2009* has priority over all encumbrances over the land or the lease under the Land Act other than encumbrances in favour of the State or a government entity.

Lodgement fees are applicable. A duty notation is not required.

²The certificate of title, if issued, is not required to be deposited (s. 154(2)(e) of the *Land Title Act 1994*).

¹Removal of a charge**[14-2940]**

A registered charge under s. 95 of the *Local Government Act 2009* against a title may only be removed by lodgement of a Form 14 – General Request to remove the charge and must be executed by the local government or by a lawyer. A certificate signed by the chief executive officer or delegate of the local government stating that the overdue rates or charges have been paid must be deposited with the request.

Lodgement fees are applicable. A duty notation is not required.

²The certificate of title, if issued, is not required to be deposited (s. 154(2)(e) of the *Land Title Act 1994*).

¶[14-2495] and [14-2947] deleted

^{2,3}Subdivision of a Water Allocation**[14-2950]**

A registered owner of a water allocation seeking to subdivide it into two or more smaller allocations must first apply to the Chief Executive (s. 159(1) of the *Water Act 2000*) for the issue of a Water Allocation Dealing Certificate, whether or not the water allocation is managed under a Resource Operations Licence (ROL).

When the certificate approving the subdivision has been obtained, it must be deposited with a Form 14 – General Request Subdivision of a Water Allocation. Certificates are valid for 40 business days or until the expiry date shown on the certificate. A separate Form 14 – General Request is required to be lodged for each Water Allocation to be subdivided.

In addition for a subdivision of a water allocation managed under a ROL, a W2F152 – Notice of existence of water supply contract must also be deposited.

Lodgement fees (including a fee for each new water allocation title to be issued) apply. A duty notation is not required.

Where the water allocation is subject to a mortgage, the consent of the mortgagee in Form 18 – General Consent is required to be deposited with the request.

When a subdivision is lodged, no other dealings affecting the relevant title will be accepted for lodgement, until after the subdivision is registered.

See Example 32.

2,³Amalgamation of Water Allocations

[14-2960]

A registered owner of two or more water allocations seeking to amalgamate them into a single water allocation must first apply to the Chief Executive (s. 159(1) of the *Water Act 2000*) for the issue of a Water Allocation Dealing Certificate, whether or not the water allocations are managed under a Resource Operations Licence (ROL).

When the certificate approving the amalgamation has been obtained, it must be deposited with a Form 14 – General Request Amalgamation of Water Allocations. Certificates are valid for 40 business days or until the expiry date shown on the certificate. A separate Form 14 – General Request is required to be lodged for each amalgamation request.

In addition for an amalgamation of water allocations managed under a ROL, a W2F152 – Notice of existence of water supply contract must also be deposited.

Lodgement fees (including a fee for each new water allocation title to be issued) apply. A duty notation is not required.

Where the water allocation is subject to a mortgage, the consent of the mortgagee in Form 18 – General Consent is required to be deposited with the request.

When an amalgamation is lodged, no other dealings affecting the relevant title will be accepted for lodgement, until after the amalgamation is registered. This includes a collateral mortgage (see part 2 – Mortgage (National Mortgage Form), esp. ¶[2-2080])

Where any resource related element of the water allocations to be amalgamated are not the same, the holder must change to the elements so that the water allocations being amalgamated have the same attributes. See ¶[49-2970]. The Request to Change Water Allocation must be lodged prior to the Request to Amalgamate Water Allocations.

See Example 33.

2,³Change of Water Allocation

[14-2970]

A registered owner of a water allocation seeking to change a resource related element must apply to the Chief Executive (s. 159(1) of the *Water Act 2000*) for a Water Allocation Dealing Certificate approving such change to the resource related elements.

When the certificate approving the change has been obtained, it must be deposited with a Form 14 – General Request Change of a Water Allocation. Certificates are valid for 40 business days or until the expiry date shown on the certificate. A separate Form 14 – General Request is required to be lodged for each Water Allocation to be changed.

In addition, where the water allocation is managed by a Resource Operations Licence (ROL) holder a Form W2F152 – Notice of Existence of Water Supply Contract – issued by the ROL holder, is also required to be deposited with the request for change. See part 49 – Water Allocations, esp. ¶[49-0030].

Lodgement fees are applicable. A duty notation is not required.

See Example 34.

1,²Charge under the *Water Supply (Safety and Reliability) Act 2008* **[14-2980]**

Under s. 361 of the Water Supply (Safety and Reliability) Act where the Chief Executive gives a debt notice in relation to land that is not leased from the State under the *Land Act 1994*, the

debt becomes a charge on the land. The Chief Executive must lodge a request to register a charge. The request must be on a Form 14 – General Request and state that the request is under Chapter 4 Part 1 Division 4 of the Water Supply (Safety and Reliability) Act. The request must be accompanied by:

- a certificate signed by the Chief Executive stating the debt is a charge over the land under Chapter 4 Part 1 Division 4 of the Water Supply (Safety and Reliability) Act; and
- a copy of the debt notice.

The request will usually be signed by the Director Water Allocations.

Lodgement fees are not applicable.

The certificate of title if it exists is not required to be deposited.

The charge once registered on the title will not impede registration of other dealings. However, the charge attaches to the land and binds the owner and the owner's successors.

1,²Release of Charge under the *Water Supply (Safety and Reliability) Act 2008*

[14-2990]

A charge under Chapter 4 Part 1 of Division 4 of the Water Supply (Safety and Reliability) Act (the Act) registered over land that is not leased from the State under the *Land Act 1994* may be released on the payment of the debt (s. 361(2) of the Act).

A request to release a charge under the above provision must be on a Form 14 – General Request which:

- shows the dealing number to be released; and
- is accompanied by a certificate stating that the debt has been paid.

The request will usually be signed by the Director Water Allocations.

Lodgement fees are not applicable.

The certificate of title if it exists is not required to be deposited.

The Chief Executive is also authorised to lodge at any time a request to release a charge (s. 361(3) of the Act). A request to release the charge under s. 361(3) of the Act must be on a Form 14 – General Request which states:

- the dealing number to be released; and
- that the release is under s. 361(3) of the *Water Supply (Safety and Reliability) Act 2008*.

The request requires no supporting evidence.

The request will usually be signed by the Director Water Allocations.

Lodgement fees are not applicable.

The certificate of title if it exists is not required to be deposited.

^{1,2}Amendment of Charge under the *Water Supply (Safety and Reliability) Act 2008*

[14-3000]

A charge under Chapter 4 Part 1 Division 4 of the *Water Supply (Safety and Reliability) Act* (the Act) registered over land that is not leased from the State under the *Land Act 1994* may be varied at any time by the Chief Executive under s. 361(3) of the Act.

A request to record a variation of charge must be on a Form 14 – General Request which:

- states the dealing number of the charge being varied; and
- is accompanied by a certificate stating the type of variation requested.

The request will usually be signed by the Director Water Allocations.

Lodgement fees are not applicable.

The certificate of title if it exists is not required to be deposited.

^{1,3}Condition under s. 362 of the *Water Supply (Safety and Reliability) Act 2008*

[14-3010]

Under s. 362 of the *Water Supply (Safety and Reliability) Act* where the Chief Executive gives a debt notice in relation to land leased from the State under the *Land Act 1994*, the debt is a condition of the lease. The Chief Executive must lodge a request to register the condition. The request must be on a Form 14 – General Request and state the details of the condition and that the request is under Chapter 4 Part 1 Division 4 of the *Water Supply (Safety and Reliability) Act*. The request must be accompanied by:

- a certificate signed by the Chief Executive stating the details of the debt; and
- a copy of the debt notice.

The request will usually be signed by the Director Water Allocations.

Lodgement fees are not applicable.

¹Removal of a Carbon Abatement Interest

[14-3015]

Under the provision of s. 97U(3) of the *Land Title Act 1994* or s. 373Y(3) of the *Land Act 1994*, a carbon abatement interest may be removed if:

- (a) a request to remove the carbon abatement interest is lodged, and the request establishes that—
 - (i) the period of time for which the carbon abatement interest was intended to exist has ended; or
 - (ii) an event upon which the carbon sequestration was intended to end has happened; or
- (b) the registrar receives a request to remove the interest under an Act of the Commonwealth.

The removal is lodged in a Form 14 – General Request. Any interested party can apply. If the removal is based upon the happening of an event then evidence that clearly establishes the occurrence of that event must be deposited.

If non-freehold land is involved, the Minister administering the Act must consent to the removal on a Form 18 – General Consent.

Lodgement fees are applicable. A duty notation is not required.

Forms

General Guide to Completion of Forms

[14-4000]

For general requirements for completion of forms see part 59.

A document that is lodged as an electronic conveyancing document must be accompanied by a set of lodgement instructions identifying the nominated Responsible Subscriber and the order in which the documents are to be lodged. The lodgement instructions must be digitally signed by all subscribers to the transaction.

Guide to Completion of Form 14 for Examples 1 to 25

Item 1

[14-4010]

Insert nature of request.

Item 2

[14-4020]

^{1,2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for Crown plans). The area of the lot/s is not shown.

e.g. Lot on Plan Description	Title reference
Lot 27 on RP 204939	11223078

^{2,3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

e.g. Lot on Plan Description	Title reference
WA 27 on AP 7900	46012345

^{1,3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘CP’ for a crown plan).

e.g. Lot on Plan Description	Title reference
Lot 27 on CP Liv1234	40567123

Item 3

[14-4030]

Insert, as the case requires, the full name of the person/entity owning or holding the interest which is the subject of the request and shown in Item 4, for example:

- the registered owner of a freehold lot; or the holder of a lease or licence under the *Land Act 1994*, or the holder of a water allocation; or

- the registered proprietor or holder of a secondary interest (e.g. mortgagee or lessee of a lease of freehold).

Item 4**[14-4040]**

Insert interest, either fee simple, water allocation, the type of State tenure e.g. State Lease, or lease or mortgage number.

Item 5**[14-4050]**

Insert full name of applicant.

Complete the postal address of the applicant for service of notice for a request that changes:

- the registered owner of a freehold lot; or
- the holder of a lease or licence under the *Land Act 1994*; or
- the holder of a water allocation; or
- the name or any part of the name of the above, for example a Request to Change Name or Request to Correct Name.

Item 6**[14-4060]**

Insert details of the Request.

Item 7**[14-4070]**

Complete and execute where indicated.

Example 1 – Request to Record Correction of Name (Natural Person) supported by a declaration from the solicitor's firm that prepared the original instrument or document

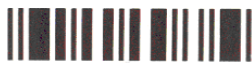
QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 2

Dealing Number



Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

OFFICE USE ONLY

1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD CORRECTION OF NAME	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 14 ON RP238942	11345070	
3. Registered Proprietor/State Lessee		
WAYNE KYLE PEARSON and MEREDITH JULIE PEARSON		
4. Interest		
FEE SIMPLE		
5. Applicant		
DWAYNE KYLE PEARSON ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 22 REAL STREET, ASHGROVE, QLD 4060		
6. Request		
I hereby request that: the name of one of the Registered Owners be corrected from Wayne Kyle Pearson to Dwayne Kyle Pearson in accordance with the declaration deposited herewith.		
7. Execution by applicant		

21/11/2007	<i>L J Fung</i> LOIS JANE FUNG
Execution Date	Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Example 1 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 2 of 2

Title Reference [11345070]

I, **LOIS JANE FUNG** of 24 Logan Road, Logan in the State of Queensland, Solicitor, do solemnly and sincerely declare as follows:

1. My firm, Smith & Co prepared a Form 1 – Transfer in the name of WAYNE Kyle Pearson and Meredith Julie Pearson lodged under Dealing No. 710478823.
 2. The name WAYNE Kyle Pearson in item 5 of the transfer was shown incorrectly.
 3. The name should have been shown as DWAYNE Kyle Pearson.
1. **AND** I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

DECLARED AND SIGNED before me at Brisbane)
this 21st day of November 2007)

L J Fung

.....
(Signature of Declarant)

W J Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 1A – Request to Record Correction of Name (Natural Person) supported by a declaration by the registered owner

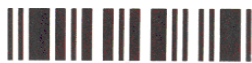
QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 2

Dealing Number



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OFFICE USE ONLY

1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD CORRECTION OF NAME	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 14 ON RP238942	11345070	
3. Registered Proprietor/State Lessee		
WAYNE KYLE PEARSON and MEREDITH JULIE PEARSON		
4. Interest		
FEE SIMPLE		
5. Applicant		
DWAYNE KYLE PEARSON ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 22 REAL STREET, ASHGROVE, QLD 4060		
6. Request		
I hereby request that: the name of one of the Registered Owners be corrected from Wayne Kyle Pearson to Dwayne Kyle Pearson in accordance with the evidence and declaration deposited herewith.		
7. Execution by applicant		

21/11/2007
Execution Date

L J Fung
LOIS JANE FUNG
.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Example 1A (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 2 of 2

Title Reference [11345070]

I, **DWAYNE KYLE PEARSON** of 24 Hideaway Close, Narangba in the State of Queensland, do solemnly and sincerely declare as follows:

1. On 20 May 2003 a transfer to Wayne Kyle Pearson and Meredith Julie Pearson was lodged under dealing 710478823.
2. My name in item 5 on the transfer was shown incorrectly as WAYNE Kyle Pearson.
3. My name should have been shown as DWAYNE Kyle Pearson as evidenced by the name shown in the copy of my certificate of birth deposited herewith.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

DECLARED AND SIGNED before me at Brisbane)
this 21st day of November 2007)

D K Pearson
.....
(Signature of Declarant)

W J Brown JP(Qual.) #12345
.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN
.....
(Name of Witness in Full)

Example 2 – Request to Record Change of Name of Registered Owner (Natural Person)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 2

Dealing Number



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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD A CHANGE OF NAME	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 10 ON RP225533	17688021	
3. Registered Proprietor/State Lessee		
GEOFFREY MATTHEW WINDSOR and LAURA MARGARET BARNARD		
4. Interest		
FEE SIMPLE		
5. Applicant		
LAURA MARGARET WINDSOR		
ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 22 REAL STREET, ASHGROVE, QLD 4060		
6. Request		
I hereby request that: in accordance with the declaration dated 21 November 2007 deposited herewith, the change of name of Laura Margaret Barnard to Laura Margaret Windsor be registered.		
7. Execution by applicant		

21/11/07
Execution Date

L M Windsor
.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Example 2 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 53 of 2

Title Reference [17688021]

I, **LAURA MARGARET WINDSOR**, do solemnly and sincerely declare as follows:

I am the person identical with Registered Owner **LAURA MARGARET BARNARD** named in Item 3 on the attached Form 14 – General Request.

My true and correct name is as shown in Item 5 on the Form 14 – General Request as **LAURA MARGARET WINDSOR** as on the 14th day of August 2007 I married **GEOFFREY MATTHEW WINDSOR**, as evidenced by the office copy Certificate of Marriage deposited herewith.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1867.

DECLARED AND SIGNED before me at Brisbane)
this 21st day of November 2007)

L M Windsor

.....
(Signature of Declarant)

W J Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 3 – Request to Record Change of Name of Registered Owner (Corporation)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 1

Dealing Number



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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD CHANGE OF NAME	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 14 ON RP977000	11326072	
3. Registered Proprietor/State Lessee		
XYZ CORPORATION LIMITED ACN 001 311 711		
4. Interest		
FEE SIMPLE		
5. Applicant		
EXIT CORPORATION LIMITED ACN 001 311 711		
ADDRESS FOR THE SERVICE OF NOTICES TO THE APPLICANT: 22 REAL STREET, ASHGROVE, QLD 4060		
6. Request		
I hereby request that: the change of name of the registered owner from XYZ Corporation Limited ACN 001 311 711 to Exit Corporation Limited ACN 001 311 711 be recorded.		
7. Execution by applicant		

(seal)
or full name of
company to be shown

21/11/07

Execution Date

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

S Brown, Director
SAMUEL DENIS BROWN

G Wolfe, Director/Secretary
GERALD JOSEPH WOLFE

Applicant's or Solicitor's Signature

Example 4 – Request to Record Removal of Expired Lease from Title

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 2

Dealing Number



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1. Nature of request REQUEST TO RECORD REMOVAL OF EXPIRED LEASE FROM TITLE	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 27 ON RP131121	Title Reference 18329006	
3. Registered Proprietor/State Lessee SWANSDOWN PTY LTD ACN 020 777 420		
4. Interest LEASE NO. 300290364 (L336621P)		
5. Applicant BLACKDON PTY LTD ACN 030 662 421		
6. Request I hereby request that: the dealing noted in the attached statutory declaration marked Annexure "A" be removed from the title.		
7. Execution by applicant		

(seal)
or full name of
company to be shown

21/11/07
Execution Date

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

D A Smith, Director
DIANNE ALLYSON SMITH

.....
M Hudson, Director/Secretary
MARGARET ALICE HUDSON

.....
Applicant's or Solicitor's Signature

Example 4 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

ANNEXURE "A"

FORM 20 Version 2
Page 56 of 2

Title Reference [18329006]

This is annexure "A" referred to in the Form 14 – General Request executed for Blackdon Pty Ltd ACN 030 662 421 dated 21 November 2007.

I, **DIANNE ALLYSON SMITH** of Brisbane, in the State of Queensland, Director of Blackdon Pty Ltd ACN 030 662 421 do hereby solemnly and sincerely declare as follows:

1. I am duly authorised to make this declaration.
2. Lease registered under Dealing No 600290364 (L336621P) on Title Reference 18329006 may be removed, as the option to renew has not been exercised.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

DECLARED AND SIGNED before me at Brisbane)
this 21st day of November 2007)

D A Smith

.....
(Signature of Declarant)

W J Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 5 – Request to Register Merger of Lease

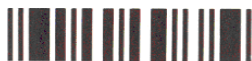
QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO REGISTER MERGER OF LEASE	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 1 ON RP112233	11223244	
3. Registered Proprietor/State Lessee		
JANE ELIZABETH SMITH		
4. Interest		
FEE SIMPLE		
5. Applicant		
JANE ELIZABETH SMITH		
6. Request		
I hereby request that: Lease No. 600555333 be merged in the fee simple.		
7. Execution by applicant		

21/11/07	J E Smith
Execution Date	Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Certificate of Title, if issued

Example 6 – Request to Register Merger of Easement

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO REGISTER MERGER OF EASEMENT NO. 623456789	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
DOMINANT TENEMENT		
LOT 3 ON RP877500	21138062	
SERVIENT TENEMENT		
EASEMENT A IN LOT 4 ON RP877500	21138063	
3. Registered Proprietor/State Lessee		
XYZ CORPORATION LIMITED ACN 001 222 349		
4. Interest		
FEE SIMPLE		
5. Applicant		
XYZ CORPORATION LIMITED ACN 001 222 349		
6. Request		
I hereby request that: Easement No. 623456789 be merged in the fee simple of the land described above.		
7. Execution by applicant		

(seal)
or full name of
company to be shown

21/11/07
Execution Date

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

P D Mazwell, Director
PETER DOUGLAS MAZWELL

.....
M S Hudson, Director/Secretary
MATTHEW STANLEY HUDSON

.....
Applicant's or Solicitor's Signature

NOTE: Items to be deposited:
▪ Certificate of Title, if issued

Example 7 – Request to Register Discharge of Writ of Execution

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Nature of request REQUEST TO REGISTER DISCHARGE OF WRIT OF EXECUTION BY ENFORCEMENT CREDITOR	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 10 ON RP100006	Title Reference 16679023	
3. Registered Proprietor/State Lessee DALE RAYMOND WHITE		
4. Interest FEE SIMPLE		
5. Applicant ERICA JUNE JONES		
6. Request I hereby request that: the discharge of Writ of Execution No 700334991 be registered.		
7. Execution by applicant		

21/11/07	<i>E J Jones</i>
Execution Date	Applicant's or Solicitor's Signature
Note: A Solicitor is required to print full name if signing on behalf of the Applicant	

NOTE: If executed by the enforcement creditor no evidence is required
If executed by a solicitor for the enforcement credit, evidence of satisfaction of the debt is required see Part 12 esp. clause 12-2060

Example 8 – Request to Record Removal of Caveat

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD REMOVAL OF CAVEAT	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 2 ON RP112234	11223145	
3. Registered Proprietor/State Lessee		
JOHN DONALD BROWNE		
4. Interest		
FEE SIMPLE		
5. Applicant		
JOHN DONALD BROWNE		
6. Request		
I hereby request that: in accordance with the court order dated 3 April 2007 deposited herewith, Caveat No. 630711945 be removed.		
7. Execution by applicant		

21/11/07
Execution Date

J D Browne
.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Example 9 – Request to Register Satisfaction of Writ of Execution

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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1. Nature of request REQUEST TO REGISTER SATISFACTION OF WRIT OF EXECUTION	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 2 ON RP223311	Title Reference 12255187	
3. Registered Proprietor/State Lessee JANET DESLEY BROWNE		
4. Interest FEE SIMPLE		
5. Applicant JANET DESLEY BROWNE		
6. Request I hereby request that: Writ of Execution No 600721789 be discharged upon the grounds that the writ of execution has been satisfied, as evidenced by the [certificate of search issued by the Supreme Court Registrar or other evidence] deposited herewith.		
7. Execution by applicant		

J D Browne

21/11/07

Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Evidence of satisfaction of the debt is required to be deposited see Part 12 esp. clause 12-2070]

Example 10 – Request to Record Extension of Writ of Execution

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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1. Nature of request REQUEST TO RECORD EXTENSION OF WRIT OF EXECUTION	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 2 ON RP223311	Title Reference 15023186	
3. Registered Proprietor/State Lessee DALE RODNEY CROSS		
4. Interest FEE SIMPLE		
5. Applicant CREDIT QUICK CORPORATION PTY LTD ACN 002 390 480		
6. Request I hereby request that: in accordance with the court order dated 13 April 2007 deposited herewith, you record an extension for a period of three months of Writ of Execution No. 634882911.		
7. Execution by applicant		

(seal)
or full name of
company to be shown

21/11/07
Execution Date

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

M P Laidlaw, Director
MARTIN PETRIE LAIDLAW

.....
D T Wright, Director/Secretary
DOUGLAS THOMAS WRIGHT

.....
Applicant's or Solicitor's Signature

Example 11 – Request to Register Standard Terms Document

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO REGISTER STANDARD TERMS DOCUMENT FOR LEASE	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
NOT APPLICABLE		
3. Registered Proprietor/State Lessee		
NOT APPLICABLE		
4. Interest		
NOT APPLICABLE		
5. Applicant		
ADVANCED LIFE PTY LTD ACN 010 330 730		
6. Request		
I hereby request that: pursuant to s.169 of the Land Title Act 1994 the attached Standard Terms Document containing Lease covenant for Advanced Life Pty Ltd ACN 010330730 be registered.		
7. Execution by applicant		

F B Chan

FRED BRIAN CHAN

21/11/07

Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Example 12 – Request to Record Transmission by Bankruptcy (Request by Official Trustee)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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1. Nature of request REQUEST TO RECORD TRANSMISSION BY BANKRUPTCY	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 2 ON RP571535	Title Reference 30066134	
3. Registered Proprietor/State Lessee EDWARD ROBERT SULLIVAN		
4. Interest FEE SIMPLE		
5. Applicant THE OFFICIAL TRUSTEE IN BANKRUPTCY Address for the service of notices to the applicant: USE CURRENT RECORDED ADDRESS		
6. Request I hereby request that: the applicant be registered as a proprietor of the estate or interest specified in Item 4 in the and described in Item 2 in consequence of the bankruptcy of EDWARD ROBERT SULLIVAN as evidenced by the National Personal Insolvency index extract and declaration deposited herewith.		
7. Execution by applicant		

The seal of the Official Trustee in Bankruptcy was hereto affixed by me,
Digby Nicholas Bartholomew Ross,
the Official Receiver for the Bankruptcy District of the State of Queensland

(seal)

D N B Ross

21/10/07

Execution Date

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

- NOTE: Items to be deposited:
- Certificate of Title, if issued;
 - Extract from the National Personal Insolvency Index;
 - Supporting declaration/s.

Example 12 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
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Title Reference [3006134]

I, **DIGBY NICHOLAS BARTHOLOMEW ROSS** of c/- 13th Level, 340 Adelaide Street, Brisbane in the State of Queensland, a Commonwealth Public Servant, do solemnly and sincerely declare that:

1. I am the Official Receiver for the Bankruptcy District of the State of Queensland under the *Bankruptcy Act 1966* (Cth) and am authorised to act on behalf of the Official Trustee in Bankruptcy pursuant to s. 18(8) of the Act.
2. Edward Robert Sullivan is registered as proprietor of an estate in fee simple in that land comprised in Indefeasible Title 30066334 being Lot 2 RP571535.
3. The said Edward Robert Sullivan registered as proprietor in the said Indefeasible Title is one and the same person as and identical with the Edward Robert Sullivan mentioned in extract from the National Personal Insolvency Index deposited herewith who disclosed his interest in the said land as an asset of his estate.
4. I am advised and verily believe that by virtue of section 58 of the *Bankruptcy Act 1966* (Cth) the Official Trustee in Bankruptcy is entitled to be registered as proprietor of the interest of Edward Robert Sullivan in the said land.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED by **DIGBY NICHOLAS**)
BARTHOLOMEW ROSS at Brisbane in the State of)
Queensland this 21st day of October 2007)

D B N Ross

.....
(Signature of Declarant)

H P Thomas JP (Qual.) #19833

.....
(Signature of a Justice of the Peace/Solicitor)

HAROLD PETER THOMAS

.....
(Name of Witness in Full)



**National Personal Insolvency Index
Insolvency Trustee Service Australia
Extract as at 04:18 pm 21-Nov-2007**

Name	SULLIVAN, EDWARD ROBERT		
Date of Birth	16-Sep-1942	Administration Type	Bankruptcy
Administration Number	QLD 2541/3/0	Petition Type	Debtor Petition
Date Filed	20-Oct-2006		
Date SA Filed	20-Oct-2006		
Entered on NPII	20-Oct-2006		
Date Ended	<No Data Held>		
Result	<No Result>		
Address	1 Choonda Street CORINDA QLD 4075		
Occupation	UNEMPLOYED		
Business Name	<No Data Held>		
Business Address	<No Data Held>		
Trustee	OFFICIAL TRUSTEE IN BANKRUPTCY		
Overall Summary	This individual is an undischarged bankrupt.		

**End of
Report**

The information in this extract comes from ITSA's National Personal Insolvency Index database as at the time and date indicated in this document. If you consider that the information contains errors, please promptly advise ITSA.

Example 13 – Request to Record Transmission by Bankruptcy (Request by Trustee other than Official Trustee)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD TRANSMISSION BY BANKRUPTCY	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 33 ON RP213130	34567112	
3. Registered Proprietor/State Lessee		
ROBERT TIMOTHY MCCARTHY and ANNA JANE MCCARTHY		
4. Interest		
THE ½ SHARE OF AN ESTATE IN FEE SIMPLE HELD BY ROBERT TIMOTHY MCCARTHY IN THE LOT DESCRIBED IN ITEM 2.		
5. Applicant		
THE TRUSTEE OF THE PROPERTY OF ROBERT TIMOTHY MCCARTHY (a bankrupt) ADDRESS FOR THE SERVICE OF NOTICES TO THE APPLICANT: LEVEL 30, 1 EAGLE STREET, BRISBANE, 4000		
6. Request		
I hereby request that the applicant be registered as proprietor of the estate or interest specified in Item 4 in the land described in item 2 in consequence of the bankruptcy of ROBERT TIMOTHY MCCARTHY as evidenced by the National Personal Insolvency Index extract and in accordance with the declaration of Arthur Wayne Lachlan deposited herewith.		
7. Execution by applicant		

A W Lachlan

Arthur Wayne Lachlan as Trustee in Bankruptcy

21/11/07

Execution Date

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

- NOTE: Items to be deposited:
- Certificate of Title, if issued;
 - Extract from the National Personal Insolvency Index (see Example 12);
 - Supporting documentation.

Example 13 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 68 of 2

Title Reference [34567112]

I, **ARTHUR WAYNE LACHLAN**, Chartered Accountant of c/- Level 30, Waterfront Place, 1 Eagle Street, Brisbane, Queensland do solemnly declare as follows:

1. On 1 November 2006 I became the trustee in bankruptcy of the estate of Robert Timothy McCarthy pursuant to a sequestration order made that day in the Federal Court by District Registrar McPherson sitting in the General Division of the Bankruptcy Division of the State of Queensland, the order having been made after all requirements of s. 52 of the *Bankruptcy Act 1966* (Cth) were satisfied.
2. Pursuant to s58 of the *Bankruptcy Act 1966* (Cth), upon the making of the said sequestration order, all the divisible property of Robert Timothy McCarthy vested in me. That divisible property includes the right title and interest of Robert Timothy McCarthy.
3. The said Robert Timothy McCarthy is one and the same person and identical with the Robert Timothy McCarthy mentioned in the extract from the National Personal Insolvency Index deposited herewith.
4. The said Robert Timothy McCarthy disclosed his interest in the property described as Lot 33 on RP 213130 contained in Indefeasible Title 34567112 as an asset of his estate.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED by **ARTHUR WAYNE**)
LACHLAN at Brisbane in the State of Queensland this)
21st day of November 2007)

A W Lachlan

.....
(Signature of Declarant)

WJ Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 14 deleted



Example 15 – Request to Record Annulment of Bankruptcy

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Dealing Number



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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD ANNULMENT OF BANKRUPTCY	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 811 ON RP993662	13182248	
3. Registered Proprietor/State Lessee		
TRUSTEE OF THE PROPERTY OF KAREN ELIZABETH JOHNSTONE (A BANKRUPT)		
4. Interest		
FEE SIMPLE		
5. Applicant		
KAREN ELIZABETH JOHNSTONE ADDRESS FOR THE SERVICE OF NOTICES TO THE APPLICANT: 160 MARSDEN ROAD KALINGA QLD 4030		
6. Request		
I hereby request that: the above land be vested in the applicant in consequence of the annulment of the bankruptcy of KAREN ELIZABETH JOHNSTONE as evidenced by the extract from the National Personal Insolvency deposited herewith.		
7. Execution by applicant		

21/11/07	<i>K E Johnstone</i>
Execution Date	Applicant's or Solicitor's Signature
Note: A Solicitor is required to print full name if signing on behalf of the Applicant	

NOTE: Items to be deposited:

- Certificate of Title, if issued;
- Extract from the National Personal Insolvency Index (see Example 12);
- If executed by the trustee, no further evidence. If executed by the former bankrupt or a solicitor a Form 18 – General Consent from the trustee or a statutory declaration by the trustee authorising the transaction (see clause ¶[14-2250])

Example 16 – Request to Record Removal of Life Estate Charge

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD REMOVAL OF LIFE ESTATE CHARGE	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 10 ON RP224436	17317021	
3. Registered Proprietor/State Lessee		
JAMES EDWARD CORNWALL AS PERSONAL REPRESENTATIVE		
4. Interest		
ESTATE FOR LIFE		
5. Applicant		
JAMES EDWARD CORNWALL		
6. Request		
I hereby request that: in accordance with the copy of the death certificate of the life tenant deposited herewith, the life estate charge under instrument No. 611223345 entered against the above lot be removed.		
7. Execution by applicant		

21/11/07
Execution Date

J E Cornwall
.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Certificate of Title, if issued;
- Certified copy of certificate of death, or evidence of relinquishment of life interest, as applicable.

Example 17 – Request for Title by Adverse Possession

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Page 1 of 4

Dealing Number



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Privacy Statement

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST FOR TITLE BY ADVERSE POSSESSION	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 4 ON RP955211	19229134	
3. Registered Proprietor/State Lessee		
ANGUS THOMAS BLACK		
4. Interest		
FEE SIMPLE		
5. Applicant		
LAWRENCE FABIAN FORBES		
ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 3 Brisbane Road, Brisbane 4000		
6. Request		
I hereby request that: pursuant to Part, Division 5 of the Land Title Act 1994 and in accordance with the declarations and the other evidence deposited herewith, I be recorded as Registered Owner in fee simple by adverse possession of the land described above.		
7. Execution by applicant		

8/10/07

Execution Date

L F Forbes

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:
▪ Supporting declaration and evidence.

Example 17 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 73 of 4

Title Reference [19229134]

I, **LAWRENCE FABIAN FORBES**, of 3 Brisbane Road, Brisbane in the State of Queensland do solemnly and sincerely declare that:

1. I am the applicant in an application for title by adverse possession dated 8 October 2007 lodged with the Registrar of Titles.
2. I began occupying the subject land on or about 7 January 1975. To the best of my knowledge the land had not been occupied for some time. The land was vacant.
3. On 30 June 1975 I completed construction of a dwelling house on the land. I have continued to use the land for residential purposes up to the date of this application.
4. Since 30 June 1975 I have paid rates on the land to the Brisbane City Council as evidenced by the attached certificate.
5. I enclose declaration by Edith Dora Leary and Francis Terrence Darville, residents of No. 2 and No. 7 Brisbane Road, Brisbane respectively testifying as to my occupation of the land.
6. There is no person in possession or occupation of the land adversely to my estate or interest therein.
7. I am not aware of any mortgage, encumbrance or claim affecting the land or that any person other than the registered owner has any claim, estate or interest in the land in law or in equity.
8. I have never been the tenant of the registered owner of the land and I have never been contacted by him or anyone acting on his behalf.
9. I have no documents, receipts or contracts in my possession or under my control from the registered owner of any other person deriving title thereunder relating to the land.
10. In consequence of the evidence herein set forth I verily believe and claim that I am entitled to the issue to me under Part 6, Division 5 of the *Land Title Act 1994* of a Certificate of Title for an estate in fee simple in the land described above.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED before me at Brisbane)
this 8th day of October 2007)

L F Forbes

.....
(Signature of Declarant)

WJ Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 17 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 3 of 4

Title Reference [19229134]

I, **EDITH DORA LEARY**, of 2 Brisbane Road, Brisbane in the State of Queensland do solemnly and sincerely declare that:

1. I have occupied 2 Brisbane Road, Brisbane since 1972.
2. I recall that Lawrence Fabian Forbes commenced occupation of the property at 3 Brisbane Road, Brisbane on or about January 1975.
3. I remember that shortly after that time Lawrence Fabian Forbes constructed a home on the land.
4. Since that time Lawrence Fabian Forbes has used the land for his residence.
5. To the best of my knowledge at no time has any person come forward claiming an interest in the land.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED before me at Brisbane)
this 8th day of October 2007)

E D Leary

.....
(Signature of Declarant)

WJ Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 17 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 4 of 4

Title Reference [19229134]

I, **FRANCIS TERRENCE DARVILLE** of 7 Brisbane Road, Brisbane in the State of Queensland do solemnly and sincerely declare that:

1. On 13 September 1970 I purchased 7 Brisbane Road, Brisbane. I have lived at that address since that time.
2. I remember that around January 1975 Lawrence Fabian Forbes was occupying 3 Brisbane Road, Brisbane. I remember that in the winter of 1975 Lawrence Fabian Forbes built a home on the land.
3. I have not noticed any other person come forward claiming an interest in that land.
4. Lawrence Fabian Forbes has occupied the land since 1975.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED before me at Brisbane)
this 8th day of October 2007)

F T Darville

.....
(Signature of Declarant)

WJ Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 18 – Request to Register Order of Foreclosure and Vesting

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 1

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO REGISTER ORDER OF FORECLOSURE AND VESTING	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 6 ON RP177662	13352117	
3. Registered Proprietor/State Lessee		
XYZ CORPORATION PTY LTD ACN 003 976 423 (IN LIQUIDATION)		
4. Interest		
FEE SIMPLE		
5. Applicant		
BRISBANE BANKING CORPORATION LIMITED ACN 003 421 600 ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 22 REAL STREET, ASHGROVE QLD 4060		
6. Request		
I hereby request that: in accordance with the court order dated 20 July 2007 deposited herewith you register the order for foreclosure and vesting of the interest of the Registered Owner shown in Item 4 above in the applicant.		
7. Execution by applicant		

(seal)
or full name of
company to be shown

21/11/07

Execution Date

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

M J Kendall, Director
MARCUS JOHN KENDALL

.....
K M Chan, Director/Secretary
KEVIN MICHAEL CHAN

.....
Applicant's or Solicitor's Signature

NOTE: Items to be deposited:

- Certificate of Title, if issued;
- Court issued copy of the order.

Example 19 – Request to Record Revocation of Resumption

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Page 1 of 1

Dealing Number



OFFICE USE ONLY

Privacy Statement

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1. Nature of request REQUEST TO RECORD REVOCATION OF RESUMPTION	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 10 ON RP223344	Title Reference 13123066	
3. Registered Proprietor/State Lessee MORETON BAY REGIONAL COUNCIL (FORMERLY CABOOLTURE SHIRE COUNCIL)		
4. Interest FEE SIMPLE		
5. Applicant MORETON BAY REGIONAL COUNCIL ADDRESS FOR SERVICE OF NOTICES: 22 REAL STREET, NARANGBA QLD 4460		
6. Request I hereby request that: in accordance with the gazette notice dated 11 May 2007 revoking a previous gazette notice registered under dealing 6032214/88 you record the reversion of the above described land in the name of DEVELOPMENT CO PTY LTD ACN 003 520 397 for an estate in fee simple.		
7. Execution by applicant		

S Jones,

.....
MORETON BAY REGIONAL COUNCIL
Stephen James Jones Chief Executive Officer

21/11/07
Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Certificate of Title, if issued;
- Proclamation revoking resumption.

Example 20 deleted



Example 21 – Request to Record Determination of Lease

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 2

Dealing Number



OFFICE USE ONLY

Privacy Statement

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1. Nature of request REQUEST TO RECORD DETERMINATION OF LEASE	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 12 ON RP674555	Title Reference 13088190	
3. Registered Proprietor/State Lessee XYZ COPORATION LIMITED ACN 003 976 423		
4. Interest LEASE NO. 718654213		
5. Applicant ABC CORPORATION LTD ACN 011 632 911		
6. Request I hereby request that: Lease No. 718654213 be determined and cancelled from the above title in accordance with the attached statutory declaration.		
7. Execution by applicant		
<div>(seal) or full name of company to be shown</div> <div>21/11/07 Execution Date</div>		<div>L Blundell, Director LAUREL BLUNDELL</div> <div>..... J Smith, Director/Secretary JORDAN RAYMOND SMITH</div> <div>..... Applicant's or Solicitor's Signature</div>
Note: A Solicitor is required to print full name if signing on behalf of the Applicant		

NOTE: Items to be deposited:

- Certificate of Title, if issued;
- Supporting documentation.

Example 21 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 80 of 2

Title Reference [13088190]

I, **LAUREL BLUNDELL** of 122 Edward Street, Brisbane, Queensland do solemnly and sincerely declare as follows:

1. I am a director of ABC Corporation Ltd ACN 011 632 911 and am duly authorised to make this declaration on its behalf.
2. On 5 November 2002 ABC Corporation Ltd as lessor entered into Lease No. 718654213 with XYZ Corporation Limited ACN 003 976 423 as lessee of the premises known as Sunshine Place situated at 14 Sunny Street, Brisbane and described as Lot 12 on RP674555.
3. On 1 March 2007 ABC Corporation Ltd served the two notices annexed hereto ("**Notices**") claiming breaches of the lease on the Principal Executive Officer, Richard Manuel Morrow at the lessee's registered office at 222 Bowen Road, Manly.
4. The breaches stated in the Notices were not remedied by the lessee and the lease was subsequently determined by the Registered Owner who re-entered and took possession of the premises.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED before me at Brisbane)
this 21st day of November 2007)

L Blundell

.....
(Signature of Declarant)

WJ Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 22 – Request to Record Retirement (or Discharge) of Trustee

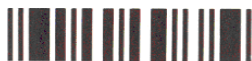
QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
Page 1 of 1

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD THE RETIREMENT (OR DISCHARGE) OF TRUSTEE	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 17 ON RP113268	13088190	
3. Registered Proprietor/State Lessee		
JONATHON MATTHEW BRADY AS TRUSTEE UNDER INSTRUMENT NO. 732468931		
4. Interest		
FEE SIMPLE		
5. Applicant		
ANTHEA NICOLA RICHARDS ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 22 REAL STREET, ASHGROVE QLD 4060		
6. Request		
I hereby request that: you record the retirement/discharge of the above named Jonathon Matthew Brady in accordance with terms of the deed of retirement (or discharge) deposited.		
7. Execution by applicant		

21/11/07	<i>A N Richards</i>
Execution Date	Applicant's or Solicitor's Signature
Note: A Solicitor is required to print full name if signing on behalf of the Applicant	

NOTE: Items to be deposited:

- Certificate of Title, if issued;
- Certified copy of original deed of retirement (or discharge)

Example 23 – Request to Record Merger of Estates

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Page 1 of 2

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OFFICE USE ONLY

Privacy Statement

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
REQUEST TO RECORD MERGER OF ESTATES	SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	21
2. Lot on Plan Description	Title Reference	
LOT 3 ON RP32044	22383085	
3. Registered Proprietor/State Lessee		
JONATHAN COLIN MIDDLETON AS DEVISEE IN TRUST		
4. Interest		
FEE SIMPLE		
5. Applicant		
JONATHAN COLIN MIDDLETON ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 30 INALA AVENUE, BROWNS PLAINS QLD 4060		
6. Request		
I hereby request that: you register the applicant as the registered owner of the lot pursuant to a merger of the beneficial and legal estate.		
7. Execution by applicant		

10/11/07
Execution Date

J C Middleton
.....
Applicant's or Solicitor's Signature
Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Certificate of Title, if issued;
- Supporting declaration.

N.B. – The request requires a duty notation.

Example 23 (contd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

DECLARATION

FORM 20 Version 2
Page 83 of 2

Title Reference [23383085]

I, **JONATHAN COLIN MIDDLETON** of 30 Inala Avenue, Browns Plains in the State of Queensland do solemnly and sincerely declare as follows:

1. I am the executor of the estate of Rose Middleton, and the registered owner of the lot described in the attached Form 14 – General Request as devisee in trust.
2. Pursuant to the will of Rose Middleton, deposited with Transmission by Death No. 700015762, Joyce Elva Middleton is the life tenant of the said lot, and I am the devisee in trust.
3. The life tenant, Joyce Elva Middleton, died on 14 September 2007 as appears by the certificate of death deposited herewith. I am the sole beneficiary.
4. I have effected all executorial duties in respect of the administration of the estate of Rose Middleton deceased.
5. The legal and beneficial estates have merged and are vested in me.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

SIGNED AND DECLARED before me at Brisbane)
this 10th day of November 2007)

J C Middleton

.....
(Signature of Declarant)

WJ Brown JP(Qual.) #12345

.....
(Signature of a Justice of the Peace/Solicitor)

WILLIAM JOHN BROWN

.....
(Name of Witness in Full)

Example 24 – Request to Record Incorporated Association

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Page 1 of 1

Dealing Number



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Privacy Statement

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1. Nature of request	Lodger (Name, address, E-mail & phone number)	Lodger Code
RECORDING UNDER THE ASSOCIATIONS INCORPORATION ACT 1981	JOHN WATERHEAD 24 FLATHEAD COURT SURFHAVEN QLD 4999 (07) 3278 5943	
2. Lot on Plan Description	Title Reference	
LOT 999 ON RP999999	14399224	
3. Registered Proprietor/State Lessee		
WILLIAM SANDMAN and NORMAN BEACHCOMBER AS TRUSTEE OF THE COASTAL GOLF CLUB UNDER NOMINATION OF TRUSTEES 666655554		
4. Interest		
FEE SIMPLE		
5. Applicant		
COASTAL GOLF CLUB INCORPORATED ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: 22 REAL STREET, ASHGROVE QLD 4060		
6. Request		

I hereby request that: the Registrar of Titles record the interest of the above registered proprietors in the name of the applicant in accordance with s24 of the Associations Incorporation Act 1981 and certify that the applicant is incorporated as evidenced by the certificate of incorporation deposited.

7. Execution by applicant

21/11/07	<i>J D Surfboard</i> JOHN DAVID SURFBOARD Secretary, Coastal Golf Club Incorporated
Execution Date	Applicant's or Solicitor's Signature
Note: A Solicitor is required to print full name if signing on behalf of the Applicant	

NOTE: It should be noted that:

- Certificate of Title must be deposited, if issued, or a request made to dispense with production;
- the registered proprietor/State Lessee in Item 3 should be as shown on the current title/lease; and
- the applicant in Item 5 is the incorporated association; and
- the request in Item 6 should be substantially as shown in the example; and
- the signing of Item 7 must be by the secretary of the association (see ss24(1), (2) and (3) of the *Associations Incorporation Act 1981*; and
- these Requests attract normal lodgement fees; and
- there is no duty payable; and
- a copy of the certificate of incorporation, issued by the relevant agency and certified by an appropriate officer of that agency is to be provided; or
- the alternative arrangements whereby the original certificate and a photocopy are presented, checked and the photocopy noted by the Receiving Officer as being a true copy of the original, the noted copy retained and the original returned to the lodger is acceptable.

**Example 25 – Application by Local Government under Chapter 4 Part 12 Division 3
of the Local Government Regulation 2012**

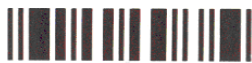
QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Dealing Number



OFFICE USE ONLY

Privacy Statement

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1. Nature of request APPLICATION BY LOCAL GOVERNMENT UNDER CHAPTER 4 PART 12 DIVISION 3 OF THE LOCAL GOVERNMENT REGULATION 2012	Lodger (Name, address, E-mail & phone number) SMITH & CO. SOLICITORS 218 EDWARD STREET BRISBANE QLD 4000 mail@smithco.com.au (07) 3278 5943	Lodger Code 21
2. Lot on Plan Description LOT 10 ON RP120610	Title Reference 11223134	
3. Registered Proprietor/State Lessee JOHN DAVID BROWN		
4. Interest FEE SIMPLE		
5. Applicant SMITHSON CITY COUNCIL ADDRESS FOR SERVICE OF NOTICES TO THE APPLICANT: PO BOX 31 SMITHSON QLD 4878		
6. Request I hereby request that: under Chapter 4 Part 12 Division 3 of the Local Government Regulation 2012 the land in item 2 be registered in the name of the applicant in Item 5.		
7. Execution by applicant		

(local government seal)

22/11/07
Execution Date

J Bloggs
Authorised Officer

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Example 26 – Request to Remove a Profit a Prendre

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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Dealing Number



OFFICE USE ONLY

Privacy Statement

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1. Nature of request

REQUEST TO REMOVE PROFIT A PRENDRE

Lodger (Name, address, E-mail & phone number)

SMITH & CO.
SOLICITORS
218 EDWARD STREET
BRISBANE QLD 4000
mail@smithco.com.au
(07) 3278 5943

**Lodger
Code**
21

2. Lot on Plan Description

LOT 5 ON RP900432

Title Reference

50008710

3. Registered Proprietor/State Lessee

KRISTINA MARIA JOHNSON

4. Interest

PROFIT A PRENDRE NO. 700258637

5. Applicant

KRISTINA MARIA JOHNSON

6. Request

I hereby request that: Profit a Prendre No. 700258637 be removed as the term specified in instrument expired on 20/09/2007.

7. Execution by applicant

F B Chan
FRED BRIAN CHAN

21/9/07

Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Certificate of Title, if issued

¹Guide to Completion of Form 14 for Example 26

Item 1 [14-4090]

Insert the nature of the request.

Item 2 [14-4100]

Insert the ‘Lot on Plan’ descriptions and identify all burdened and, if applicable, benefited lots comprised in the profit a prendre.

Item 3 [14-4110]

Insert the full name(s) of the registered proprietor(s) or holder(s) of the lot(s) affected by the profit a prendre.

Item 4 [14-4120]

Insert the profit a prendre number.

Item 5 [14-4130]

Insert the full name of the applicant.

Item 6 [14-4133]

Insert the appropriate words for the relevant request.

Item 7 [14-4136]

Execute as required.

Example 27 – Request to Record Reservation of Name for a Community Titles Scheme

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Dealing Number



OFFICE USE ONLY

Privacy Statement

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1. Nature of request

REQUEST TO RECORD RESERVATION OF NAME
FOR COMMUNITY TITLES SCHEME

Lodger (Name, address, E-mail & phone number)

SMITH & CO.
SOLICITORS
218 EDWARD STREET
BRISBANE QLD 4000
mail@smithco.com.au
(07) 3278 5943

**Lodger
Code**
21

2. Lot on Plan Description

LOT 70 ON SP900432

Title Reference

50046270

3. Registered Proprietor/State Lessee

BRIGHTON PTY LTD ACN 007 768 903

4. Interest

FEE SIMPLE

5. Applicant

BRIGHTON PTY LTD ACN 007 768 903

6. Request

I hereby request that: the name Brighton Villa be reserved for the community titles scheme proposed for the land described in item 2.

7. Execution by applicant

(seal)
or full name of
company to be shown

21/9/07

Execution Date

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

C Johns, Director
CHARLES ANTHONY JOHNS

.....
K Brown, Director/Secretary
KENNETH ROBERT BROWN

.....
Applicant's or Solicitor's Signature

^{1, 2}**Guide to Completion of Form 14 for Example 27**

Item 1**[14-4140]**

Insert the nature of the request (ie ‘Request for reservation of name/extension of reservation of name/withdrawal of reservation of name’).

Item 2**[14-4150]**

Insert the full description of:

- the land for the proposed scheme; or
- the common property, if the name is to be reserved over an existing scheme.

Item 3**[14-4160]**

Insert the full name(s) of the registered owner(s).

Item 4**[14-4170]**

Insert fee simple.

Item 5**[14-4180]**

Insert the full name of the applicant.

Item 6**[14-4190]**

Insert the appropriate words for the relevant request.

Item 7**[14-4200]**

Execute as required.

Example 28 – Request to Record “First” Community Management Statement

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Nature of request

REQUEST TO RECORD FIRST COMMUNITY
MANAGEMENT STATEMENT FOR BRIGHTON
VILLA COMMUNITY TITLES SCHEME

Lodger (Name, address, E-mail & phone number)

SMITH & CO.
SOLICITORS
218 EDWARD STREET
BRISBANE QLD 4000
mail@smithco.com.au
(07) 3278 5943

Lodger Code

21

2. Lot on Plan Description

LOT 70 ON SP900432

Title Reference

50046270

3. Registered Proprietor/State Lessee

BRIGHTON PTY LTD ACN 007 768 903

4. Interest

NOT APPLICABLE

5. Applicant

BRIGHTON PTY LTD ACN 007 768 903

6. Request

I hereby request that: the first CMS deposited herewith be recorded as the CMS for Brighton Villa Community Titles Scheme and that 32 This Rd Indooroopilly Qld 4068 be recorded as address for service on the body corporate for the scheme.

7. Execution by applicant

(seal)
or full name of
company to be shown

21/10/07
Execution Date

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

C Johns, Director
CHARLES ANTHONY JOHNS

K R Brown, Director/Secretary
KENNETH ROBERT BROWN

Applicant's or Solicitor's Signature

^{1, 2}Guide to Completion of Form 14 for Example 28

Lodger Details

[14-4218]

The name, address, contact phone number and lodger code (if applicable) should be completed by the person/firm actually lodging the request for registration.

Item 1

[14-4220]

Insert the nature of the request.

Example:

‘Request to record first community management statement for Brighton Villa community titles scheme’.

Item 2

[14-4230]

Insert the lot on plan description and title reference for each current parcel which will be subdivided to create the scheme land.

Example:

2.	Lot on Plan description	Title Reference
	Lot 70 on RP885798	50046270

Item 3

[14-4240]

Insert the name(s) of the registered owner(s) as per the title(s).

Item 4

[14-4250]

Insert not applicable.

Item 5

[14-4260]

Insert the name of the applicant – registered owner(s).

Item 6

[14-4270]

Insert the appropriate words of request including the address for service.

Example:

‘... the first CMS deposited herewith be recorded as the CMS for Brighton Villa community titles scheme and that (show postal address) be recorded as the address for the service of the body corporate for the scheme’.

Item 7

[14-4280]

Execution may be by the applicant or applicant’s solicitor. If signed by a solicitor print the full name of the solicitor signing.

Example 29 – Request to Record “New” Community Management Statement

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

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Page 1 of 1

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Nature of request

REQUEST TO RECORD NEW COMMUNITY
MANAGEMENT STATEMENT FOR FAWLTY
TOWERS COMMUNITY TITLES SCHEME 2345

Lodger (Name, address, E-mail & phone number)

SMITH & CO.
SOLICITORS
218 EDWARD STREET
BRISBANE QLD 4000
mail@smithco.com.au
(07) 3278 5943

**Lodger
Code**
21

2. Lot on Plan Description

COMMON PROPERTY OF FAWLTY
TOWERS COMMUNITY TITLES
SCHEME 2345

Title Reference

19203231

3. Registered Proprietor/State Lessee

BODY CORPORATE FOR FAWLTY TOWERS COMMUNITY TITLES SCHEME 2345

4. Interest

NOT APPLICABLE

5. Applicant

BODY CORPORATE FOR FAWLTY TOWERS COMMUNITY TITLES SCHEME 2345

6. Request

I hereby request that: the new CMS deposited herewith which amends (insert appropriate Item and schedule e.g. Item 2 (regulation module) and Schedule C) of the existing CMS be recorded as the CMS for Fawltly Towers Community Titles Scheme 2345.

7. Execution by applicant

(seal of body corporate)

J Cleese, Chairperson
JASON JOHN CLEESE

.....
C Booth, Secretary/Treasurer
CELESTE SYBIL BOOTH

21/10/07

Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

^{1, 2}Guide to Completion of Form 14 for Example 29

Lodger Details

[14-4290]

The name, address, contact phone number and lodger code (if applicable) should be completed by the person/firm actually lodging the request for registration

Item 1

[14-4300]

Insert the nature of the request.

Example:

‘Request to record new community management statement for Fawltly Towers community titles scheme 2345.’

Item 2

[14-4310]

Insert the description and title reference for the common property for the scheme.

Example:

2.	Lot on Plan description	Title Reference
	Common property of Fawltly Towers community titles scheme 2345	19201331

Item 3

[14-4320]

Insert the name of the body corporate eg ‘Body corporate for Fawltly Towers community titles scheme 2345’.

Item 4

[14-4330]

Insert not applicable.

Item 5

[14-4340]

Insert the name of the body corporate eg ‘Body corporate for Fawltly Towers community titles scheme 2345’.

Item 6

[14-4350]

Insert the appropriate words of request.

Example:

‘... the new CMS deposited herewith which amends (for example) Schedule(s) (A etc) and/or (for example) Item 2 (regulation module) of the existing CMS be recorded as the CMS for Fawltly Towers community titles scheme 2345.’

Item 7

[14-4360]

Execution may be by the applicant or applicant’s solicitor. If signed by a solicitor print the full name of the solicitor signing.

Example 30 – Request to Record Change of Address for Body Corporate

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

Duty Imprint

Form 14 Version 4
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Dealing Number



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Privacy Statement

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1. Nature of request

REQUEST TO RECORD CHANGE OF
ADDRESS FOR THE BODY CORPORATE

Lodger (Name, address, E-mail & phone number)

SMITH & CO.
SOLICITORS
218 EDWARD STREET
BRISBANE QLD 4000
mail@smithco.com.au
(07) 3278 5943

**Lodger
Code**
21

2. Lot on Plan Description

COMMON PROPERT OF BRIGHTON
VILLA COMMUNITY TITLES SCHEME
1246

Title Reference

50055887

3. Registered Proprietor/State Lessee

BODY CORPORATE FOR BRIGHTON VILLA COMMUNITY TITLES SCHEME 1246

4. Interest

NOT APPLICABLE

5. Applicant

BODY CORPORATE FOR BRIGHTON VILLA COMMUNITY TITLES SCHEME 1246

6. Request

I hereby request that: the address for the service of body corporate under s315 of the *Body Corporate and Community Management Act 1997* be recorded as 32 Any Road, Indooroopilly Q 4068.

7. Execution by applicant

(seal)

C Johns, Chairperson
CHARLES ANTHONY JOHNS

.....
K R Brown, Secretary
KENNETH ROBERT BROWN

21/10/07

Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

^{1, 2}Guide to Completion of Form 14 for Example 30**Item 1** [14-4370]

Insert the nature of the request.

Item 2 [14-4380]

Insert the description and title reference of the common property eg ‘Common property of Brighton Villa community titles scheme 1246’.

Item 3 [14-4390]

Insert the name of the body corporate eg ‘Body corporate for Brighton Villa community titles scheme 1246’.

Item 4 [14-4400]

Insert not applicable.

Item 5 [14-4410]

Insert the name of the body corporate.

Item 6 [14-4420]

Insert the appropriate request which includes the new address for service of the body corporate.

Item 7 [14-4430]

Execute as required.

Example 31 – Request to Record Update of Power of Attorney

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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1. Nature of request

REQUEST TO RECORD UPDATE
OF POWER OF ATTORNEY

Lodger (Name, address, E-mail & phone number)

SMITH & CO.
SOLICITORS
218 EDWARD STREET
BRISBANE QLD 4000
mail@smithco.com.au
(07) 3278 5943

**Lodger
Code**
21

2. Lot on Plan Description

NOT APPLICABLE

Title Reference

3. Registered Proprietor/State Lessee

ABC PTY LTD ACN 001 002 003

4. Interest

POWER OF ATTORNEY NO. 701234567

5. Applicant

XYZ PTY LTD ACN 001 002 003

6. Request

I hereby request that: XYZ Pty Ltd ACN 001 002 003 be recorded as the principal [or attorney] in Power of Attorney No 701234567 in accordance with the certified copy of the certificate of change of name [or other relevant evidence] deposited herewith.

7. Execution by applicant

W G Smith
WILLIAM GRAHAME SMITH

21/9/07
Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Copy of evidence certified by the relevant issuing agency

Guide to Completion of Form 14 for Example 31

Item 1 [14-4440]

Insert the nature of the request.

Item 2 [14-4450]

Insert not applicable.

Item 3 [14-4460]

Insert the name of the principal/attorney as registered.

Item 4 [14-4470]

Insert the reference to the power of attorney to be updated.

Item 5 [14-4480]

Insert full name of principal/attorney to be registered.

Item 6 [14-4490]

Insert details of the request.

Item 7 [14-4500]

Execute as required.

Example 32 – Subdivision of Water Allocation

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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1. Nature of request

SUBDIVISION OF WATER ALLOCATION

Lodger (Name, address, E-mail & phone number)

A. Water-Owner
PO Box 999
ANYTOWN QLD 4999
(07) 4999 9999

Lodger Code

2. Lot on Plan Description

LOT 1234 ON AP1234

Title Reference

46009999

3. Registered Proprietor/State Lessee

ALFRED BRIAN WATER-OWNER and BETTY BEATRICE WATER-OWNER

4. Interest

WATER ALLOCATION

5. Applicant

ALFRED BRIAN WATER-OWNER and BETTY BEATRICE WATER-OWNER

6. Request

I hereby request that: the Water Allocation shown in Item 2 be subdivided in accordance with Dealing Certificate No. 199999 deposited herewith.

7. Execution by applicant

A B Water-Owner

B B Water-Owner

21/9/07

Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Water Allocation Dealing Certificate
- If managed under a Resource Operations Plan: Notice to registrar of water allocations of Existence of Supply Contract (W2F152)

^{2, 3}**Guide to Completion of Form 14 for Example 32**

Item 1 [14-4510]

Insert the nature of the request.

Item 2 [14-4520]

Insert Lot/Plan description of water allocation to be subdivided. Only one Water Allocation is permitted on each Form 14 –General Request.

Item 3 [14-4530]

Insert the full name(s) of the registered owner(s).

Item 4 [14-4540]

Insert: Water Allocation.

Item 5 [14-4550]

Insert the full name of the applicant.

Item 6 [14-4560]

Insert the appropriate words for the relevant request.

For example:

I hereby request that: the water allocation shown in Item 2 be subdivided in accordance with Dealing Certificate No. 199999 deposited herewith.

Item 7 [14-4570]

Execute as required.

Example 33 – Amalgamation of Water Allocation

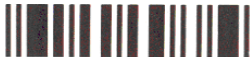
QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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Dealing Number

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Privacy Statement
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1. Nature of request AMALGAMATION OF WATER ALLOCATION	Lodger (Name, address, E-mail & phone number) A. Water-Owner PO Box 999 ANYTOWN QLD 4999 (07) 4999 9999	Lodger Code
2. Lot on Plan Description LOT 1234 ON AP1234 LOT 1235 ON AP1234	Title Reference 46009999 46008888	
3. Registered Proprietor/State Lessee AQUA OWNERS PTY LTD A.C.N. 999 999 999		
4. Interest WATER ALLOCATION		
5. Applicant AQUA OWNERS PTY LTD A.C.N. 999 999 999		
6. Request I hereby request that: the Water Allocations shown in Item 2 be amalgamated in accordance with Dealing Certificate No. 199998 deposited herewith.		
7. Execution by applicant		
<div>(seal) or full name of company to be shown</div> <div>21/9/07 Execution Date</div>		<div>A Water-Owner, Director ALFRED BRIAN WATER-OWNER B Water-Owner, Director/Secretary BETTY BEATRICE WATER-OWNER Applicant's or Solicitor's Signature</div> <div>Note: A Solicitor is required to print full name if signing on behalf of the Applicant</div>

NOTE: Items to be deposited:

- Water Allocation Dealing Certificate
- If managed under a Resource Operations Plan: Notice to registrar of water allocations of Existence of Supply Contract (W2F152)

^{2, 3}Guide to Completion of Form 14 for Example 33**Item 1** [14-4580]

Insert the nature of the request.

Item 2 [14-4590]

Insert Lot/Plan description of all Water Allocations to be amalgamated. Only one amalgamation request is permitted on each Form 14 – General Request.

Item 3 [14-4600]

Insert the full name(s) of the registered owner(s).

Item 4 [14-4610]

Insert: Water Allocation.

Item 5 [14-4620]

Insert the full name of the applicant.

Item 6 [14-4630]

Insert the appropriate words for the relevant request.

For example:

I hereby request that: the water allocations shown in Item 2 be amalgamated in accordance with Dealing Certificate No. 199998 deposited herewith.

Item 7 [14-4640]

Execute as required.

Example 34 – Change of Water Allocation

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

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Dealing Number



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1. Nature of request

CHANGE OF WATER ALLOCATION

Lodger (Name, address, E-mail & phone number)

B. F. Pioneer
PO Box 999
ANYTOWN QLD 4999
(07) 4999 9999

Lodger Code

2. Lot on Plan Description

LOT 1234 ON AP1234

Title Reference

46009999

3. Registered Proprietor/State Lessee

BURNETT FITZROY PIONEER

4. Interest

WATER ALLOCATION

5. Applicant

BURNETT FITZROY PIONEER

6. Request

I hereby request that: the Water Allocation shown in Item 2 be changed in accordance with Dealing Certificate No. 199998 deposited herewith.

7. Execution by applicant

B F Pioneer

21/9/07

Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

NOTE: Items to be deposited:

- Water Allocation Dealing Certificate
- If managed under a Resource Operations Plan: Notice to registrar of water allocations of Existence of Supply Contract (W2F152)

^{2, 3}**Guide to Completion of Form 14 for Example 34**

Item 1 [14-4650]

Insert the nature of the request.

Item 2 [14-4660]

Insert Lot/Plan description of the water allocation to be changed. Only one Water Allocation is permitted on each Form 14 –General Request.

Item 3 [14-4670]

Insert the full name(s) of the registered owner(s).

Item 4 [14-4680]

Insert: Water Allocation.

Item 5 [14-4690]

Insert the full name of the applicant.

Item 6 [14-4700]

Insert the appropriate words for the relevant request.

For example:

I hereby request that: the water allocation shown in Item 2 be changed in accordance with Dealing Certificate No. 199998 deposited herewith.

Item 7 [14-4710]

Execute as required.

Duty

[14-5500]

Set out below is an alphabetical list of likely Form 14 – General Requests, with information as to whether a request requires a Queensland duty notation. The list was prepared in consultation with the Office of State Revenue.

Form 14 – General Request list of likely requests	Duty Notation Required
Abolishment of council and vesting in another	yes
Acquisition of land by Commonwealth	no
Agreement – <i>River Improvement Trust Act 1940</i>	no
Amalgamation of Water Allocation	no
Annulment of bankruptcy	yes
Application for title by possession (executed after 1 March 2002)	yes
Application under Chapter 2 Part 12 Division 3 of the <i>Local Government Act (Finance, Plans and Reporting) Regulation 2010</i>	yes
Cancellation of a caveat	no
Cancellation of expired lease of freehold or water allocation lodged in the first unexercised option period see part 7, esp ¶[7-2200])	Yes*
Cancellation of expired lease over freehold or water allocation lodged after the first unexercised option period see part 7, esp ¶[7-2200])	no
Cancellation of an Agreement – <i>Local Government (Planning and Environment) Act 1990</i>	no
Cessation of Public Trustee as administrator	no
Change or correction of name of corporation	no
Change or correction of name of natural person	no
Change of Water Allocation	no
Correction of deed of grant (s. 359 of the <i>Land Act 1994</i>)	no
Determination of lease	Yes*
Discharge of trustee only	yes
Discharge/Satisfaction/Cancellation of Writ	no
Disclaimer of lease	Yes*
Divest and Vest – changing registered proprietor details	yes
Divest and Vest – no change to registered proprietor details	yes
Extinguishment of lease other than surrender	yes
Merger of lease	no
Notice of forfeiture, foreclosure and vesting	yes
Order of the court – changing registered proprietor details	yes
Order of the court –no change to registered proprietor details	yes
Order in Council	no
Proclamation resuming land (State)	yes
Proclamation resuming easement (State)	yes
Realignment of a road – notification	no
Realignment of a road – determination	no
Removal of trustee only	yes
Resignation of trustee only	yes

Form 14 – General Request list of likely requests	Duty Notation Required
Retirement of trustee only	yes
Register any direction, licence or order of the Supreme Court not being a vesting order	no
Removal of carbon abatement interest	no
Removal of charge created by a will	yes
Removal of instalment contract caveat	yes
Revocation of proclamation resuming land	no
Revocation of proclamation resuming easement	no
Request for separate indefeasible titles	no
Request to record change of name by a corporation	no
Request to record change of name by a natural person	no
Request to record correction of name	no
Request to record first CMS	no
Request to record new CMS	no
Request to record reservation of name for a community titles scheme	no
Request to record change of address of a body corporate	no
Request to record removal of profit a prendre	no
Request to register standard terms document (s. 169 of the <i>Land Title Act 1994</i> or s. 317 of the <i>Land Act 1994</i>)	no
Subdivision of Water Allocation	no
Transmission by bankruptcy – registered proprietor	yes
Transmission by bankruptcy – lessee, etc	yes
Vesting order – land	yes
Vesting order – not land	yes
Withdrawal of caveat (by equitable mortgagee)	no
Withdrawal of caveat (other than by equitable mortgagee)	no

*where the lease commenced before 1 January 2006.

¶[14-6000] deleted

¶[14-7000] deleted

Fees

[14-8000]

Fees payable to the Titles Registry are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1, 2}Land Title Regulation;
- ^{1, 3}Land Regulation
- ^{2, 3}Water Regulation.

Cross References and Further Reading

[14-9000]

Part 1 – Transfer

Part 2 – Mortgage (National Mortgage Form)

Part 11 – Caveat

Part 12 – Request to Register Writ or Warrant of Execution

Part 20 – Schedule, Enlarged Panel, Additional Page, Declaration or Standard Terms Document

Part 45 – Body Corporate and Community Management Schemes

Part 48 – State Land

Part 49 – Water Allocations

Megarry, RE and Wade, WHR, *The Law of Real Property*, 5th edn, London Stevens, 1984

Butt, P, *Land Law*, 2nd edn, Law Book Company, 1988

Bradbrook, A, MacCallum, S and Moore, AP, *Australian Real Property Law*, Law Book Company, 1990

Darvall, C and Fernon, NT, McDonald, Henry and Meek: *Australian Bankruptcy Law and Practice*, Law Book Company (loose-leaf service)

Notes in text

[14-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

^{1, 2}Part 15 – Request for Amalgamation

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^{1, 2}Part 15 – Request for Amalgamation

General Law

[15-0000]

There are two relevant types of amalgamations:

- amalgamation of lots; and
- amalgamation of interests held by tenants in common.

Amalgamation of Lots

Adjoining Lots Amalgamated into One Indefeasible Title

[15-0010]

Section 39(1) of the *Land Title Act 1994* enables the Registrar to create a single indefeasible title for two or more lots having the same registered owner. However, the Registrar must be satisfied that special circumstances make it appropriate to have the one indefeasible title (s. 39(2) of the *Land Title Act*). The Registrar is expressly authorised to act under s. 39 where the lots either share a common boundary or have a boundary that adjoins the same part of a road or watercourse (s. 39(3) of the *Land Title Act*).

¶[15-0020] to [15-0030] deleted

Practice

Amalgamation of Lots

Adjoining Lots Amalgamated into One Indefeasible Title

[15-2000]

Section 39(2) of the *Land Title Act 1994* provides for two or more lots to have a single indefeasible title if the Registrar of Titles considers this to be appropriate. The intent of the section is to allow the Registrar latitude in unusual circumstances and the section will be used only where it is considered necessary for efficient registry operations.

In keeping with this rationale, it is not intended that this option will be available to registered owners.

For the issue of indefeasible titles for lots created on a plan of amalgamation see part 21 – Plans and Associated documents, esp ¶[21-2300].

¶[15-2010] deleted

Amalgamation of Interests Held by Tenants in Common in Separate Titles

[15-2020]

Where separate titles have been created and one tenant in common acquires the interest of another, the following documentation should be lodged:

For a fee simple title:

- Form 1 – Transfer;
- Form 24 – Property Transfer Information;

- Form 25 – Foreign Ownership Information (if applicable);
- Form 15 – Request to Amalgamate; and
- Certificates of Title for all lots affected, if issued.

Those parts of Item 7 of the Form 15 – Request to Amalgamate which are not applicable to this type of amalgamation must be ruled through.

It should be noted that the consolidation of shares already held by a tenant in common on existing titles should be the subject of a Form 14 – General Request.

Forms

General Guide to Completion of Forms

[15-4000]

For general requirements for completion of forms see part 59 – Forms.



Dealing Number

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Lodger (Name, address, E-mail & phone number)

SMITH & CO
SOLICITORS
38 ANN STREET
BRISBANE QLD 4000
mail@smithco.com.au
(07) 3227 5943

Lodger
Code
902

1. Lot on Plan Description of land held	Title Reference
LOT 17 ON RP817618	50035826
2. Applicant	
JOHN VICTOR COOK and JANE ALEX COOK	
3. How land/shares in item 1 is held	
1/4 SHARE AS JOINT TENANTS INTER-SE	
4. Instrument by which land to be amalgamated was acquired	
Dealing Type TRANSFER FROM PETER SMALL TO JOHN VICTOR COOK AND JANE ALEX COOK AS JOINT TENANTS Dated 5 SEPTEMBER, 2007	
Dealing No. 700901236..... Share acquired 1/4	
5. Lot on Plan Description of land acquired	Title Reference
LOT 17 ON RP817618	10035127
6. Amalgamated Lot on Plan description	Title Reference (if amalgamation of shares)
LOT 17 ON RP817618	10035126
	10035127

7. Request/Execution by applicant

It is requested that:

~~*The lots described in item 1 and item 5 be amalgamated and an indefeasible title be created for the land described in item 6.~~

OR

*The shares of the applicant specified in item 3 and item 4 be amalgamated and an indefeasible title be created for
1/2 SHARE AS JOINT TENANTS INTER-SE
for the land described in item 6.

*delete if not applicable
#state share and tenancy

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

H I Newton

..... signature

HENRY ISAAC NEWTON

..... full name

SOLICITOR

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

11/9/2007
Execution Date

J V Cook

J A Cook

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name
if signing on behalf of the Applicant

Guide to Completion of Form 15

Item 1 [15-4010]

Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

eg	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

Item 2 [15-4020]

Insert full name of the registered owner.

Item 3 [15-4030]

Insert tenancy and or interests of land or shares if more than one applicant.

Item 4 [15-4040]

Insert particulars of the instrument by which the lot or share was acquired. In the case of a share, identify the share acquired.

Item 5 [15-4050]

See Item 1 above.

If amalgamation is in accordance with a new plan of survey then insert the new plan description.

Item 6 [15-4060]

Insert title references from Items 1 and 5 for amalgamation of shares and new amalgamated ‘Lot... on Plan...’ reference. Identify share as applicable.

Item 7 [15-4070]

Complete where indicated and delete sentence that is not applicable. Execute as required.

~~¶[15-6000] deleted~~

Case Law [15-7000]

Nil.

Fees [15-8000]

Fees payable to the registry are subject to an annual review. See the current Land Title Regulation in relation to the fee for “any other instrument” and the fee for creating an indefeasible title.

Cross References and Further Reading

[15-9000]

Part 18 – General Consent

Part 19 – Application for Title

Part 21 – Plans and Associated Documents

Notes in text

[15-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This part does not apply to State land.

Part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney

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Part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney

General Law

[16-0000]

The *Powers of Attorney Act* 1998 (the Act) was proclaimed to commence on 1 June 1998. This Act consolidated the law about general powers of attorney and enduring powers of attorney and also provides for advance health directives.

By Chapter 9 Part 5 (ss 181 and 182) of the Act, Part 9 (Powers of Attorney) of the *Property Law Act* 1974 (PLA) was repealed. However, s 163 of the Act clarifies that every power of attorney made under the PLA prior to 1 June 1998 is a power of attorney under the Act.

Any power of attorney executed prior to 1 June 1998 and pursuant to the PLA must comply with the provisions of the PLA to be registered in the Power of Attorney Register.

A power of attorney is an authority in writing given by one or more persons or corporations (the ‘principal’ or ‘donor’) to another or others (the ‘attorney’ or ‘donee’) to act in his/her/its/their name and on his/her/its/their behalf in dealings with third parties. The power of attorney may or may not be restricted in some way.

A power of attorney may subsequently be revoked (except in circumstances where it is made irrevocable in accordance with s 10 of the Act) either expressly by the principal or on the happening of an event or occurrence. In the case of ‘general’ powers of attorney, one such event is the incapacity of the principal(s). ‘Enduring’ powers of attorney are not revoked by the incapacity of the principal (s 32(2) of the Act). However, powers of attorney, other than irrevocable powers of attorney, are revoked on the death of the principal(s) (ss 19 and 51 of the Act).

If an attorney dies, the power of attorney is revoked to the extent it gives power to that attorney (ss 24 and 58 of the Act). Section 59A of the Act commenced from 21 April 2000 and provides that where joint attorneys have been appointed, the power for one or more of the attorney’s may be revoked provided that at least one attorney remains.

However, this provision only applies to enduring powers of attorney. If only one of joint attorneys remains after the death or disqualification of another/others he/she may exercise the powers. If two or more joint attorneys remain, they must exercise the powers jointly.

Prior to 21 April 2000, s 68 of the Act provided for the revocation of one or more joint attorneys. This provision applied to any power of attorney, provided that the revocation instrument has been executed during the period from 1 June 1998 to and including 20 April 2000. If only one of joint attorneys remains after the death or disqualification of another/others he/she may exercise the powers. If two or more joint attorneys remain, they must exercise the powers jointly.

Sections 132 and 133 of the *Land Title Act* 1994 (LTA) provide for the registration of powers of attorney, and for the subsequent registration of instruments or documents executed by an attorney under a power of attorney. The provisions recognise that restrictions may be placed on an attorney’s powers under a power of attorney.

The provisions include a requirement for the Registrar to keep a register of powers of attorney known as the ‘Power of Attorney Register’. The provisions also prescribe how the Registrar

registers a power of attorney. The provisions do not discern between ‘general’ and ‘enduring’ powers of attorney.

Section 134 of the LTA details the effect of registering powers of attorney and revocations. Section 135 of the LTA provides for registration of a revocation of any registered power of attorney.

Section 383 of the *Land Act* 1994 provides that a power of attorney registered under the *Land Title Act* 1994 is also taken to be a power of attorney registered for that Act.

General Rules Relating to Powers of Attorney

[16-0010]

Attorneys cannot put themselves in a position where their own interests conflict with the interests of the principal or their duties as an attorney, unless there is a specific provision permitting them to do so in the power of attorney (s 73(1) of the Act).

Attorneys also cannot act on behalf of the principal in dealings with themselves in their personal capacities unless expressly authorised by and with informed consent of the principal (*Tobin v Broadbent* (1947) 75 CLR 378).

An instrument or document executed by an attorney may only be registered if the power of attorney is registered in the registry (s 132 of the LTA).

Powers of attorney should have the powers clearly expressed. General words do not confer a general power, but confer such additional authority necessary to carry out any specified powers expressly conferred by the power of attorney.

It is possible for the principal to ratify acts done by an attorney, even retrospectively. A ratification clause which provides for a principal to ratify and confirm acts done by an attorney does not extend the authority given by the power of attorney, and can not be relied on to justify a transaction not otherwise expressly authorised.

An attorney may be appointed retrospectively. For example, an instrument that has been signed by an attorney on behalf of a principal may be dated prior to the power of attorney. However, the power of attorney document would need to include a ratification clause authorising the attorney’s actions. For the purposes of registering instruments or documents in the registry, the ratification may be specific as to the instrument or document or general, for example, to sell any land owned by the principal in the State. The dealing number of the power of attorney would need to be inserted in the instrument or document following registration of the power of attorney.

Generally, attorneys are not authorised to make gifts. Authority to make a gift may be provided in addition to any other powers. However, unless there is a contrary intention expressed in an enduring power of attorney, an attorney for financial matters may make a gift if the gift is:

- to a relation or close friend of the principal; and
- of a seasonal nature or because of a special event (including, for example, a birth or marriage); or
- a donation of the nature that the principal made when the principal had capacity or that the principal might reasonably be expected to make;

and the gift's value is not more than what is reasonable having regard to all the circumstances and in particular, the principal's financial circumstances. The attorney or a charity with which the attorney has a connection is not precluded from receiving a gift mentioned above.

A trustee may appoint the only other co-trustee of a trust to act as their attorney if:

- the co-trustee is a statutory corporation under the *Trustee Companies Act* 1968. That is, there must be at least two trustees acting, unless one is a trustee company; or
- there is specific authority in the trust document allowing the trustees to appoint the only other co-trustee as their attorney.

A trustee cannot appoint the only other co-trustee of a trust to act as their attorney if relying on s 56 of the *Trusts Act* 1973.

An attorney may only delegate administrative actions, powers or duties to another person if there is express authority in the power of attorney. If authorised by the power of attorney, an attorney can, by a substitutionary power of attorney, appoint substitutes to act in his/her stead for part or all of the duties (see ¶[16-0160]).

Capacity of Principal

[16-0020]

The principal must have legal capacity to delegate to an attorney and must not be under any duress, disability, lacking mental capacity or younger than 18 years of age. A minor, therefore, cannot delegate powers to an attorney.

Prior to 1 March 1975 a person under the age of 21 years had not attained the age of majority and could not execute documents on their own behalf. After 1 March 1975, a person of the age of 18 years is considered to have attained majority (*Age of Majority Act* 1974 repealed by the *Statute Law Revision (No 2) Act* 1995). These provisions are now contained in Part 6 of the *Law Reform Act* 1995. Any power of attorney executed after 1 March 1975 by a person 18 years or older (in the absence of any evidence that the person was not otherwise legally incapable) is legal and capable of registration.

If an enduring power of attorney is only to begin on the incapacitation of the principal, and the principal has lost capacity and is unable to conduct their financial affairs, a letter from a registered medical practitioner (on the practitioner's letterhead) stating that the principal has lost capacity and is unable to conduct their financial affairs must be deposited with the Form 16 – Request to Register Power of Attorney when initially lodged.

If the principal has capacity at the time of lodgement of the power of attorney and subsequently loses capacity, evidence, as stated above, should be deposited with all dealings executed under the power of attorney.

¶[16-0030] deleted

Prisoners

[16-0040]

Persons serving a prison sentence of three or more years, or subject to an indefinite sentence within the meaning of part 10 of the *Penalties and Sentences Act* 1992, or detained pursuant to Part 3 of the *Criminal Law Amendment Act* 1945 have no control over their affairs (such control being vested in the Public Trustee of Queensland) and cannot therefore execute a lawful power of attorney without the consent in writing of the public trustee.

A letter from the lodging solicitor advising the term of the sentence should be deposited with the Form 16 – Request to Register Power of Attorney. If the term is longer than three years, a statutory declaration from the Public Trustee stating that it has no objection to the attorney acting for the principal must be deposited. Alternatively, the Public Trustee may consent to the power of attorney. This consent may be given in a Form 18 – General Consent.

Dual Capacity Powers

[16-0050]

A principal, acting in two or more capacities, can appoint an attorney in respect of those various capacities in the one power of attorney. For example:

In a Form 1 (under the *Powers of Attorney Act 1998*) and at Item 1 in a Form 16 – Request to Register Power of Attorney (under the *Land Title Act 1994*) it would be stated as follows:

‘John Doe (both in his personal capacity and as trustee for the John Doe Family Trust)’;
or

‘John Doe Pty Ltd (both in its personal capacity and as trustee for the John Doe Family Trust)’.

The clause in the deed of trust authorising the appointment of an attorney must be stated in Item 3 of the Form 16 – Request.

The trust document must be deposited in the registry for any power executed by a person in his/her/its capacity as trustee. (For deposit of trust document see part 51, esp ¶[51-2043].)

Trustee

Power under s 56 of the *Trusts Act 1973*

[16-0060]

Section 56 of the *Trusts Act 1973* authorises a trustee who is absent from the State or is about to leave the State or become physically incapable, to appoint an attorney who is a Queensland resident. This can only apply to trustees who are natural persons, and not to corporate trustees.

This section applies even if the trust deed is silent on the point. The attorney has the same powers as the original trustee except for the power of delegation.

A power of attorney granted under s 56 of the *Trusts Act 1973* does not come into operation until the donor is actually out of the State or is physically incapable and is revoked upon his/her return or recovery.

Any instrument or document executed under this type of power of attorney requires a statutory declaration by the attorney stating that:

- the donor has left the State or is incapable; and
- that he/she has not returned or recovered; and
- that pursuant to s 56(7) of the *Trusts Act 1973* the power has come into operation.

A trustee cannot appoint the only other co-trustee of a trust to act as their attorney if relying on this section of the *Trusts Act 1973*.

Statutory Trustee Company

[16-0070]

Notwithstanding s 56 of the *Trusts Act* 1973 or the provisions of any particular trust deed, the Public Trustee and trustee companies under the *Trustee Companies Act* 1968, may appoint attorneys to transact on behalf of the particular trustee company in respect of trusts administered by it.

Corporation

[16-0080]

A corporation may appoint a person or another corporation to act as its attorney.

A power of attorney by or to a corporation must include the corporation's ACN, ARBN or ABN (see part 50 – Corporations and Companies).

A power of attorney given by corporations and executed in a way permitted by law does not require a witness.

The power of attorney need not be registered in the registry for execution of an instrument or document by the attorney to bind the company, however, it must be registered in the registry to enable instruments or documents dealing with land to be registered.

Section 52 of the *Corporations Act* 2001 (Cth) allows a director of a company to appoint an attorney to execute a dealing for the principal in his/her capacity as director of that company.

Receiver/Manager

[16-0090]

A receiver/manager of a company can execute instruments or documents on behalf of the company either with or without the company seal.

Section 420(2)(q) of the *Corporations Act* 2001 (Cth) authorises a receiver/manager to appoint an agent to do business that he/she cannot do in person. Evidence of appointment of the receiver/manager by way of a current Australian Securities and Investments Commission (ASIC) certified copy of the appointment must be deposited with the power of attorney.

An attorney appointed by the company prior to the appointment of a receiver/manager may continue to execute instruments or documents on behalf of the company in relation to charged assets **only** with the consent of the receiver/manager. This consent may be given in a Form 18 – General Consent.

See part 50 – Corporations and Companies for further details on receiver/managers.

Liquidator

[16-0100]

A liquidator executes instruments or documents in the name of the company and uses the company's common seal when necessary. Section 477(2)(k) of the *Corporations Act* 2001 (Cth) authorises a liquidator to appoint an agent to do business that the liquidator is unable to do in person. Usual evidence of appointment by way of Australian Securities and Investments Commission (ASIC) certified copy of the appointment must be deposited with the power of attorney.

An attorney appointed by the company prior to the appointment of the liquidator may continue to execute instruments or documents on behalf of the company **only** with the consent of the liquidator. This consent may be given in a Form 18 – General Consent.

See part 50 – Corporations and Companies for further details on company liquidators.

Effect of Winding Up on Receiver

[16-0110]

Under the *Corporations Act 2001* (Cth), a receiver of property of a corporation that is being wound up may, with the written approval of the corporation's liquidator or the approval of the court, carry on the corporation's business, either generally or as otherwise specified in the approval, and do whatever is necessarily incidental to carrying on the business under this provision (s 420C of the *Corporations Act 2001* (Cth)). The approval may be given in a Form 18 – General Consent.

Where this approval is not granted, the receiver's authority as agent of the company terminates. This does not, however, terminate the receiver's power to control and deal with property over which the receiver is appointed.

The receiver's authority as agent is limited to exercising the rights of the security holder as agent of the security holder and to deal with the property which is the subject of the charge. If necessary, the receiver may use the name of the company in the exercise of such rights.

Power of Attorney Granted by Way of Security – Irrevocable Powers

[16-0120]

Where a power is expressed to be irrevocable, it must be in terms of s 10 of the *Powers of Attorney Act 1998*. If the power is not in those terms, it may be requisitioned to have any reference to 'irrevocable' contained in the document removed.

Under s 10 of the *Powers of Attorney Act 1998*, an irrevocable power of attorney clause in a security, granted to secure a proprietary interest in a donor's asset together with the performance of an obligation owed to the donee (attorney), confers an authority to the security holder or donee. This continues regardless of the commencement of a winding up of a company or the death of the principal (donor).

Joint and Several Attorneys

[16-0130]

Where a power of attorney has appointed two or more attorneys to act jointly, then both or all of the attorneys must act on behalf of the principal. Where two or more attorneys have been appointed jointly and severally (or 'jointly and/or severally'), then any one of the attorneys may act on behalf of the principal.

If a power of attorney appoints more than one attorney and fails to disclose whether the attorneys are to act jointly or severally, it is presumed that the attorneys are to act jointly and the power will be registered accordingly.

Successive Power of Attorney

[16-0140]

A power of attorney which appoints one person as attorney and, in the event of that attorney's death or some other happening, appoints another as attorney, is effective as it relates to the first named attorney only, and is registered as such. Should the first named attorney die, or should

the prescribed event occur (eg the attorney becomes incapable) before the power of attorney is revoked, the power of attorney has to be presented again, with evidence of the death of the first named attorney or the happening of the prescribed event, to have the second attorney registered.

Similarly, if a power of attorney appoints two or more persons as attorneys and specifies that they are appointed ‘successively in the order named’, the first named attorney only is registered as the attorney. If a principal in a power of attorney nominates more than one attorney ‘successively’ and does not specify ‘in the order named’, the Registrar will assume that they are appointed ‘successively in the order named’. Should the first named attorney die or become incapable, the power of attorney must be lodged again to register the appointment of the next named attorney. Evidence of the ending of the first (or earlier) power, for example evidence of death or incapacity of the prior named attorney(s), must be deposited with the Request to register the subsequent attorney.

Alternative Attorney

[16-0145]

Section 43(2)(d) of the *Powers of Attorney Act 1998* states that an alternative attorney may be appointed by a principal for a matter or all matters, so that a power is given to a particular attorney to act only in the circumstance stated in the enduring document.

Although the *Powers of Attorney Act 1998* does not make specific reference to an alternative attorney in a general power of attorney, ss 8 and 9 allow for a principal to specify a time or circumstance in which a power is exercisable.

An alternative attorney may act only temporarily unlike a successive attorney who is appointed permanently in the circumstances stated in the power of attorney, for example the prior attorney is unwilling or unable to act.

For an attorney to be an alternative attorney it must be identified that the appointment is a temporary appointment whilst the first named attorney is unable to act. Once the first named attorney can resume duty as the attorney for the principal, the powers of the alternative attorney cease.

A statutory declaration must be deposited with any dealing executed by an alternative attorney stating why the first named attorney is unable to act.

Item 2 of the Form 16 – Request to Register Power of Attorney must show the first named attorney and the alternative attorney, and must state that the appointment is as an alternative attorney.

¶[16-0150] moved to [16-0175]

Substitutionary Power of Attorney

[16-0160]

The general rule is that an attorney cannot delegate his/her powers or duties to another, in part or in whole, without the express authority of the principal. Therefore, if authorised by the power of attorney, the attorney can, by a substitutionary power of attorney, appoint a substitute to act in his/her stead, for part or all of the duties delegated to him/her by the power of attorney. In this case, the power of attorney granted by an attorney that nominates and appoints another person to be the attorney’s substitute for specified purposes is registrable.

To record the substitutionary power of attorney, the Registrar requires the lodgement of a Form 16 – Request to Register the appointment of a substitute attorney together with the substitutionary power of attorney document.

Item 1 of the Form 16 – Request should show the principal in the capacity of attorney under the head power of attorney dealing number. Item 3 of the Form 16 – Request should state the clause in the head power of attorney document that authorises the appointment of the substitute attorney.

The *Powers of Attorney Act* 1998 does not provide for the attorney to have power to appoint a substitute attorney under an enduring power of attorney.

Supplementary Power of Attorney

[16-0170]

A principal can, by a power of attorney, appoint a person to be his/her attorney, and at a later date and by a separate power of attorney, appoint another person to act in addition to, or jointly with, the first attorney.

This is called a ‘supplementary power of attorney’ and the Power of Attorney Register is cross referenced with details of the supplementary power. An attorney, if authorised by the power, can also appoint supplementary attorneys to carry out part of the original duties as attorney for the principal.

Where an attorney with conferred power has appointed a substitute, it should always be first ascertained whether the authority is to appoint an additional (or supplementary) attorney to:

- (a) act ‘under the attorney’ in a supplementary capacity; or
- (b) make a substitutionary appointment ‘in the attorney’s stead’.

In the former case (a), the original attorney is to be regarded as still continuing in office, notwithstanding his/her appointment of a supplementary attorney. On the death of the original attorney or on his/her ceasing to hold office, the supplementary attorney will also terminate.

In the latter case (b), however, the appointment by the original attorney would prevent him/her acting in the position again. In effect, it creates his/her own retirement in favour of the substitute.

¶[16-0175] deleted

Power of Attorney Affecting State Tenure and Water Allocations

[16-0180]

All powers of attorney registered in the Power of Attorney Register can be applied to dealings with either freehold land, State tenures or water allocations.

Interstate or International Power of Attorney

[16-0190]

Sections 132 to 134 of the *Land Title Act* 1994 comprise current Queensland law relating to powers of attorney and their registration in the registry.

Nothing in those sections suggests that a power of attorney that is prepared and executed according to the laws of another State or country cannot be registered in the registry, as registration of a power of attorney does not transfer interests, but simply records that a person other than the owner or proprietor is entitled to deal with an interest (subject to any limitations in the power).

Powers of attorney (including an enduring power of attorney) prepared and executed according to the laws of another State or country may be registered in the registry under the *Land Title Act* 1994.

A request (Form 16) to register an interstate or international enduring power of attorney must include a statement in writing, by either the lodging solicitor or the attorney, confirming that the power of attorney lodged conforms with the law of the state or country to which the power of attorney relates.

General powers of attorney executed interstate or internationally require a statement that the power of attorney has been executed in accordance with the law of the jurisdiction to which the power of attorney relates, if the witness does not comply with the requirements for an instrument executed in Queensland (eg a Justice of the Peace etc).

However, the above requirements will not apply if the power of attorney lodged has a notation, memorial or other evidence that indicates the power of attorney has been recorded in that jurisdiction.

Certified Copy of Power of Attorney

[16-0195]

Sections 14 and 45 of the *Powers of Attorney Act* 1998 provides that a general power of attorney or an enduring power of attorney may be proved to be a copy by certification under the relevant section and does not prevent a power of attorney being proved in another way.

The Registrar of Titles will extend the practice of certification to other powers of attorney (eg a common law form of power of attorney) provided it is certified in the same manner. The Registrar of Titles will deal with a properly certified copy of a power of attorney as if it were the original instrument.

A copy of a power of attorney certified under the provisions of s 14 or s 45 of the *Powers of Attorney Act* 1998 is to be proved in the following manner:

- 1 Each page, other than the last page, must be certified to the effect that the copy is a true and complete copy of the corresponding page of the original.
- 2 The last page must be certified to the effect that the copy is a true and complete copy of the original.
- 3 Each page of the certified copy of the power of attorney must be on a single-sided A4 sheet of paper.
- 4 The certification must be by one of the following persons –
 - (a) the principal;
 - (b) a justice of the peace;
 - (c) a commissioner for declarations;
 - (d) a notary public;
 - (e) a lawyer (see ss 33A and 36 of the *Acts Interpretation Act* 1954);

- (f) a trustee company under the *Trustee Companies Act* 1968;
- (g) a stockbroker.

A copy of a certified copy of a power of attorney may also be certified as a copy under the provisions of s 14 or s 45 of the *Powers of Attorney Act* 1998.

Restrictions in Power of Attorney

[16-0200]

A principal may limit the powers given to an attorney by specifically defining the functions the attorney may perform. For example, attorneys who do not have the power to purchase land cannot sign transfers as transferee.

An enduring power of attorney under Chapter 3 of the *Powers of Attorney Act* 1998 must be in or substantially comply with Form 2 or 3 under the *Powers of Attorney Act* 1998.

Revocation of Power of Attorney

[16-0210]

A power of attorney, other than an enduring power of attorney, may be revoked in accordance with the provisions of Chapter 2 Part 3 of the *Powers of Attorney Act* 1998.

An enduring power of attorney may be revoked in accordance with Chapter 3 Part 5 of the *Powers of Attorney Act* 1998.

A Form 16 – Request to Register Revocation of Power of Attorney, with the necessary amendment to Item 3, is appropriate to register the revocation of a power of attorney, but is not the revocation itself.

A revocation cannot be registered in the registry if the power of attorney is not registered in the registry.

A principal that has complied with s 16 or s 46 of the *Powers of Attorney Act* 1998 may register a revocation of a registered power of attorney. The revocation of power of attorney in the appropriate form as approved in keeping with s 161 of the *Powers of Attorney Act* 1998 together with a Form 16 – Request to Register Revocation of Power of Attorney (Form 16 under the *Land Title Act* 1994) must be lodged in the registry.

A Form 5 – Revocation of General Power of Attorney (approved in keeping with the *Powers of Attorney Act* 1998) is appropriate to revoke any general power of attorney. A Form 6 – Revocation of an Enduring Power of Attorney (approved in keeping with the *Powers of Attorney Act* 1998) is appropriate to revoke an enduring power of attorney. A registered enduring power of attorney may only be revoked in Form 6. See also ¶[16-0260] in relation to enduring powers of attorney.

The revocation of a general power of attorney may be in the form of a deed made by the principal. The deed of revocation is deposited with the Form 16 – Request to Register Revocation of Power of Attorney (under the *Land Title Act* 1994).

If a revocation of a power of attorney is executed in another State or country and the laws of that State or country provide specific requirements for the execution of a revocation, the execution must be undertaken in accordance with those laws.

The date of revocation of a power of attorney is recorded in the Power of Attorney Register to notify interested parties of the time the attorney's power ended. Any substitutionary power of attorney is also revoked from that time.

For the purpose of registration in the registry a power of attorney that revokes a previously registered power of attorney **and** appoints one or more attorneys, is taken to be two instruments and requires lodgement of two Forms 16 under the *Land Title Act 1994*.

If more than one power of attorney is being revoked, separate revocations are required for each power of attorney. Separate lodgement fees are payable for revocation of each power of attorney.

Revocation of Joint and Several Principals

[16-0220]

Where two or more principals severally appoint an attorney, it is possible for only one principal to revoke his/her power of attorney.

Revocation of Joint and Several Attorneys

[16-0230]

Where two or more attorneys have been appointed jointly or jointly and/or severally the power given to one or more of them may be revoked separately.

Revocation of Substituted Attorney

[16-0240]

The principal of an original power of attorney can revoke the power of attorney so far as it relates to a substituted attorney. Revocation of the original power of attorney is sufficient for the revocation of the substitutionary power of attorney.

Revocation of a Power of Attorney Granted by a Corporation

[16-0250]

If a corporation has given a power of attorney to any person and an official manager is subsequently appointed, the power of attorney will cease to operate from the date that the official manager is appointed, unless the official manager directs that the power of attorney is to continue in force (see also ¶[16-0090]).

Revocation by Operation of Law

[16-0260]

Generally speaking, a power of attorney is revoked upon the (a) death or (b) loss of capacity of the principal. The exceptions are:

- (a) where the power of attorney is stated to be irrevocable pursuant to s 10 of the *Powers of Attorney Act 1998*; and
- (b) enduring powers of attorney pursuant to Chapter 3 Part 5 of the *Powers of Attorney Act 1998*, although an enduring power of attorney **is** revoked by the death of the principal.

An enduring power of attorney is revoked in the circumstances set out in Chapter 3 Part 5 of the *Powers of Attorney Act 1998* or s 135 of the *Land Title Act 1994*. In the case of revocation pursuant to an order of the court, a copy of the court order is required to be lodged. Where revocation is due to the bankruptcy of the principal or attorney, a copy of the extract from the National Personal Insolvency Index is required to be lodged. Where revocation is due to the

winding up, dissolution or appointment of a receiver or administrator to a corporate attorney, a copy of the appointment of liquidator, receiver or administrator is required to be lodged. Where the revocation results from the death of either a joint tenant principal or a sole principal, an office copy of the certificate of death is required to be lodged.

The above evidence should be deposited with a Form 16 – Request to Register Revocation of Power of Attorney when lodged for registration in the titles registry. See [60-1030] for information about depositing supporting documentation.

¶[16-0270] deleted

Legislation

[16-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of ss 150(1) and 151 of the *Water Act 2000*, subject to the exceptions provided in ss 150(2) and 151(1) of the *Water Act 2000*, the *Land Title Act 1994* applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act 2000* an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act 1994* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act 1994*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act 2000*; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

Land Act 1994

Section 383 of the *Land Act 1994* states that, a Power of Attorney registered under the *Land Title Act 1994* is taken to be a Power of Attorney registered under the *Land Act 1994* and authorises the donee to deal with any interest in land that may be dealt with by the donor under the power of attorney under the this Act

Section 383(3) of the *Land Act 1994* forbids a trustee of trust land from authorising a person to deal with an interest in trust land that the trustee may deal with. Trust land in this part would refer to reserves, deeds of grant in trust and similar land held for community purposes.

Practice

NOTE! From this point on and for simplicity, ‘donees’ will only be referred to as ‘attorneys’ and ‘donors’ will only be referred to as ‘principals’.

Registration of Power of Attorney

General Registration Requirements

[16-2000]

The *Powers of Attorney Act* 1998 was proclaimed on 1 June 1998. This Act consolidated the law about general powers of attorney and enduring powers of attorney and also provides for advance health directives.

The *Powers of Attorney Act* 1998 does not prevent a person from executing and registering what is referred to as a common law form of **general** power of attorney. However, for these powers of attorney to be registered they must be executed under the provisions of s 161 and s 162 of the *Land Title Act* 1994.

Seven forms have been approved under the *Powers of Attorney Act* 1998 for use when making or revoking powers of attorney. The following table may assist to determine how any of the forms may be registered.

Form	Purpose	Register – LTA	Register – PLA
1	General Power of Attorney	Yes	Yes
2	Enduring Powers of Attorney – Short Form (same attorney(s) for financial and personal matters)	Yes, if financial matters included	Yes
3	Enduring Powers of Attorney – Long Form (different attorneys for financial and personal matters)	Yes, if financial matters included	Yes
4	Advance Health Directive	No	Yes
5	Revocation of General Power of Attorney	If p/a registered	Yes
6	Revocation of Enduring Power of Attorney	If p/a registered	Yes
7	Interpreter's/Translator's Statement	Only with power	Only with power

All powers of attorney lodged for registration under the *Land Title Act* 1994 are registered in the Power of Attorney Register in the Automated Titles System.

A power of attorney may confer on the attorney(s) authority of a general nature or it may authorise only specific actions and these may not relate to land. If there is no power for an attorney to deal with land or an interest in land under the *Land Title Act* 1994, the power of attorney can not be registered in the Power of Attorney Register.

However, it may be registered in the registry under the *Property Law Act* 1974 (see ¶[16-2135]).

If a printed power of attorney form specifically sets out the powers of the attorney and has additional powers typed in, the additional powers will be read in addition to the printed powers. For example:

If the following clause is added to a pre-printed power of attorney:

‘I hereby specifically declare that my attorney can execute transfer documentation for the sale of my property’

then the implication is **not**:

‘I hereby specifically declare that my attorney can **only** execute transfer documentation for the sale of my property’.

Any power of attorney that authorises an attorney to deal with an interest in land may be registered in the Power of Attorney Register.

A power of attorney registered in the Power of Attorney Register may be quoted as authority for execution of an instrument or document to be registered under the *Land Title Act* 1994 or the *Land Act* 1994.

Form 16 is not a power of attorney in itself but the vehicle by which registration of a power of attorney or revocation of power attorney is requested. A completed Form 16 must accompany any power of attorney, including a power of attorney contained in a lease, mortgage or agreement, or a revocation of a power of attorney to be registered in the Power of Attorney Register.

Form 16 – Request to Register must be signed by the person making the request, for example the principal or attorney, or the solicitor for the principal or attorney. A witness to the signature is not required.

Duty

[16-2010]

There is no duty notation required on a power of attorney executed after 1 November 1989. Powers of attorney executed prior to 1 November 1989 should be referred to the Office of State revenue for duty payment.

Lodgement

[16-2015]

The original or a properly certified copy of the power of attorney is to be deposited with the Form 16 – Request to Register Power of Attorney on lodgement. A copy of the instrument or document is retained in the registry after registration and the deposited original power of attorney or certified copy is returned to the lodger. (For requirements of certifying a power of attorney see ¶[16-0195]).

Power of Attorney under s 56 of the *Trusts Act* 1973

[16-2020]

The power given should include a reference to s 56 of the *Trusts Act* 1973, if applicable, and to the ‘estate’ being administered as is appropriate to the specific case.

This section does not apply to corporate trustees.

A power of attorney under this section cannot be exercised until the principal (trustee) is out of the State or is incapable by reason of physical infirmity. It can no longer be exercised once the principal (trustee) returns to the State or recovers.

It is a requirement under s 56(7) of the *Trusts Act* 1973 that the attorney lodge a statutory declaration with any document executed under the power of attorney to the effect that the principal has left the State or is physically incapable and that under s 56(5) of the *Trusts Act*

1973, the power of attorney has come into operation. For example, a statutory declaration in the following form is acceptable:

‘QUEENSLAND
TO WIT

I, BILL JONES of 22 Klume Street, Red Hill in the State of Queensland do solemnly and sincerely declare as follows:

- 1 KEITH JONES of 22 Klume Street, Red Hill aforesaid did execute power of attorney Dealing No F567861 to me prior to departing from the State of Queensland in or about April 1985.
- 2 I am the donee mentioned and referred to in the said power of attorney and reside in Queensland.
- 3 The said Keith Jones has not returned to Queensland at the time of making this declaration.
- 4 I further declare that pursuant to s 56(5) of the *Trusts Act* 1973 the aforementioned power of attorney has come into operation.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act* 1867 as amended.

SIGNED AND DECLARED by)	
the KEITH JONES at Brisbane)	<i>K Jones</i>
in the State of Queensland this 3rd)	
day of July 1985, before me:)	

T. Tallis

.....

THOMAS TALLIS

A Justice of the Peace’

Power Under a Trust Deed to Appoint an Attorney

[16-2030]

Trustees (including corporate trustees) may appoint an attorney if authorised to do so by the trust deed appointing the trustee. Note that s 4(4) of the *Trusts Act* 1973 provides that powers given in a trust deed are in addition to those given under the *Trusts Act* 1973.

Whenever a person or company in his/her/its capacity as trustee appoints an attorney, a copy of the original trust instrument must be deposited with the power of attorney when it is lodged. See [60-1030] for information about depositing supporting documentation.

When a trustee grants the power to deal with a trust in a power of attorney, he/she must specifically state in Item 1 of the Form 16 – Request to Register Power of Attorney that he/she ‘as trustee/personal representative of [name of trust/deceased]’ is granting the power. The relevant paragraph/clause in the trust deed or relevant section of the *Trusts Act* 1973 that gives the power to appoint an attorney must be stated in Item 3 of the Form 16 – Request to Register Power of Attorney.

Joint and Several Principals or Attorneys

[16-2040]

In a general power of attorney 2 or more principals may jointly appoint an attorney, in which case the attorney can only act for both or all of the principals jointly. A power given jointly by two or more people is revoked upon the death or loss of legal capacity of any one of the principals. In cases where powers of attorney fail to disclose how the multiple principals hold their interests, they will be assumed to be and will be registered as granting the power jointly

Where two or more principals jointly and severally (or jointly and/or severally) appoint an attorney or multiple attorneys jointly and severally (or jointly and/or severally) to act, then the attorney may act for any or all of the principals. It is possible to register the power from only one principal to one attorney.

Registration of Power of Attorney Clause in Mortgage or Other Instrument or Document

[16-2050]

By a specific clause in most leases, mortgages, etc, it is usual for the lessee or mortgagor to appoint the lessor or mortgagee as their attorney. While these appointments are usually granted in the event of default under the terms and conditions, this is not always the case.

Exercise of these powers is confined to the land referred to in the lease or mortgage, unless otherwise specified in the instrument or document.

Where the power of attorney clause is only able to be invoked upon default of some kind, evidence of such default must be deposited at the time of lodgement of the power of attorney.

For example, the following clause is effective to grant an immediate power of attorney under s 132 of the *Land Title Act* 1994:

‘... and to secure payment to you of any amounts outstanding whether debt, interest or costs, I charge all my property, both real and personal, present and future, with the amount of my indebtedness until discharged, such indebtedness to include all matters referred to in Clause [number] hereof and I hereby appoint as my duly constituted attorney your manager for the State in which the said debt was payable...’.

A power of attorney clause in a mortgage that has been discharged may only be registered if the mortgagor has not been discharged from personal covenants under the mortgage. A power of attorney clause of this nature and one in an unregistered short term lease, an instrument or document that has not been registered in the registry or certain deeds and agreements is capable of registration as a power of attorney.

In order to register a power of attorney clause, the following documentation must be produced with the registry Form 16 – Request to Register Power of Attorney:

- (a) a copy of the registered instrument or document obtained from the Land Registry (which need not be a certified copy); or
- (b) an unregistered, executed copy of the registered instrument or document (eg an unregistered duplicate or triplicate); or
- (c) an original executed deed or agreement (eg a mortgage debenture containing a power of attorney clause).

In all cases the documentation produced will be returned to the lodger after registration (s 133(3) of the *Land Title Act* 1994).

If default is a pre-requisite of the power of attorney, evidence of default (ie a declaration as to default having occurred and service of notices on the defaulting proprietor(s)) and a copy of the notice(s) must be deposited. In these instances the date of default is the date of the power of attorney. If default is not a pre-requisite, the date of the document that contains the power of attorney clause or event specified is the date of the power of attorney.

Error in Power of Attorney

[16-2060]

If an attorney executes an instrument or document and a minor difference in the name of the principal or the attorney is detected (eg a typographical error), a declaration of identity is required.

Types of Power of Attorney

Form 1 under s 11 of the *Powers of Attorney Act 1998*

[16-2063]

A Form 1 – General Power of attorney (non-enduring) (under the *Powers of Attorney Act 1998*) operates to confer on attorneys (acting jointly or severally if more than one), authority to do anything that an Attorney can lawfully do on behalf of a principal or it may contain terms or information about exercising the power (s 8 of the *Powers of Attorney Act 1998*). A general power of attorney must be in the approved form (s 11 of the *Powers of Attorney Act 1998*), however, strict compliance with the form is not necessary and substantial compliance is sufficient (s 49 of the *Acts Interpretation Act 1954*).

These are capable of being registered in the Power of Attorney Register provided they do not specifically exclude the attorney from dealing with land owned by the principal.

A general power of attorney is capable of being registered as a deed under the *Property Law Act 1974*.

Forms 2 and 3 under s 44 of the *Powers of Attorney Act 1998*

[16-2066]

A Form 2 (short form) or Form 3 (long form) – Enduring Power of Attorney (under the *Powers of Attorney Act 1998*) operates to confer on the attorney authority to do, on behalf of the principal, anything that the principal may lawfully authorise an attorney to do. However, enduring powers of attorney can only be registered in the Power of Attorney Register if they contain powers in relation to financial matters and do not exclude dealings with both interests in land or water allocations owned by the principal.

These powers of attorney continue to operate and have full force and effect even if the principal becomes incapable. However, the attorney's authority ceases on the death of the principal.

Forms 2 and 3 – Enduring Powers of Attorney, may give a general authority, a specific authority or a general and specific authority with restrictions or conditions, without affecting its enduring status. An enduring power of attorney must be in the approved form. If a power of attorney is not in substantial compliance with Form 2 or 3, it will be ineffective as an **enduring** power of attorney in Queensland (see ¶[16-0190]).

Section 44(3)(b) of the *Powers of Attorney Act 1998* states that an enduring document must—

(a) be signed—

(i) by the principal; or

(ii) if the principal instructs—for the principal and in the principal’s presence, by an eligible signer; and

(b) be signed and dated by an eligible witness.

Section 44(4) states that if an enduring document is signed by the principal, it must include a certificate signed by the witness. This section sets out that the eligible witness is required to sign and date an enduring power of attorney in both the Statement of Understanding and the Certificate of Witness clauses.

An enduring power of attorney is capable of being registered as a deed under the *Property Law Act 1974*.

¶[16-2070] to ¶[16-2090] deleted

Form 13 or Form 14 under the *Property Law Act 1974*

[16-2100]

A Form 13 – (General Power of Attorney) or Form 14 – (Enduring Power of Attorney) under the *Property Law Act 1974* may be registered in the Power of Attorney Register if executed prior to 1 June 1998.

¶[16-2110] and ¶[16-2120] deleted

Power of Attorney under Common Law

[16-2130]

No form is prescribed for a common law power of attorney. However, every power of attorney, to be registered in the registry, must be presented for lodgement with a Form 16 – Request to Register Power of Attorney.

Registration under the *Property Law Act 1974*

[16-2135]

Note: At present, this service is only available at the Brisbane Office. For registration of a power of attorney as a deed under Part 18 Division 3 of the *Property Law Act 1974*, the original and a photocopy (printed one-side on international A4 sized white paper) that has been certified as required by s 242 of the *Property Law Act 1974* and has provision for endorsements as required by s 244 of the *Property Law Act 1974* must be provided. Section 242 of the *Property Law Act 1974* requires the certification to be made by a credible person and the oath to be taken before a witness as prescribed by schedule 1 of the *Land Title Act 1994*.

The certification of the copy by a credible person should be made on the last page and in the following format:

‘I (*insert full name*), of (*insert full address*) in the State of (*insert State*), (*insert profession*), certify that this (*insert number*) and the preceding pages is a true copy of the original power of attorney given by (*insert full name of principal*) dated (*insert date of power*).

Sworn by (*insert full name*) at)
(*insert place*) in the State of)
(*insert State*) on this (*insert date*))
before me: (*signature of deponent*)

(signature of witness)

(print full name of witness)

(*insert qualification of witness*)’

Provision for endorsement by the Registrar or delegate on the original power of attorney and the certified photocopy in keeping with s 244 of the *Property Law Act 1974* should be on last page of both the original and the certified copy and in the following formats:

Certified copy

‘Received in the registry as No. *(leave space to insert number)* Book *(leave space to insert book number)* at the time and date recorded on the document.

(leave space for signature of Registrar)

Registrar of Titles and Registrar of Water Allocations, Queensland’

Original

‘Received in the registry as No. *(leave space to insert number)* Book *(leave space to insert book number)* at *(leave space to insert time)* am/pm on *(leave space to insert date)*.

(leave space for signature of Registrar)

Registrar of Titles and Registrar of Water Allocations, Queensland’

Note: The above receipts (which comprise registration under the *Property Law Act 1974*) may only be given by the Registrar personally or by a delegate.

Execution of Power of Attorney

Individual

[16-2140]

Execution of powers of attorney is governed by s 45 of the *Property Law Act 1974* for individuals and s 46 of the *Property Law Act 1974* for corporations.

Note: A principal may place his/her mark on the power of attorney where, for example, the principal does not have the physical strength to make the signature. A marksman clause is required (see part 60 – Miscellaneous, esp ¶[60-0900]).

In the case of physical incapacity, it is possible also for another person (apart from the principal) to execute the power at the direction of the principal. For example, where a principal is unable to physically sign the power of attorney, the following execution would be acceptable:

‘**SIGNED SEALED AND DELIVERED** by **LEE ROBERT ERNEST** at the direction of **PHYLLIS MURIEL** and in the presence of **PHYLLIS MURIEL** on the grounds that **PHYLLIS MURIEL** was unable to execute this document personally by reason of infirmity and physical incapacity, **LEE ROBERT ERNEST** having read the contents of this document to **PHYLLIS MURIEL** who appeared to understand the same and the nature and effect thereof.

L R Ernest

.....

Lee Robert Ernest

P Smith

.....

Paul Smith

(A Justice of the Peace)’

Corporation

[16-2150]

A power of attorney given by a corporation may be executed either with or without the common seal provided the execution is in a way permitted by law.

If a corporation subsequently changes its name, a Request to Update power of attorney is required to be lodged (see ¶[16-2190]).

It is possible for two or more corporations or a corporation and a natural person to appoint a common attorney in one instrument.

Where several corporations appoint a common attorney and registration is required in respect of less than all the principals, the Form 16 – Request to Register must specify which of the powers requires registration.

Attestation

[16-2160]

Every power of attorney lodged in the registry must be witnessed in accordance with:

- (a) s 161 and 162 of the *Land Title Act* 1994, or
- (b) the requirements for execution of powers of attorney of the state or country to which the form relates.

The exception to this is in the case of a corporation and these powers of attorney are sufficiently attested if executed in a way permitted by law.

Execution of Instrument by Attorney

[16-2170]

See part 60, esp ¶[60-0900].

Revocation of Power of Attorney

[16-2180]

Any dealing executed under a power of attorney after registration of the revocation of the power cannot be registered (see s 134(4) of the *Land Title Act* 1994). The Registrar may register a dealing executed under the power of attorney where the execution was before the time of registration of the revocation, even if the dealing was lodged after registration of the revocation. It is crucial that the time of execution of the dealing for which registration is sought precedes the time of registration of the revocation. The time of lodgement of the dealing and the time of lodgement of the revocation are immaterial.

Update of a Registered Power of Attorney

[16-2190]

A registered power of attorney may require updating following a change of name of a principal and/or an attorney, or following a change to the description of the property identified in the power of attorney. Updating the power of attorney will facilitate prompt registration of later transactions signed under the power of attorney. See part 14, esp ¶[14-2800].

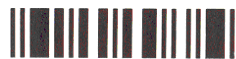
Forms

General Guide to Completion of Forms

[16-4000]

For general requirements for completion of forms see part 59 – Forms.

**REQUEST TO REGISTER POWER OF ATTORNEY/
REVOCATION OF POWER OF ATTORNEY**



Dealing Number

OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

Lodger (Name, address, E-mail & phone number)

LINCON & LEE
SOLICITORS
48 TURBOT STREET
BRISBANE QLD 4000
mail@linconlee.com.au
(07) 3227 4562

**Lodger
Code**
725

1. Principal (Donor) Given names

IVOR DENIS

SALLY ENID

Surname/Company name and number

DREAME

DREAME

~~* and as Trustee/Responsible Entity for~~

~~* jointly and/or severally~~

~~* delete if not applicable~~

2. Attorney (Donee) Given names

RICHARD LEO

Surname/Company name and number

MURRAY

~~* jointly and/or severally~~

~~* delete if not applicable~~

3. Request

It is requested that you register:

*Power of Attorney produced with this request

*Power of Attorney Clause no. in Dealing no.

*Power of Attorney Clause no. in Document dated produced with this request

*Power of Attorney Pursuant to Section (name of legislation)

~~*the attached Revocation of Power of Attorney Dealing no.~~

~~*delete if not applicable~~

4. Execution

R B Lee
ROBERT BRUCE LEE

9/10/2007
Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Guide to Completion of Form 16

Item 1

[16-4010]

Insert the full name of the principal (donor) and either:

‘as Trustee/Responsible Entity for ...’; or if more than one

‘jointly’; or

‘severally; or

‘jointly and severally’

which ever is applicable.

Item 2

[16-4020]

Insert the full name of the attorney (donee) and if more than one, either:

‘jointly’; or

‘severally; or

‘jointly and severally’; or

as a majority; or

any two jointly.

which ever is applicable.

Item 3

[16-4030]

Delete the statement that is not applicable. If the power of attorney is only partially revoked, then set out the details in this panel.

Item 4

[16-4040]

Execute as required. No witness is required to the execution of the Form 16.

¶[16-6000] deleted

Case Law

Tobin v Broadbent (1947) 75 CLR 378

[16-7000]

However widely a power of attorney is expressed, it should not be construed as authorising the attorney to deal with the property of the principal for the attorney’s own benefit, unless it is expressed that the attorney is specifically authorised to do so.

Fees

[16-8000]

Fees payable to the registry are subject to an annual review. See the current:

- ^{1,2}*Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m); and
- ^{1,3}*Land Regulation* 2009 – Schedule 11, item numbers 2(e), and 2(f).

Cross References and Further Reading

[16-9000]

Part 50 – Corporations and Companies

Part 51 – Trusts

Part 60 – Miscellaneous

Halsbury's Laws of Australia, Volume 1, Title 15, Agency

Notes in text

[16-9100]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

^{1, 2}Part 17 – Request to Dispense with Production of Instrument

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^{1, 2}Part 17 – Request to Dispense with Production of Instrument

General Law

[17-0000]

Where a Certificate of Title has not been cancelled by the Registrar and it has been lost or destroyed and is required to be lodged with the Registrar (eg for cancellation to allow registration of an instrument), an application must be made to the Registrar, pursuant to s 164 of the *Land Title Act* 1994, to dispense with production of the Certificate of Title. The dispensation with production of the Certificate of Title will be noted in the Register.

Practice

¶[17-2000] deleted

Advertising

[17-2010]

Generally, the Registrar requires public notice to be given for applications to dispense with production of a Certificate of Title in the following manner, as determined by the Registrar from the evidence deposited:

- in the *Courier-Mail* if the land is located within 50 kilometres from the Brisbane GPO; or
- in a paper that is acceptable to the Registrar and is circulated in the vicinity of the land, if it is more than 50 kilometres from the Brisbane GPO.

However, for applications to dispense where:

- (a) there are two or more proprietors; or
- (b) there is only one proprietor and a corroborative statutory declaration from another person is produced,

and the parties declare that, from their own personal knowledge, they can substantiate that:

1. the Certificate of Title was **definitely destroyed**, no public notice is required; or
2. the Certificate of Title was **definitely either lost or stolen** at a particular location, public notice is required once only in a newspaper that is acceptable to the Registrar and is circulated in the vicinity where the Certificate of Title was lost or stolen.

Seven clear days after the date of publication of the notice, the dispense may be registered if no caveat (pursuant to s 122 of the *Land Title Act* 1994 has been lodged e.g. if the advertisement is placed in the newspaper on Wednesday 7th March and given to our office the following day, it would not be able to be registered until Thursday 15th March at the earliest. Where the eighth day is on a weekend or a public holiday, it will be registered on the next business day.

For more information about advertising see [60-0830].

Supporting Statutory Declaration

[17-2020]

There are a wide variety of circumstances involved in Form 17 – Requests. The Registrar requires the best evidence available to ensure the Certificate of Title is not able to be located before registering the Request, but has a discretionary power to determine what is acceptable evidence for each individual case. Generally, statutory declarations are required from:

- the registered owner; and
- every person who had custody of the Certificate of Title:
 - since it was last delivered from the Titles Registry; or
 - until and including when it was in the custody of a reliable source (for example, a solicitor's firm or a financial institution).

The registered owner's statutory declaration must cover the following points (as applicable):

- the date on which and to whom the Certificate of Title was last delivered from the Titles Registry;
- the history of its custody since delivery from the Titles Registry;
- the point at, and the circumstances through, which the Certificate of Title was lost, mislaid or destroyed;
- the efforts made by the applicant to search for the Certificate of Title if it is lost or mislaid;
- a statement that the search has been conducted in all likely and unlikely places around their home and any other places where valuables are kept;
- they are familiar with the appearance of the missing Certificate of Title; and
- any documentary proof of such searches, such as copies of letters received from banks, solicitors, etc, confirming that the Certificate of Title is not held by them.

Note: If the sole registered owner is deceased and the statutory declaration is being made by their personal representatives, a transmission by death application must be lodged simultaneously when the Form 17 – Request to Dispense with Production of Instrument is lodged.

A supporting statutory declaration may also be required if there is only one proprietor who is unable to declare that they are familiar with the appearance of the missing Certificate of Title. A corroborative statutory declaration should be obtained from at least one person, such as a relative or neighbour who assisted the applicant to search their home and any other places where valuable records are kept and made enquiries on the proprietor's behalf.

Each declarant other than the registered owner must set out the details within their knowledge, of the movement and custody of the Certificate of Title.

If all the persons who have had custody of the Certificate of Title since it was last delivered from the Titles Registry are not available or able to provide statutory declarations, statutory declarations should be obtained from those who are available and a further statutory declaration made by someone appropriate in the specific circumstances stating who the others are and why statutory declarations cannot be obtained from them.

Statutory declarations prepared on forms purchased from stationers or prepared by word-processor, as well as on Form 20, are acceptable.

Loss by a Third Party

[17-2030]

If a registered owner deposits a Certificate of Title with another party (eg bank, solicitor, etc) as or for security and the Certificate of Title is lost, destroyed or stolen while in the possession of that party, the following documentation is required:

- a Form 17 – Request to Dispense with Production of Instrument, together with:
 - a statutory declaration by the registered owner regarding the deposit of the Certificate of Title with the third party (amend Item 5(b)); and
 - a supporting statutory declaration by the party with whom the Certificate of Title was deposited detailing the circumstances of the loss, destruction or theft.

Original Certificate of Title Located

[17-2040]

If a Certificate of Title is found after production has been dispensed with, it should be produced to the Titles Registry for cancellation and destruction.

Forms

General Guide to Completion of Forms

[17-4000]

For general requirements for completion of forms see part 59 – Forms.

**REQUEST TO DISPENSE WITH PRODUCTION
OF INSTRUMENT / DOCUMENT**



Dealing Number

OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the department's website.

Lodger (Name, address, E-mail & phone number)

NELSON & EVANS
SOLICITORS
10 WHARF STREET
BRISBANE QLD 4000
mail@nelsevans.com.au
(07) 3227 1212

Lodger

Code
300

1. Type of missing document (certificate of title)

CERTIFICATE OF TITLE 16999033

2. Lot on Plan Description

LOT 34 ON RP64731

County

STANLEY

Parish

KEDRON

Title Reference

16999033

3. Registered Owner/Lessee

BERTRAM JAMES DUCAL and ELEANOR ELIZABETH DUCAL

4. Applicant

BERTRAM JAMES DUCAL and ELEANOR ELIZABETH DUCAL

5. Request by Applicant

- a) The applicant makes this request as REGISTERED OWNER
(eg registered owner etc)
- b) The missing certificate of title is not deposited with any person as security for any purpose or for safe custody.
- c) The facts and circumstances of the loss or destruction of the missing certificate of title and efforts to locate it are set out in the attached declaration.
- d) It is requested that:
the production of the missing certificate of title be dispensed with for the purpose of
~~*cancellation~~
*registering transfer 711145698
(insert type of instrument to be registered)
*delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

H Nelson

.....signature

HORATIO LAWD NELSON

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

B J Ducal

E E Ducal

20/9/2007
Execution Date

.....
Applicant's Signature

DECLARATION

Title Reference [16999033]

(The facts as to the missing Certificate of Title are declared here in a statutory declaration)

Guide to Completion of Form 17

Item 1

[17-4010]

Insert the nature of and the reference to missing Certificate of Title.

Item 2

[17-4020]

Description of lot should be 'Lot... on Plan...'.

Item 3

[17-4030]

Insert full name (as registered) of the registered owner/s.

Item 4

[17-4040]

Insert full name of applicant.

Item 5

[17-4050]

Complete Item 5(a) with the appropriate information.

Select the appropriate request at Item 5(d) and delete the other. If the second alternative is selected, insert the type of instrument to be registered and the dealing number if already lodged.

Execute as required.

Duty

[17-4060]

There is no duty notation required on a Form 17 – Request to dispense with production of instrument.

¶[17-6000] deleted

¶[17-7000] deleted

Fees

[17-8000]

Fees payable to the Titles Registry are subject to an annual review.

See the current *Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m).

Cross References and Further Reading

[17-9000]

See also s 154(1) of the *Land Title Act* 1994 – Return of Cancelled Instrument

Notes in text

[17-9050]

Note¹ – This part does not apply to water allocations.

Note² – This part does not apply to State land.

Part 18 – General Consent

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Part 18 – General Consent

General Law

[18-0000]

Form 18 – General Consent is provided specifically for the purpose of recording consents to instruments or documents by parties not directly involved in a transaction. The relevant part of the manual should be consulted to clarify circumstances where consent may be required.

The following paragraphs identify common examples where consent is required.

Lease

Mortgagee's Consent

Grant of Lease

[18-0010]

See part 7 – Lease ¶[7-0040] and [7-2030].

Amendment

[18-0020]

See part 7 – Lease ¶[7-0040] and [7-2030] and part 13 – Amendment [13-0010] and [13-2000].

Surrender

[18-0030]

See part 8 – Surrender of Lease [8-0030] and [8-2000].

Sublessee's Consent

[18-0040]

See part 8 – Surrender of Lease [8-0030] and [8-2000].

Local Government's Approval

¹Lease of Part of Land

[18-0050]

See part 7 – Lease ¶[7-0050].

¶[18-0060] and ¶[18-0070] deleted

Easement

¹ Lessee's/Mortgagee's Consent

[18-0080]

See part 10 – Surrender of Easement [10-2000].

¹Local Government's Approval

[18-0090]

See part 9 – Easement ¶[9-2080].

¹Lessee's Consent

[18-0100]

See part 9 – Easement [9-2082].

See part 10 – Surrender of Easement [10-2000].

Building Management Statement

¹Mortgagee's Consent

[18-0110]

See part 34 – Building Management Statement [34-2000].

¶[18-0120] and ¶[18-0160] deleted

^{2, 3}Subdivision or Amalgamation of a Water Allocation

Mortgagee's Consent

[18-0170]

See part 49 – Water Allocations [14-2950] and [14-2960].

^{1, 2}High-density Development Easement

Lessee's Consent

[18-0180]

See part 39 – High-density Development Easement [39-2020].

^{1, 2} Surrender of High-density Development Easement

Lessee's/Mortgagee's Consent

[18-0190]

See part 40 – Surrender of High-density Development Easement [40-2000].

Legislation

[18-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Practice

[18-2000]

Where a consent or approval is required pursuant to the *Land Title Act 1994* or another Act it must be given on a Form 18 – General Consent except where the form has appropriate provision or another practice is permitted. For example:

- ¹an approval by a planning body to a plan of subdivision is usually given in Item 2 of Form 21 – Plan;
- ^{1, 2}a mortgagee’s consent to a Form 19 – Application for Title, the consent must be endorsed on the Form 19;
- ^{1, 2}where the consent of a first mortgagee is required, the deposit of the Certificate of Title by the mortgagee is taken as that mortgagee’s consent and there is no need to deposit a Form 18.

^{1, 2}The rationale behind this is that where a Certificate of Title is taken in the possession of a mortgagee, the mortgagee has control over voluntary actions in relation to that title. Accordingly, if the mortgagee deposits the Certificate of Title for cancellation, the mortgagee is obviously aware of and agreeable to the registration of the transaction in question.

A Form 18 – General Consent cannot be lodged on its own. It must be attached to, form part of and be deposited with the relevant instrument.

The Registrar does not enforce the contractual arrangements of individuals, therefore if a dealing creating an interest is registered without obtaining the necessary consent required by the contract, the parties are at the risk of the interest being defeated by the party who is entitled to the consent.

¶[18-2010] to ¶[18-2050] deleted

Forms

General Guide to Completion of Forms

[18-4000]

For general requirements for completion of forms see part 59 – Forms.

1. Lot on Plan Description

LOT 75 ON RP20478

Title Reference

16494203

2. Instrument/document being consented to

Instrument/document type SURRENDER OF EASEMENT

Dated 17/10/2007

Names of parties EVELYN ALICE WAUGH and ROBERT JOHN WAUGH

3. Instrument/document under which consent required

Instrument/document type MORTGAGE

Dealing No. 700000203

Name of consenting party SUNPAC FINANCE PTY LTD ACN 123 456 789

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

20/10/2007
Execution Date

A P Lincoln
Sunpac Finance Pty Ltd by its duly
constituted attorney Allan Peter Lincoln
under Power of Attorney 700000222

.....
Consenting Party's Signature

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy see the department's website.

Guide to Completion of Form 18

Item 1

[18-4010]

^{1, 2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

eg	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

^{2, 3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg	Lot on Plan Description	Title reference
	WA 27 on AP 7900	46012345

^{1 3}State Tenure Description

The description of the relevant State tenure should always read Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for a crown plan).

eg	Lot on Plan Description	Title reference
	Lot 27 on LIV1234	46012345

Item 2

[18-4020]

Insert type and date of instrument or document to which the consent is to be bound and the full names of both parties involved in the matter.

Item 3

[18-4030]

Insert the type and dealing number of the instrument or document under which the consent is required (if applicable). Insert the full name of the consenting party.

Item 4

[18-4040]

Execute as required.

Duty

[18-4050]

A duty notation is not required

¶[18-6000] deleted

Case Law

Nil

¶[18-7000] to [18-7020] deleted

Fees

[18-8000]

No fees are payable for the lodgement of a Form 18 – General Consent.

Cross References and Further Reading

[18-9000]

Part 2 – Mortgage (National Mortgage Form)

Part 7 – Lease

Part 9 – Easement

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 19 – Application for Title

Part 21 – Plans and Associated Documents

Part 49 – Water Allocations

Notes in text

[18-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

.

^{1, 2}Part 19 – Application for Title

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^{1, 2}Part 19 – Application for Title

General Law

[19-0000]

The Registrar has the discretion to issue a Certificate of Title following a written request made by the registered owner in a Form 19 – Application for Certificate of Title (s. 42(1) of the *Land Title Act 1994*).

The Registrar will not issue a Certificate of Title:

- (a) if the lot is subject to a registered mortgage, unless the consent of the mortgagee is endorsed (s. 42(2) of the *Land Title Act*); or
- (b) until all lodged instruments have been registered; or
- (c) if the application is not over all of the land in the title; or
- (d) if the first Certificate of Title is not cancelled; or
- (e) for common property created under the *Body Corporate and Community Management Act 1997*, the *South Bank Corporation Act 1989* or the *Building Units and Group Titles Act 1980*.

Any existing Certificate of Title that is deposited for cancellation to allow registration of a dealing affecting that title is cancelled unless the Registrar directs to the contrary (s. 45 of the *Land Title Act*). The cancellation is recorded in the Automated Titles System when the dealing is processed. However, an application can be made by the registered owner (or the lessee of a lease under the *South Bank Corporation Act*) to the Registrar to issue a fresh Certificate of Title for that lot (s. 42(1) of the *Land Title Act*).

A Certificate of Title issued for a lot under the *South Bank Corporation Act* is to be treated by the Registrar in the same manner as a Certificate of Title under the *Land Title Act* (Schedule 4 item 9A(6A) of the *South Bank Corporation Act*).

Practice

[19-2000]

An Application for a Certificate of Title:

1. Must be made by the registered owner (or the lessee of a lease under the *South Bank Corporation Act 1989*);
2. Must be made in a Form 19 – Application for Title; and
3. Must include the consent of all mortgagees that hold a registered mortgage over the lot.

The consent of a mortgagee should be endorsed in the following terms, eg ‘XYZ Bank Ltd ACN 456799403 consents to this request’, followed by the date and execution. If there is insufficient space on the Form 19 to accommodate all of the consents, a Form 20 – Schedule must be used. A Form 18 – General Consent **must not** be used for a mortgagee’s consent to a Form 19 – Application for Title.

After a Form 19 – Application for Certificate of Title has been received, the Registrar will consider the Application and decide whether to exercise the discretion to issue a Certificate of Title under s. 42(1) of the *Land Title Act 1994*.

If the Registrar decides to issue a Certificate of Title, the Certificate of Title will be issued and delivered in accordance with the instructions in the Form 19 – Application for Certificate of Title.

Forms

General Guide to Completion of Forms

[19-4000]

For general requirements for completion of forms see part 59 – Forms.

Example 1 – Application (No Consent Required)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994

APPLICATION FOR CERTIFICATE OF TITLE

FORM 19 Version 4
Page 1 of 1



Dealing Number

OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

Lodger (Name, address, E-mail & phone number)

M G DILMAH
29 ALBERT STREET
CAMP HILL QLD 4152
(07) 2680 4078

**Lodger
Code**

1. Lot on Plan Description

LOT 160 ON RP32261

Title Reference

25432099

2. Registered owner

MARY GRACE DILMAH

3. Request by registered owner

It is requested that a certificate of title be issued in the name of the registered owner described in item 2 and:-

- a) mailed to Ms Mary G Dilmah
of 29 Albert Street, Camp Hill Qld 4152

OR

- b) held for collection by

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

J Osprey

..... signature

JAMES OSKAR OSPREY

..... full name

JUSTICE OF THE PEACE (C.DEC) #29004

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

20/9/2007
Execution Date

M G Dilmah

.....
Registered Owner's Signature

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Registered Owner's Signature

Mortgagee's Consent (Mortgagee must show full name and execute)

..... hereby consents to the above request.

/ /
Execution Date

.....
Mortgagee's Signature

Example 2 – Application with Mortgagee's Consent

QUEENSLAND TITLES REGISTRY
Land Title Act 1994

APPLICATION FOR CERTIFICATE OF TITLE

FORM 19 Version 4
Page 1 of 1



Dealing Number

OFFICE USE ONLY

Privacy Statement

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Lodger (Name, address, E-mail & phone number)

M G DILMAH
29 ALBERT STREET
CAMP HILL QLD 4152
(07) 2680 4078

**Lodger
Code**

1. Lot on Plan Description

LOT 160 ON RP32261

Title Reference

25432099

2. Registered owner

MARY GRACE DILMAH

3. Request by registered owner

It is requested that a certificate of title be issued in the name of the registered owner described in item 2 and:-

a)

OR

b) held for collection by XYZ BANK LTD ACN 123 123 456

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

J Osprey

..... signature

JAMES OSKAR OSPREY

..... full name

JUSTICE OF THE PEACE (C.DEC) #29004

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

20/9/2007
Execution Date

/ /
Execution Date

M G Dilmah

.....
Registered Owner's Signature

.....
Registered Owner's Signature

Mortgagee's Consent (Mortgagee must show full name and execute)

XYZ BANK LTD ACN 123 123 456 hereby consents to the above request.

XYZ BANK LTD by its duly constituted
attorney Jonathan Pennyfeather under
Power of Attorney 784666945

J Pennyfeather

20/9/2007
Execution Date

.....
Mortgagee's Signature

Guide to Completion of Form 19

Item 1 [19-4010]

Description of lot should be ‘Lot... on Plan...’.

Item 2 [19-4020]

Insert full name of registered owner.

Item 3 [19-4030]

Complete either (a) or (b), strike out the other and sign as indicated.

Duty [19-4040]

There is no duty notation required on a Form 19 – Application for Title.

[19-6000] deleted

Case Law [19-7000]

Nil.

Fees [19-8000]

No fees are payable for the deposit of a Form 19 – Application for Title.

Cross References and Further Reading [19-9000]

Part 22 – Certificate of Title.

Notes in text [19-9050]

Note¹ – This part does not apply to water allocations.

Note² – This part does not apply to State land.

Part 20 – Schedule, Enlarged Panel, Additional Page, Declaration or Standard Terms Document

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^{2, 3}Application of the *Land Title Act 1994* to the *Water Act 2000*

Practice

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Part 20 – Schedule, Enlarged Panel, Additional Page, Declaration or Standard Terms Document

General Law

Schedule

[20-0000]

No law is applicable.

Enlarged Panel

[20-0010]

No law is applicable.

Additional Page

[20-0020]

No law is applicable.

Declaration

[20-0030]

The *Oaths Act 1867* or the applicable law of the State or country in which the declaration is made are relevant here.

¶[20-0040] deleted

Legislation

[20-1000]

2, ³Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Practice

General

[20-2000]

A Form 20 cannot be lodged on its own. It must be attached to another appropriate form.

One Form 20 can be used for any number of purposes. For example, an Enlarged Panel and a Declaration may appear on the same Form 20.

Schedule

[20-2010]

Please note that different requirements apply in relation to the use of a *Form 20 – Schedule* with the *National Mortgage Form*. For the requirements when using the *National Mortgage Form* please refer to Part 2 – Mortgage (National Mortgage Form) esp [2-4010].

Schedules are generally used to set out provisions or covenants and conditions for instruments or documents such as mortgages, easements or leases.

If used as a schedule, the Form 20 must repeat the relevant item number and name, eg ‘Item 6 Execution’, refer to at least one relevant title reference in the top centre of the page and show consecutive page numbering on the top right hand corner, eg ‘Page 3 of 5’.

Enlarged Panel

[20-2020]

Please note that different requirements apply in relation to the use of a *Form 20 – Enlarged Panel* with the *National Mortgage Form*. For the requirements when using the *National Mortgage Form* please refer to Part 2 – Mortgage (National Mortgage Form) esp [2-4010].

A *Form 20 – Enlarged Panel* must **only** be used when there is insufficient space to contain the necessary information in a panel in a form.

A Form 20 may be used for execution where there is insufficient space on the face of a form. For example, where the form is being executed by:

- a greater number of parties than is provided for by the form; or
- a corporation or an attorney where the space provided on the form is not sufficient for a multi-line attestation clause and the required signatures.

To clarify, where there is sufficient space for all parties to execute on the face of the form, a Form 20 should not be used for execution. Where there is insufficient space for all parties to sign on the face of the form, the spaces provided on the face of the form must be used and the remaining executions must be completed on a *Form 20 – Enlarged Panel*. The words ‘see Enlarged Panel’ should be included adjacent to the execution/s on the face of the form to reflect that additional executions have been completed on the Form 20 – Enlarged Panel.

Where an instrument or document is lodged with an execution or executions on a Form 20 and there was sufficient space for all parties to execute on the face of the form, the instrument or document will be requisitioned to seek an explanation as to why the Form 20 was used.

A Form 20 may also be required in order to include all of the information required in another panel. For example, Item 2 of a *Form 1 – Transfer*, the description of the land or water allocation, may not provide sufficient space to insert all of the descriptions of the lots involved, so on the Form 1, Item 2 would be completed with ‘see Enlarged Panel’. The *Form 20 –*

Enlarged Panel would then contain the relevant panel heading of the Form 1 and set out the descriptions of the lots involved.

To assist timely registration of an instrument or document a form should not include, in the relevant item, more than 20 title references. However, in extenuating circumstances or when it is not practical, a person may apply in writing to the Registrar seeking relaxation.

A Form 20 can contain more than one enlarged panel. As is the situation for schedules, a Form 20 used for one or more enlarged panels must refer to at least one relevant title reference in the top centre of the page, show consecutive page numbering in the top right hand corner and repeat the relevant item number and name.

Additional Page

[20-2030]

Where a schedule or an enlarged panel exceeds one page a *Form 20 – Additional Page* is to be used for the additional pages.

The additional page must repeat the relevant item number and name, refer to at least one relevant title reference in the top centre and show consecutive page numbering on the top right hand corner.

Declaration

[20-2040]

Statutory declarations that are required as essential evidence for an instrument or a document should generally be prepared on a *Form 20 – Declaration*.

If there is more than one declarant, all declarants must execute the declaration on the same page. Where there is insufficient space for the executions, separate declarations must be completed and executed.

¶[20-2050] – [20-2080] deleted

Standard Terms Document

[20-2090]

See [14-2160].

Forms

General Guide to Completion of Forms

[20-4000]

For general requirements for completion of forms see part 59 – Forms.

Title Reference [12345201]

ENLARGED PANEL

Item 2 Lot on Plan Description

Lot 1 on RP812345
Lot 5 on RP856304
Lot 3 on RP804563
Lot 4 on RP804563
Lot 5 on RP804563
Lot 7 on RP804563

Title Reference

12345201
14235102
16323051
16323052
16323053
16323055

DECLARATION

I, George John McIntosh of 24 Glendown Street, Barsfield in the State of Queensland solemnly and sincerely declare that:

1. George Jon McIntosh is registered as the owner of the lands described as Lot 1 on RP812345 and Lot 5 on RP856304 contained in Title References 12345201 and 14235102 respectively.
2. George John McIntosh is registered as the owner of the lands described as Lot 3 on RP804563, Lot 4 on RP804563, Lot 5 on RP804563 and Lot 7 on RP804563 contained in Title References 16323051, 16323052, 16323053 and 16323055 respectively.
3. I, George John McIntosh, the registered owner of the lands described in 2 above am one and the same person as George Jon McIntosh, the registered owner of the lands described in 1 above.
4. My name was mis-spelt during preparation of the transfer when I acquired the lands in 1 above.
5. My true and correct name is George John McIntosh as stated in the attached transfer by which I am disposing of my interests in all of the above lands.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

R J Spencer

ROBERT JOHN SPENCER

COMMISSIONER FOR DECLARATIONS #32989

Witnessing Officer (signature, full name & qualification)

23/5/2007

Execution Date

G J McIntosh

Transferor's Signature

¶[20-6000] deleted

Case Law

Documents

[20-7000]

In *Re Westpac Banking Corporation* [1987] 1 Qd R 300, it was decided that a registered document can contain covenants and conditions as well as other provisions which could not be classified as covenants and conditions.

The provisions of any registered document which are incorporated into another instrument, whether they be covenants and conditions or other types of provisions, will be deemed to be set out in full in that instrument.

Fees

[20-8000]

No fees are payable for the lodgement of a Form 20.

Cross References and Further Reading

[20-9000]

For further assistance in relation to preparation of statutory declarations refer to the relevant chapter for the Form in question.:

Part 1 – Transfer

Part 2 – Mortgage (National Mortgage Form)

Part 5, 5A, 6 – Transmission Applications

Part 7 – Lease

Part 9 – Easement

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 14 – General Request

Part 17 – Request for Substitute Instrument or to Dispense with Production of Instrument

Part 23 – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice

Part 48 – State Land

¶[20-6000] deleted

¹Part 21 – Plans and Associated Documents

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³Part 21 – Plans and Associated Documents

General Law

[21-0000]

The term ‘plan of survey’ (or ‘survey plan’ as it is also called) includes all surveys undertaken by a cadastral surveyor as defined by the *Surveyors Act 2003* and for the purpose of:

- subdividing one or more lots;
- dedicating land to public use;
- redefining a lot by resurvey;
- amalgamating two or more lots to create a smaller number of lots;
- defining an area for an easement, lease, profit a prendre or covenant; and
- any other purpose that the Registrar may require the registered proprietor to undertake.

A plan of survey does not include a sketch plan.

Definitions

[21-0010]

The definitions relevant to a plan of subdivision that may be registered in the Land Registry are as follows:

1. ‘lot’ is defined in Schedule 2 of the *Land Title Act 1994*, Schedule 6 of the *Land Act 1994* and Schedule 2 of the *Planning Act 2016*.
2. ‘plan of subdivision’ is defined in s 49 of the *Land Title Act* and s. 290E of the *Land Act*.

There is a definition of ‘plan of subdivision’ in Schedule 24 of the *Planning Regulation 2017*. This term is intended to be similar to ‘plan of subdivision’ under the *Land Title Act* and *Land Act*, but is to be used in the context of assessing a planning body approval.

3. ‘reconfiguring a lot’ is defined in Schedule 2 of the *Planning Act*
4. ‘planning body’ means the relevant local government, or where applicable, the Minister for Economic Development Queensland or the Coordinator-General (s. 50(6) of the *Land Title Act*).

¶[21-0020] to [21-0040] deleted

Practice

Plan of Survey

[21-2000]

A plan of survey is a diagrammatic representation of a parcel or parcels of land showing location and dimensions. A plan may also show monuments, both natural (e.g., a lake, stream or cliff) and artificial (e.g., a peg, fence or building) found or placed in connection with the survey.

A plan of survey is prepared by a cadastral surveyor in accordance with the *Survey and Mapping Infrastructure Act 2003* and the *Surveyors Act 2003* and associated regulations and

standards. Once the survey has been completed and approved by the planning body, if required, the plan is lodged in the Land Registry.

On registration by the Registrar, plans become part of the relevant register.

The freehold land register records details about ownership and other interests on the indefeasible title for a lot. It provides a record of all registered surveys and the unique identifier ('Lot [number] on [Plan reference]') of each lot. It also facilitates the lodgement of dealings with individual lots and interests.

Preparation of Plan

[21-2010]

Plans of survey must be prepared on the approved form; Form 21 – Survey Plan (Main Plan), Form 21B – Survey Plan (Administration Sheet) and if required, multiple Form 21A – Survey Plan (Additional Sheet).

For plans of survey where a visualisation of a submitted cadastral infrastructure file (CIF) is created using the Department's eSurvey system, the main plan, administration sheet and additional sheets, if required, must be prepared on the approved form; Form 38, Form 38B and Form 38A, respectively. [Note: the current eSurvey System has been decommissioned as at 30 June 2017 and will be replaced as part of a Cadastral and Geodetic services system review.]

All plans of survey must be drawn to the requirements set down in the Registrar of Titles Directions for the Preparation of Plans and the Cadastral Survey Requirements, and must comply with the requirements of s. 50 of the *Land Title Act 1994* and other relevant legislation.

Plan Formats

Format

[21-2020]

Standard, Building, Volumetric and Explanatory format plans use the same plan form, however the requirements for preparation of each format differ and are set out in the Registrar of Titles Directions for the Preparation of Plans.

The spatial characteristics of the lots or interests depicted on a plan are derived from the format of the plan used.

It is not permissible to create parcels of different format types on the same plan, other than in the case of easements or remainder lot(s) on a volumetric or building format plan.

The format of the plan must be shown in the 'Format' field on the first sheet of the plan.

Lots are not qualified by the adjectives 'Building', 'Remainder', 'Restricted', 'Standard' or 'Volumetric'.

Standard Format Plan

[21-2030]

A standard format plan defines parcels two dimensionally, at ground level. The new parcel will be unlimited in height and depth. They can be defined by natural monuments and/or marks placed on the ground. The plan must include dimensions and area(s).

A standard format plan cannot subdivide a single building format lot or a single volumetric format lot.

For further information of the survey requirements for a standard format plan see direction 8 of the Registrar of Titles Directions for the Preparation of Plans.

Building Format Plan**[21-2040]**

A building format plan creates lots bounded by structural elements. Lots generally are defined by floors, walls and ceilings. However, some variations are addressed in direction 9 of the Registrar of Titles Directions for the Preparation of Plans.

Generally a building format plan cannot subdivide a base parcel that consists of both standard and volumetric lots. Exceptions to this are explained in direction 9.16 of the Registrar of Titles Directions for the Preparation of Plans.

Volumetric Format Plan**[21-2050]**

A volumetric format plan creates lots that are defined by three dimensional co-ordinate geometry and are fully defined by bounding surfaces (e.g. a cube). The lots may be above, below or partly above and partly below ground level.

A volumetric format plan may divide a lot or lots and/or common property on a standard, building or volumetric format plan of subdivision.

For further information on the survey requirements for a volumetric format plan see direction 10 of the Registrar of Titles Directions for the Preparation of Plans.

Explanatory Format Plan**[21-2060]**

An explanatory format plan provides a cost effective means to define the boundaries of an interest in land.

The purpose of an explanatory format plan is to provide a depiction of a secondary interest without any field survey. The plan is based upon mathematical calculations so that, if required in the future, the interest could be identified and marked on the ground.

The plan may be used for easements or covenants over State Tenure land or leases, easements, covenants or profits a prendre over freehold land.

For an explanatory format plan the words 'SURVEY PLAN' on the top of the form must be crossed out and the words 'EXPLANATORY PLAN' placed beneath.

Every explanatory format plan to be lodged in the Land Registry must have been approved by the Registrar of Titles in writing prior to lodgement. The approval of the Registrar is required to be deposited with the plan upon lodgement.

For further information on the survey requirements for an explanatory format plan see direction 20 of the Registrar of Titles Directions for the Preparation of Plans.

Plan of Subdivision**[21-2070]**

A plan of subdivision is a plan of survey that may provide for 1 or more of the following:

- division of 1 or more lots;
- amalgamation of 2 or more lots to create a smaller number of lots;
- dedication of land to public use;
- redefinition of a lot on a resurvey.

A plan of subdivision may require the approval of the relevant planning body (see [21-2130]). Additional approvals to the plan may be also required in some cases (see [21-2140] to [21-2210]). Where the land is affected by a mortgage, lease, easement, profit a prendre or statutory covenant, consents of relevant parties may be required (see [21-2230]). The plan must be signed by the registered owner and all relevant items must be completed by the appropriate person (see [21-2220] and [21-4010]).

Where the title to land being subdivided is noted with a Road Licence (RDL) endorsement this will not prevent the registration of the plan. On registration of plan the (RDL) endorsement will be recorded on all the new titles created for the land that abuts/adjoins the Road Licence. It is suggested that lodgers contact State Land Asset Management (SLAM) to address the issue of the Road Licence prior to lodgement of the plan.

Plan of Survey for Easement

[21-2080]

Section 83 of the *Land Title Act 1994* requires, for an easement (other than a high-density development easement under Part 6 Division 4AA of the Land Title Act) over part of a lot to be registered, the easement must first be designated on a registered plan of survey. If an easement is over the whole of a lot, no new plan is required as the extent of the easement is defined by the registered plan depicting the lot.

Section 83A(1) of the Land Title Act allows for the defining of boundaries of a proposed easement (other than a high-density development easement under Part 6 Division 4AA of the Land Title Act) by registration of a plan in the appropriate format. A plan that depicts an easement may show the easement as proposed whether or not the easement document that grants the easement is lodged with the plan. However, if an easement document is not lodged with the plan, the word ‘proposed’ must be shown on the plan.

Plans for easement purposes must comply with direction 4.8.2, and either direction 6, 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans. The depiction of an easement may be included with a survey of lots on a plan of subdivision.

A plan must not depict an easement in parts.

The registration of a plan does not create an easement. An easement can only be created by registering an instrument of easement (s. 82(1) of the Land Title Act).

If a plan of survey depicting an easement that gives access to a lot from a constructed road is the reconfiguring of a lot under the *Planning Act 2016*, then the plan must have the approval of the planning body concerned, when the implementing easement instrument, executed after 25 May 2001, is lodged. Alternatively the planning body may give approval to the plan on a Form 18 – General Consent that refers to the plan of survey and easement, and must then be deposited with the easement.

In cases where the plan of survey was registered prior to the lodgement of the implementing easement instrument, the plan of survey still requires approval of the planning body. Where the plan of survey depicting an easement that gives access to a lot from a constructed road was not approved by the planning body before registration, the planning body must give approval to the plan on a Form 18 – General Consent that refers to the plan of survey and easement. The consent must then be deposited with the easement.

Notwithstanding the easement is for another purpose in addition to access, the registered plan will still require the approval of the planning body.

In the majority of cases, planning body approval is required for each plan depicting the extent of an easement that gives access to a constructed road, regardless of whether or not the easement

actually abuts the road. For example, where a lot gains access through a number of easements over adjacent lots, and those easements are depicted on separate plans of survey, planning body approval is required for each plan.

In certain cases the approval of the planning body to the plan may not be required. In situations where parties consider that planning body approval is not required, sufficient evidence must be deposited with the easement.

As there is no legislated definition for a ‘constructed road’, it is sufficient to require approval by the planning body concerned, if the road has been dedicated.

²The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

Plan of Survey for Lease

[21-2090]

Where part of a lot or part of common property which is external to a building is to be leased a plan of survey must be registered to define the boundaries of the area to be subjected to the lease (s. 65(2)(b) of the *Land Title Act 1994*). These plans must comply with direction 4.8.2 and either direction 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans.

One plan may be used to define any number of separate leases.

An area identifying a lease may be included with a survey of lots on a plan of subdivision.

A plan must not describe a lease as proposed and there is no requirement for a lease to be lodged immediately after the plan.

A plan must not depict the lease in parts.

²The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

See also Part 7 Lease, ¶[7-0050] and [7-2205].

Plan of Survey for Profit a prendre

[21-2100]

Plans for profit a prendre purposes are required to define the boundaries of the area to be subjected to the profits a prendre when only part of a lot is involved (s. 97F (1)(b) of the *Land Title Act 1994* and s. 373I(1)(b) of the *Land Act 1994*). These plans must comply with directions 4.8.2 and 19 of the Registrar of Titles Directions for the Preparation of Plans. One plan can be used to define any number of separate profits.

A plan of survey or explanatory format plan is required to precede a profit a prendre if the interest affects part of a lot. If the profit a prendre is for the whole of a lot, no plan is required.

A profit a prendre may be included with a survey of lots on a plan of subdivision.

A plan must not describe a profit a prendre as proposed and there is no requirement for a profit a prendre to be lodged immediately after the plan.

A plan must not depict the profit a prendre in parts.

Plans of survey for profits a prendre do not require approval by the planning body.

²The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

Plan of Survey for Covenant

[21-2110]

Plans for covenant purposes are required to define the boundaries of the area to be subjected to the covenant when only part of a lot is involved (s. 97B(1)(b) of the *Land Title Act 1994* and s. 373B(1)(b) of the *Land Act 1994*). These plans must comply with directions 4.8.2 and 21 of the Registrar of Titles Directions for the Preparation of Plans. One plan can be used to define any number of separate covenants.

A plan of survey or explanatory format plan is required to precede an instrument of covenant under the Land Title Act or the Land Act if it affects part of a lot. If the covenant is over the whole of a lot, no plan of survey is required.

A covenant may be included with a survey of lots on a plan of subdivision.

A plan must not describe a covenant as proposed and there is no requirement for a covenant to be lodged immediately after the plan.

A plan must not depict the covenant in parts.

Plans of survey for covenants do not require approval by the planning body.

The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

Plan of Survey for Carbon Abatement Interest

[21-2115]

Plans for carbon abatement interest purposes are required to define the boundaries of the area to be subjected to the carbon abatement interest when only part of a lot is involved (s. 97O(3) of the *Land Title Act 1994* and s. 373S(3) of the *Land Act 1994*). These plans must comply with directions 4.8.2 and 24 of the Registrar of Titles Directions for the Preparation of Plans. One plan can be used to define any number of separate carbon abatement interests.

A plan of survey or explanatory format plan is required to precede an instrument of carbon abatement interest under the Land Title Act or the Land Act if it affects part of a lot. If the carbon abatement interest is over the whole of a lot, no plan of survey is required.

A carbon abatement interest may be included with a survey of lots on a plan of subdivision.

A plan must not describe a carbon abatement interest as proposed and there is no requirement for a carbon abatement interest to be lodged immediately after the plan.

A plan must not depict the carbon abatement interest in parts.

Plans of survey for carbon abatement interests do not require approval by the planning body.

The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

Plan of Survey for Resumption

[21-2120]

Generally

A constructing authority, defined in s. 2 of the *Acquisition of Land Act 1967*, may take land or an interest in land (for example, an easement) for a purpose stated in the schedule of the Act.

The Acquisition of Land Act provides that where part of a lot or an interest in a lot is to be taken, the land or interest to be taken must be identified on a plan of survey. If the whole of a lot is to be taken it may be described by reference to an existing description.

A plan of survey for a resumption action does not require the approval of a planning body (see [21-2130]) nor require the deposit of an issued Certificate of Title, nor the consent of the mortgagee or other registered proprietors.

Lodgement fees are applicable except where the constructing authority is the State.

Resumption of an Easement

Where a constructing authority is taking an easement, which is over part of a lot, a plan of survey depicting the easement is required to be registered.

The plan must:

- deal only with the taking of easement action;
- identify the taken area as an easement (a proposed easement is not permitted); and
- be signed by the constructing authority.

The plan must be accompanied by a Form 14 – General Request to register resumption (see [14-2320])

Resumption of Land

Where a constructing authority is taking part of a lot, a plan of subdivision depicting as new lots the land to be taken and the land not taken, is required to be registered.

The resumption plan must:

- deal only with the taking of land action;
- identify as a lot/s the area taken and identify the area remaining as a lot/s;
- not dedicate any new road; and
- be signed by the constructing authority.

The plan must be accompanied by a Form 14 – General Request to register resumption (see [14-2320]).

Approval by Planning Body

[21-2130]

A plan of subdivision that provides for the division of 1 or more lots, or the dedication of land to public use land must be approved by the relevant planning body, for example the local government or where relevant, the Minister for Economic Development Queensland (MEDQ) or the Coordinator-General (s. 50(1)(i) of the *Land Title Act 1994*).

Where the plan of subdivision provides only for:

- the amalgamation of 2 or more lots to create a smaller number of lots; or
- the redefinition of a lot on a resurvey; or
- under the *Body Corporate and Community Management Act 1997*, chapter 2, part 3, division 2, the incorporation of a lot with common property or conversion of lessee common property within the meaning of that Act;

the approval of the relevant planning body is not required (s. 50(1)(h) of the Land Title Act).

Subsections 50(1)(h) and (i) of the Land Title Act do not apply to a plan of subdivision that, other than for s. 50(3) of the Land Title Act, would have been required to have been approved by the relevant planning body if—

- for a plan that would have required approval by the MEDQ—the plan is not a plan of subdivision as defined in the *Economic Development Act 2012*, s. 104; or
- for a plan that would have required approval by the relevant local government—the plan is not a plan for which a process for approving the plan is provided under the *Planning Act 2016*, s. 397.

Also ss. 50(1)(h) and (i) of the Land Title Act do not apply to a plan of subdivision that, under the provision of another Act, is a plan that is not required to be approved by the relevant planning body (s. 50(4) of the Land Title Act).

An approval of a plan of subdivision is current for 6 months from the date it is given (s. 50(5) of the Land Title Act).

Where land contained in a plan of subdivision is located within a number of planning body areas, separate planning body approvals are required. For example this would occur where land is located within more than one local government area.

The Planning Regulation 2017 provides for the approval of a plan of subdivision for reconfiguring a lot. Schedule 24 of Planning Regulation 2017 provides that the following reconfigurations are not included, which are therefore exempt from local government approval:

- (i) the acquisition of land, including by agreement, under the *Acquisition of Land Act 1967*, by a constructing authority or an authorised electricity entity, for a purpose for which land may be taken under that Act; or
- (ii) the acquisition of land by agreement, other than under the *Acquisition of Land Act 1967*, by a constructing authority or an authorised electricity entity, for a purpose for which land may be taken under that Act; or
- (iii) land held by the State, or a statutory body representing the State, that is being reconfigured for a purpose for which land may be taken under the *Acquisition of Land Act 1967*, whether or not the land relates to an acquisition; or
- (iv) the acquisition of land for water infrastructure; or
- (v) a lot that is, or includes, airport land, strategic port land or Brisbane core port land; or

(vi) a plan lodged under the *Acquisition of Land Act 1967* section 12A, as a result of a reconfiguration stated in paragraph (i) above.

If a plan is withdrawn and re-entered under s. 159 of the Land Title Act or s. 308 of the Land Act, the time between planning body approval and lodgement is calculated from the date the plan was first lodged, not the date of re-entry (s. 53 of the Land Title Act and s. 290L of the Land Act).

If a plan is fully withdrawn or rejected and is presented for re-lodgement, the date it is relodged is used to assess the currency of the planning body approval (see the *Acts Interpretation Act 1954* for calculation of time).

Exemption from Approval

Where a plan is exempt from local government approval under the provisions of regulation 69 and schedules 18 and 24 of the Planning Regulation 2017, for example a plan by a constructing authority for a resumption action, the plan administration sheet (Form 21B or Form 38B), must have a statement at Item 1, signed by an appropriately authorised person, citing the relevant statutory authority for the exemption. The following statement is provided as an example:

This plan is exempt from local government approval under regulation 69 and schedules 18 and 24 of the Planning Regulation 2017.

Section 52(i) of the Australian Constitution provides the Commonwealth of Australia with exclusive power to make laws for all places acquired by the Commonwealth for public purposes. This means that State legislation cannot control the Commonwealth's use of its property, including the right to subdivide. Therefore, plans of survey of freehold land where the registered owner is the 'Commonwealth of Australia' do not require local government approval.

Under the above provision, an entity related to or owned by the Commonwealth of Australia (examples include CSIRO, Defence Housing Australia and Australian Broadcasting Corporation) may be provided the rights, powers and immunities of the Commonwealth. However, these are to be considered on a case by case basis. Where exemption from local government approval is sought, written advice of the specific legislative exemption or the specific authority that provides the entity with the entitlement to the rights, powers and immunities of the Commonwealth must be provided.

Additional Approvals

Coastal Management

[21-2140]

The *Coastal Protection and Management and Other Legislation Amendment Act 2001* (No 93 of 2001) was assented to on 10 December 2001, but the substantive provisions, including s. 25, did not commence until 20 October 2003 (the commencement date). Section 25 repealed the *Beach Protection Act 1968* and the *Canals Act 1958*.

The provisions in Division 4 of Part 2 of Chapter 6 of the *Coastal Protection and Management Act 1995* refer to planning applications in progress. In particular s. 179(2) makes reference to processing a number of applications as if the Act under which the application was made had not been repealed. Where the application predates the commencement date the plan requirements and certificates that existed under the repealed legislation continue to apply:

- For the subdivision of land within a coastal management control district the consent of the Governor in Council is required (s 45 of the Beach Protection Act).

- When a canal is to be constructed as part of the subdivision the approval of the Governor in Council is required (s. 9 of the Canals Act).

Where the application is made on or after the 20 October 2003 requirements under the Coastal Protection and Management Act apply (see [21-2170]).

¶[21-2150] deleted

Artificial Waterways

Application made prior to 20 October 2003

[21-2160]

The following requirements apply to plans of subdivision where the application to the local government was made prior to 20 October 2003.

Any plan of survey creating a canal under the *Canals Act 1958* must show the canal as a separate lot and be marked as ‘CANAL’, including complete metes and bounds and an area. A transfer of canal lots to the State is required and must be capable of registration before the plan can be registered.

The plan should be approved by the local government, and then endorsed with the consent of the Governor in Council (s. 9(1)(e) of the Canals Act). The endorsement by the Executive Council will be signed by the Clerk of the Executive Council.

Application made after 20 October 2003

[21-2170]

Any plan of survey creating an artificial waterway must show the artificial waterway as a separate lot, including complete metes and bounds and an area, and indicate on the face of the plan whether the artificial waterway is canal, artificial waterway or access channel.

The term ‘CANAL’, ‘ARTIFICIAL WATERWAY’ or ‘ACCESS CHANNEL’ must be repeated wherever the lot number appears on the face of the plan, e .g.:

Lot 37		Lot 85		Lot 106
CANAL	or	ARTIFICIAL WATERWAY	or	ACCESS CHANNEL

In addition to the local government approval to the subdivision, Item 2 on the plan administration sheet (Form 21B or Form 38B), the local government must certify on the plan that:

- the waterway, and any access channel associated with the waterway, is constructed in accordance with the development approval for the waterway; and
- if the waterway is not a canal – the local government is satisfied arrangements have been made, or will be made, for the maintenance and management of the waterway (s. 119 of the *Coastal Protection and Management Act 1995*).

If the lot is a canal, then a Form 1 – Transfer and surrender to the State must be lodged to follow the plan. The transfer to the State must be capable of registration before the plan can be registered. Releases of any mortgages are not required for the canal lot(s).

The transfer and surrender to the State is registered over the indefeasible title created. The consideration must show a reference to the relevant legislation (e.g. s. 9 of the Canals Act or s. 120 of the Coastal Protection and Management Act).

A lot that is an artificial waterway or access channel is to be dealt with as a normal fee simple lot, i.e.:

- a indefeasible title is created for the lot;
- the lot is not required to be surrendered to the State; and
- all secondary interests may remain on the title.

Access

[21-2180]

The Registrar is not obliged to ensure that a lot has access to a public road except where the lot is to be dedicated to the State for public use. Where a lot is being dedicated for public use, other than as a road, non-tidal watercourse or a lake, s. 51A(a) of the *Land Title Act 1994* and s. 290JB(a) of the *Land Act 1994* apply. Access to the lot may be by way of:

- an abutting public road; or
- a public thoroughfare easement.

If a plan does not appear to comply with the above requirements, the Minister may, upon application, under s. 51A(b) of the Land Title Act or s. 290JB(b) of the Land Act approve a plan of subdivision providing for dedication of a lot without access being available. Generally in these cases access is through an adjacent reserve and:

- the adjacent reserve has dedicated access; and
- the adjacent reserve is for the same purpose as the public use land being dedicated; and
- the trustees of the public use land being dedicated are the same as the trustees of the adjacent reserve.

The Minister may grant the approval by letter or Form 18 – General Consent.

Reservation for a Public Purpose under s. 23 of the *Land Act 1994*

[21-2190]

Where a lot is the subject of a plan of subdivision and the indefeasible title for the lot contains a reservation for a public purpose under s. 23 of the Land Act and the location of the land reserved is not identified in the grant, prior to lodgement the plan must be referred to the State Land Asset Management area of the department for action. If the Minister, under s. 23A of the Land Act, allocates the floating reservation to some or all of the lots created by the plan, a certificate to this effect will be made on the face of the plan and signed by a delegate of the Minister.

For further information about the certificate see 2.9.2 of the Cadastral Survey Requirements.

Agreement under the *Local Government (Planning and Environment) Act 1990* or the *Local Government Act 1936*

[21-2200]

Agreements under the now repealed Local Government (Planning and Environment) Act or the Local Government Act, between the registered owner and the local government, were lodged for registration as a condition of the approval of a plan of subdivision. Typically the agreements related to lots to be held by the same registered owner.

There is no similar provision under the Planning Act 2016. However, s. 97A(3)(c) of the *Land Title Act 1994* and s. 373A(3) of the *Land Act 1994* allow for the registration of an instrument of covenant, which may contain similar conditions (see part 31 – Covenants).

An agreement may be cancelled with the approval of the relevant local government.

Where an agreement is cancelled in conjunction with a new plan of subdivision, a letter from the relevant local government approving cancellation must be deposited with the plan. On registration of the plan, the agreement will be removed from relevant indefeasible titles.

Where an agreement is to be cancelled and there is no new plan of subdivision lodged, an application in a Form 14 – General Request, signed by the registered owner, and the approval of the local government on a Form 18 – General Consent are required. Lodgement fees are applicable.

¶[21-2210] deleted

Signing by the Registered Owner/Lessee of a State lease

[21-2220]

All registered owners/lessees must sign the plan (s. 50(1)(b)(i) of the *Land Title Act 1994* or s. 290J(1)(g)(ii) of the *Land Act 1994*).

If a person signs the plan on behalf of the registered owner/lessee under a power of attorney, the power of attorney must be registered in the Land Registry prior to the registration of the plan. If the power of attorney is not a general power of attorney, it must grant the attorney power to subdivide. If the attorney has been delegated power to sell, this will be accepted as sufficient authority to subdivide.

When the subject land is owned/leased by a corporation, the official designations of the persons signing on behalf of the corporation must be shown. The Australian Company Number should be included as part of the registered owner's name and in the seal if one is affixed (see part 50 – Corporations and Companies and part 60 – Miscellaneous for more details).

A mortgagee in possession can execute a plan of subdivision on behalf of the registered owner(s)/lessee(s). Evidence of default and service of the notice of demand is required to be deposited. The appropriate manner to recite in the registered owner's panel is 'XY as mortgagee in possession under Mortgage No [number]'. No reference to the registered owner's name appears on the plan, however, the new indefeasible titles will be created in the name of the registered owner, subject to the registered mortgage.

Consent of Mortgagee, Lessee, Covenantee or Grantee of an Easement, Carbon Abatement Interest or of a Profit a Prendre

[21-2230]

Section 50 (1)(j) of the *Land Title Act 1994* requires that a plan of subdivision (see definition of *plan of subdivision* in s 49 of Land Title Act) must be consented to by:

- all registered mortgagees of each lot the subject of the plan; and
- all other registered proprietors (for example a lessee, covenantee or the grantee of an easement or of a profit a prendre), whose interests are affected by a plan.

The term 'affected' in this context means, the spatial extent of a registered interest is intersected by the spatial extent of new road or a new lot (including a lot for public use) depicted on a plan. The registered interest is partly or wholly extinguished to the extent intersected.

The consent must be on a Form 18 – General Consent unless otherwise stated below.

The following matrix shows where a consent is required by a registered proprietor whose interest is affected (see the definition above) by a plan of subdivision. The table does not apply to plans prepared under the *Acquisition of Land Act 1967*.

Consent of registered proprietor of affected interest required			
Affected interest	Plan depicts new lots but no public use land shown	Plan depicts new lots and shows public use land other than road	Plan depicts new road
Mortgage	Yes*	Yes*	Yes*
Lease	No	Yes	Yes
Easement (including a high-density development easement) – other than public utility easement	No	Yes	Yes No – if easement only for right of way
Easement – public utility	No	Yes No – if Minister's approval granted (by way of Statement of Intent, letter or Form 18)	Yes No – if grantee is the local government that approves the plan No – if easement only for public thoroughfare
Profit a prendre	No	Yes	Yes
Covenant – preservation or use of land	No	Yes No – if the grantee is the local government approving the plan	Yes
Covenant – binding ownership of lots	Release of covenant required	Release of covenant required	Release of covenant required
Carbon Abatement Interest	No	Yes	Yes

²*Where the relevant current certificate of title is deposited with a plan it is taken to be a consent by the first mortgagee.

A chargee of a recorded statutory charge is not required to consent to the registration of a plan unless there are specific provisions in the relevant legislation identifying the right of possession or redemption under the charge.

²Certificate of Title

[21-2240]

If a current Certificate of Title exists, it must be lodged with the survey plan for cancellation except where the plan is for an acquisition action under the *Acquisition of Land Act 1967* and the plan is signed by the constructing authority.

Plan Registration Compliance Checklist

[21-2250]

A survey plan with a certification on the face of the plan by a cadastral surveyor dated on and from 1 July 2005 and not endorsed in Item 11 on the plan administration sheet (Form 21B or

Form 38B) by an accredited surveyor must be accompanied by a Form 10 – Plan Registration Compliance Checklist under the *Survey and Mapping Infrastructure Act 2003* when lodged.

Fees

[21-2260]

Lodgement fees and fees for the creation of new indefeasible titles must be paid unless there is a statutory exemption (see [60-0892]).

The assessment of fees is based on a lodgement fee with a fee for each additional lot. The number of lots is determined by identifying all the new lots on the plan and all new secondary interests on the plan. However, areas of new road or common property are not included in this assessment.

A new title fee is charged for any lots on the plan for which an indefeasible title is to be created. Indefeasible titles are not created for public use lots. The new indefeasible titles are created on registration of the plan but in some instances additional documentation may be required to complete this process for example, transfers to resolve ownership or collateral mortgages.

Public Use Land

[21-2270]

Dedication of Land

The dedication of land to ‘public use land’ on registration of a plan of subdivision:

- is for the whole of the registered proprietor’s interest in the lot (s. 51(1) of the *Land Title Act 1994*);
- dedicates and opens any roads for the purposes of the *Land Act 1994* without anything further, (s. 51(2)(a) of the Land Title Act or s. 290JA(2)(b) of the Land Act); or
- dedicates and opens the new non-tidal boundary watercourse or lake (s. 51(2)(b) of the Land Title Act or s. 290JA(2)(c) of the Land Act); or
- dedicates lots identified on the plan as reserves for a community purpose/s under the Land Act, if the plan has been consented to by the Minister (s. 51(2)(c) of the Land Title Act or s. 290JA(2)(a) of the Land Act); or
- otherwise—the lot becomes unallocated State land under the Land Act (s. 51(2)(d) of the Land Title Act or s. 290JA(2)(d) of the Land Act).

A plan of subdivision that includes land to be dedicated for a public use may identify the area being surrendered on the face of the plan by endorsing on it any of the following:

- ROAD (or NEW ROAD);
- Lot number and ‘PUBLIC USE LAND’;
- Lot number and ‘PUL’;
- Lot number and ‘PUBLIC USE LAND’ together with the purpose.

Statement of Intent

Statement of Intent forms are State Land Asset Management forms that provide for and give Ministerial approval to action under the Land Act associated with plans of subdivision lodged under the Land Act or the Land Title Act. A Statement of Intent form is completed by a State Land Asset Management officer and signed by a delegate of the Minister.

The Statement of Intent – Plan Lodgement under the *Land Title Act 1994* form provides for and gives Ministerial approval to the dedication of freehold land as a reserve pursuant to sections 31, 31A and 44 of the Land Act. The form may only be used where the purpose of the reserve is shown on the face of the plan. The completed form is given to the registered owner of the subject land for deposit with the plan when lodged.

The Statement of Intent – Plan Lodgement under the *Land Act 1994* form provides for and gives Ministerial approval to the dedication of unallocated State land as road pursuant to s. 94 of the Land Act.

Public Use Land other than Road

[21-2280]

Lots dedicated to public use become unallocated State land on registration of the plan without any further action.

The dedication of public use land must not be shown as a condition of the approval of the plan.

If the plan depicts public use land and a community purpose listed in schedule 1 of the *Land Act 1994* is shown on the face of the plan and the action is approved by the Minister by way of a Statement of Intent – Plan Lodgement under the *Land Title Act 1994* form, on registration of the plan the lot is dedicated as a reserve.

If a lot that is the subject of dedication to public use is affected by registered encumbrances, additional instruments (such as partial releases of mortgages and surrenders of easements and leases) are not required to be lodged. For the dedication to occur on registration of the plan consents may be required (see [21-2230]).

In the case of a public utility easement over freehold land that is to become unallocated State land the easement may continue over the unallocated State land if the approval of the Minister is obtained and deposited (s. 372(5) of the Land Act). If a Statement of Intent is being used to provide approval to the dedication of the public use land as reserve, the approval to the continuation of easements may be included on the Statement of Intent. Where a Statement of Intent is not being used the approval must be by a letter or a Form 18.

Public Use Land – Road

[21-2290]

Registration of a plan that shows new road operates to dedicate the road and open it for the *Land Act 1994* without anything further (s. 51(2)(a) of the *Land Title Act 1994*).

New road depicted on a plan of subdivision may be either a standard format parcel or a volumetric format parcel.

There are a number of alternative methods outlined below to dedicate the whole of a lot to new road.

For the Dedication of Fee Simple Land as Road under s. 54 of the *Land Title Act 1994*

A registered owner of a lot may dedicate the whole of a lot as road by registering a dedication notice. A dedication notice must be made on a Form 14 – General Request and be for the whole of a lot. See [14-2315] for additional information.

For the Dedication of Fee Simple Land as Road under s. 12B of the *Acquisition of Land Act 1967*

A constructing authority having acquired fee simple land for road purposes under the *Acquisition of Land Act 1967* may dedicate a lot as road by registering a dedication notice. A dedication notice must be made on a Form 14 –General Request and be for the whole of a lot. See [14-2315] for additional information.

For the Dedication of Fee Simple Land as Road, under s. 327 of the *Land Act 1994*

A registered owner may absolutely surrender the whole of their land by way of a Form 1 – Transfer to the State of Queensland stating in Item 4 ‘a surrender pursuant to s. 327 of the *Land Act 1994* and to dedicate by way of s. 94 of the *Land Act 1994* the land as road’. See [1-2470] for additional information.

²Creation of Indefeasible Title**[21-2300]**

Generally, indefeasible titles are created for all lots on plans of subdivision when the plan is registered. The only exceptions are:

- lots dedicated to public use; and
- common property for a body corporate created pursuant to a specified Act under the *Body Corporate and Community Management Act 1997* or the *South Bank Corporation Act 1989*.

²Transfer to Local Government in Fee Simple**[21-2310]**

See ¶[1-2580] for information on preparation of a transfer to a local government in fee simple.

²Transfer to Local Government as Trustee**[21-2320]**

Land may be transferred to a local government for a public, charitable, recreation or other leisure time purpose and held by the local government **as trustee**.

For development applications on or after 30 March 1998, the *Planning Act 2016* provides that a local government may require the applicant to give to the local government, in fee simple, part of the land for local community purposes. The land must be transferred to the local government on trust.

For development applications made prior to 30 March 1998 a local government may not require the transfer of a lot to it as trustee as a condition to its approval of a plan of subdivision.

The requirement to transfer the land must not be included as a condition in the local government approval in Item 2 on the plan administration sheet (Form 21B or Form 38B).

See [1-2570] for information on preparation of a transfer to a local government as trustee.

Realignment of Lot Boundaries**[21-2330]**

When a change of lot boundaries creates a situation where:

- the ownership arrangement of one or more of the lots is unresolved;

and if there is a mortgage registered over one or more of the lots

- the interest(s) of mortgagee(s) becomes uncertain;

documents resolving ownership and/or mortgagee(s) interest(s) must be lodged with the plan.

The following two cases are provided as examples.

Example 1

Diagram 1 – Existing Situation

Jones Street

Title: 12345067 Owner: A Lot 7 on SP 800543 Mortgage to XYZ Bank	Title: 15432178 Owner: B Lot 8 on SP 800543 Mortgage to ABC Bank	A owns Lot 7 on SP 800543 in Title: 12345067. B owns Lot 8 on SP 800543 in Title: 15432178.
---	---	--

Diagram 2 – Desired Outcome

Jones Street

Owner: A Lot 1 on SP 876345		Owner: B Lot 2 on SP 876345	A intends to buy part of B's land (as shaded) which adjoins and hold a single title for all of the land owned.
--	--	--	--

The documents required to achieve the desired outcome are:

- (a) **Plan of survey**
a plan of survey (shown as plan SP 876345 in diagram 2). Indefeasible titles will be created for:
 - lots that have changed in shape due the addition of transferred land in the names of both owner A and B with no tenancy shown that is Lot 1 on SP 876345; and
 - lots that have changed in shape due to disposal of land with no change of ownership i.e. Lot 2 on SP 876345.
- (b) **Release**
Where land is being transferred from a lot which is subject to a registered mortgage(s), a release(s) must be lodged for the land being transferred. In the example, a partial release is required from ABC Bank for the part of Lot 1 on SP 876345 being transferred.
- (c) **Transfer**
a transfer, that states at Item 4 the true and full consideration that was given or undertaken, from all the owners to the eventual owner of the lot that changed in shape due to the addition of transferred land. In the example, both A and B join in a transfer of Lot 1 on SP 876345 in Title 12345067 and title 15432178 to A).
- (d) **Mortgage**
Where mortgagee(s) interests are affected, collateral mortgage(s) will be required to be registered over any new lot(s) which includes transferred land. In the example, a collateral mortgage is required from A to XYZ Bank for Lot 1 on SP 876345.

The plan of survey will not be registered until all relevant documents are lodged and capable of simultaneous registration.

Example 2

Diagram 1 – Existing Situation

Jones Street

Title: 12345067	Title: 15432178	A owns Lot 7 on SP 800543 in Title: 12345067.
Owner: A	Owner: B	B owns Lot 8 on SP 800543 in Title: 15432178.
Lot 7 on SP 800543	Lot 8 on SP 800543	
Mortgage to XYZ Bank	Mortgage to ABC Bank	

Diagram 2 – Desired Outcome

Jones Street

Title: 12345067		Title: 15432178	A intends to buy part of B's land (as hatched) and hold a single title for all of the land owned
Owner: A		Owner: B	B intends to buy part of A's land (as shaded) and hold a single title for all of the land owned.
Lot 1 on SP 876345		Lot 2 on SP 876345	

The documents required to achieve the desired outcome are:

- (a) **Plan of survey**
a plan of survey (in the example shown as plan SP 876345 in diagram 2). Indefeasible titles will be created in the names of both owners A and B with no tenancy shown for the lots that have changed in shape due the addition of transferred land, in the example:
 - Lot 1 on SP 876345; and
 - Lot 2 on SP 876345.
- (b) **Release**
Where land is being transferred from a lot which is subject to a registered mortgage(s), a release(s) must be lodged for the land being transferred. In the example above, partial releases are required from:
 - ABC Bank for the part of Lot 1 on SP 876345 being transferred; and
 - XYZ Bank for the part of Lot 2 on SP 876345 being transferred.
- (c) **Transfer**
a transfer(s), which states at Item 4 the true and full consideration that was given or undertaken, from all the owners to the eventual owner of the lot that changed in shape due to the addition of transferred land. In the example, the following transfers are required:
 - both A and B join in a transfer of Lot 1 on SP 876345 in Title 12345067 and title 15432178 to A; and.
 - both B and A join in a transfer of Lot 2 on SP 876345 in Title 12345067 and title 15432178 to B.

(d) **Mortgage**

Where mortgagee(s) interests are affected, collateral mortgage(s) will be required to be registered over any new lot(s) which includes transferred land. In the example the following collateral mortgages are required

- from A to XYZ Bank for Lot 1 on SP 876345; and
- from B to ABC Bank for Lot 2 on SP 876345.

The plan of survey will not be registered until all relevant documents are lodged and capable of simultaneous registration.

Forms

General Guide to Completion of Forms

[21-4000]

For general requirements for completion of forms see part 59 – Forms, esp [59-2000].

SURVEY PLAN

0 50 m 100 m 150 m State copyright reserved.

		LOCAL GOVERNMENT: LOCALITY:	
		Mendian: Survey Records	

Scale:
Format:

State copyright reserved.

0 50 mm 100 mm 150 mm

Insert Plan Number

SURVEY PLAN

Sheet	of
-------	----

Certificate:

Scale:

0 50 m 100 m 150 m State copyright reserved

Meridian:

Survey
Records

Format:

LOCAL
GOVERNMENT:

LOCALITY:

(Deed No.)

(Include address, phone number, reference, and Lodger Code)

1. Certificate of Registered Owners or Lessees.

```
1/Wie .....  
.....  
.....  
.....  
.....
```

(Names in full)

* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

*as Lessees of this land agree to this plan.

Signature of *Registered Owners *Lessees

* Rule out whichever is inapplicable

2. Planning Body Approval.

hereby approves this plan in accordance with the:

Dated this day of

* Insert the name of the Planning Body.

Insert designation of signatory or delegation

% Insert applicable approving legislation.

3.Plans with Community Management Statement :

CMS Number :

Name :

4. References :

Dept File :

Local Govt :

Surveyor :

7. Annotations:

a. Passed & Endorsed :

By:

Date:

Signed:

Designation :

9. Insert Plan Number	
-----------------------	--

Land Title Act 1994 ; Land Act 1994 Form 38A Version 1	ADDITIONAL SHEET	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Sheet</td> <td style="width: 50%; text-align: center;">of</td> </tr> </table>	Sheet	of
Sheet	of			
<div style="display: flex; justify-content: space-between;"> 0 50mm 100mm 150mm </div>		<div style="display: flex; justify-content: space-between;"> State copyright reserved. <div style="border: 1px solid black; padding: 2px;"> Insert Plan Number </div> </div>		

Guide to Completion of Forms 21/21A/21B

[21-4010]

A Plan of survey can only be completed by a cadastral surveyor registered under the *Surveyors Act 2003*, except for Items 1, 2, 4 and 5 on the plan administration sheet (Form 21B).

Each plan and each sheet of the plan must be numbered and labelled in accordance with the requirements set out in Direction 4 of the Registrar of Titles Directions for the Preparation of Plans.

Item Requirements

1 Certificate of registered owners or lessees:

Full name(s), and trust capacity if applicable, and signature(s) of each registered owner(s)/lessee(s) must be completed and if a corporation, name and ACN or ARBN shown. (See [21-2220])

2 Planning Body Approval:

Where an approval to a plan of subdivision is required to be given by a planning body, Item 2 must be completed by:

- stating the name of the relevant planning body and the legislative authority relevant to the approval; and
- being signed and dated by an appropriately authorised person who state their authority.

3 Plans with Community Management Statement:

The Name of Community Titles Scheme relevant to the plan and any CMS number previously allocated to the scheme is to be shown in this item. (Completed by the Surveyor)

(Note: For a plan lodged with a **First** CMS the scheme number will be completed by the Land Registry)

4 References:

(Optional – Completed if required by the relevant person/agency)

5 Lodger details:

The name, address, contact phone number and lodger code (if applicable) should be completed by the person/firm actually lodging the plan for registration, and contain the minimum information necessary for positive identification and contact by correspondence (email) and telephone.

6 Lot allocations and interest allocations:

(Completed by surveyor)

7 Original grant allocation:

(Completed by surveyor)

8 Map Reference:

(Completed by surveyor)

11 Passed and endorsed:

(Completed by the Accredited Surveyor or ruled through if the plan is prepared by a non-accredited surveyor)

12 Building format plans certificate of encroachment/non-encroachment:

(Completed by a surveyor in accordance with Registrar of Titles Directions for the Preparation of Plans)

13 Lodgement Fees:

(Completed by Land Registry)

14 Insert plan number:

(Completed by surveyor)

Guide to Completion of Forms 38/38A/38B

[21-4020]

A plan of survey, where a visualisation of a submitted cadastral information file (CIF) is created using the Department's eSurvey system, can only be completed by a cadastral surveyor registered under the *Surveyors Act 2003*, except for Items 1, 2, 4 and 5 on the plan administration sheet (Form 38B).

Each plan and each sheet of the plan must be numbered and labelled in accordance with the requirements set out in Direction 4 of the Registrar of Titles Directions for the Preparation of Plans.

Item Requirements

1 Certificate of registered owners or lessees:

Full name(s), and trust capacity if applicable, and signature(s) of each registered owner(s)/lessees must be completed and if a corporation, name and ACN or ARBN shown. (See [21-2220])

2 Planning Body Approval:

Where an approval to a plan of subdivision is required to be given by a planning body, Item 2 must be completed by:

- stating the name of the relevant planning body and the legislative authority relevant to the approval; and
- being signed and dated by an appropriately authorised person who state their authority.

3 Plans with Community Management Statement:

The Name of Community Titles Scheme relevant to the plan and any CMS number previously allocated to the scheme is to be shown in this item. (Completed by the Surveyor)

(**Note:** For a plan lodged with a **First** CMS the scheme number will be completed by the Land Registry)

4 References:

(Optional – Completed if required by the relevant person/agency)

5 Lodger details:

The name, address, contact phone number and lodger code (if applicable) should be completed by the person/firm actually lodging the plan for registration, and contain the minimum information necessary for positive identification and contact by correspondence (email) and telephone.

6 Allocations:

(Completed by surveyor)

7 Annotations:

(Completed by surveyor)

8 Passed and endorsed:

(Completed by the Accredited Surveyor or ruled through if the plan is prepared by a non-accredited surveyor)

11 Insert plan number:

(Completed by surveyor)

¶[21-6000] deleted

Case Law

***Rock v Todeschino* [1983] Qd R 356**

[21-7000]

In this case and in *Hutchinson v Lemon* [1983] Q Conv R 54-072, it was held that the registration of a plan indicating an easement was sufficient to grant that easement. No instrument of easement was required to effect registration of the easement.

The effect of these decisions is now negated by s. 83A of the *Land Title Act 1994*, which expressly states that the registration of a plan of easement does not create the easement or evidence a present intention to create an easement.

¶[21-7010] deleted

Fees

[21-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1,2}Land Title Regulation;
- ^{1,3}Land Regulation; or

Cross References and Further Reading

[21-9000]

Part 1 – Transfer

Part 7 –Lease

Part 9 – Easement

Part 14 – General Request

Part 18 – General Consent

Part 29 –Profit a Prendre

Part 31 –Covenants

Part 36 –Carbon Abatement Interest

Part 45 –Community Title Schemes

Registrar of Titles Directions for the Preparation of Plans

Notes in text

[21-9050]

Note ¹ – This part is not applicable to water allocations.

Note ² – This numbered section, paragraph or statement does not apply State Land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.

^{1, 2} **Part 22 – Certificate of Title**

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^{1, 2} Part 22 – Certificate of Title

General Law

[22-0000]

The Certificate of Title is a paper record of the current particulars of ownership and interests of a lot recorded on an indefeasible title held in the Freehold Land Register.

Under s 45 of the *Land Title Act* 1994, unless the Registrar otherwise directs, a Certificate of Title deposited in the land registry is cancelled, whether or not a note of the cancellation is made on it.

Practice

[22-2000]

The Certificate of Title issued by the Registrar is an accurate record of the current particulars held against the indefeasible title in the Freehold Land Register for the lot shown.

A registered owner may request the issue of a Certificate of Title in a Form 19 – Application for Title. However, if the lot is subject to a mortgage, the consent of the mortgagee endorsed on the Form 19 is required. The mortgagee's consent should be endorsed in the following terms, eg: 'XYZ Bank Ltd ACN 123 456 789 consents to the Request'. The consent must be dated and lawfully executed. The consents of all mortgagees must be given.

The Registrar must give the Certificate of Title to the person stated in the owner's request in the Form 19.

Certificate of Title to be Lodged

[22-2010]

A Certificate of Title must be deposited with a dealing relating to that lot, for the purpose of cancellation (s 154(1) of the *Land Title Act* 1994) except in the cases below. If lost or destroyed, an application may be made for production to be dispensed with (s 164(1) of the *Land Title Act* 1994). See part 17 – Request to Dispense with Production of Instrument.

However, under s 154(2) of the *Land Title Act* 1994 a Certificate of Title does not have to be returned for cancellation with any of the following:

- (a) an instrument transferring or otherwise dealing with the interest of a lessee under a registered lease that is lodged without the lessor's consent;
- (b) a request to register a writ of execution;
- (c) any caveat;
- (d) a request to register a power of attorney;
- (e) a request to register a charge created under an Act;
- (f) a request to register an instrument of amendment, extinguishment or partial extinguishment of a building management statement, if the request is accompanied by the evidence the Registrar reasonably requires to allow the registration of the instrument;

- (g) a request to record a vesting, if the vesting is in favour of the State or another entity representing the State;
- (h) an instrument for which the Registrar has dispensed with production of the title;
- (i) a request to register a dealing under the *State Development and Public Works Organisation Act 1971*, part 6, division 8;
- (j) an instrument affecting the public utility provider as the registered proprietor of a public utility easement;
- (k) an instrument affecting the registered proprietor of the following interests in land—
 - (i) a registered profit a prendre, if the profit does not benefit any lot;
 - (ii) a registered carbon abatement interest.

For subsection 154 (2) (j) and (k), an instrument affects the registered proprietor of an interest in land if the registration of the instrument would result in—

- (a) a change in the registered proprietor of the interest, including, for example, because the interest has been transferred or a person beneficially entitled under a will to the interest has been registered as proprietor of the interest; or
- (b) a change in the registered proprietor's name.

A Certificate of Title is not required to be deposited for any dealing to which the person entitled to hold the Certificate of Title is not a party. For example see [10-2000].

When a Certificate of Title is in the possession of a mortgagee and that mortgagee deposits the Certificate of Title for cancellation on lodgement of a transaction, the mortgagee is taken to be aware of and agreeable to registration of the transaction. Accordingly, in such cases, there is no necessity for mortgagees to consent in Form 18 and no requisition is issued seeking the mortgagee's consent.

Certificate of Title Cancelled on Deposit

[22-2015]

The Registrar has directed that a Certificate of Title deposited or left at the land registry for any reason is cancelled, whether or not a note of the cancellation is made on it.

Form 22 – Certificate of Title

CERTIFICATE OF TITLE QUEENSLAND

Dealing No: 713099715

Title Reference: 85857505

Certificate No: 1

Issue Date: 06/12/2010

I certify that the person described below is the registered owner of the undermentioned estate in the land within described subject nevertheless to such Easements, Encumbrances and Interests as are shown.

Registrar of Titles

REGISTERED OWNER

PROPLAW PTY LTD A.C.N. 123 456 789

ESTATE AND LAND

Estate in Fee Simple

LOT 1 SURVEY PLAN 765432
 County of NARES Parish of CAIRNS
 Local Government: CAIRNS CITY

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by Deed of Grant No. 51083100 (POR 276)
2. EASEMENT IN GROSS No 909733875 06/10/2005 at 10:50
burdening the land
CAIRNS CITY COUNCIL
over
EASEMENT A ON SP787215
3. MORTGAGE No 282207654 11/11/2005 at 11:10
STATENCORP LIMITED A.C.N. 880 199 737

Guide to Form 22

[22-4000]

The following information is included on the Certificate of Title.

- (A) Lodger details.
- (B) The title reference recorded against the indefeasible title for the lot in the Automated Titles System. The version number identifies the number of Certificates of Title that have been produced for that lot. The date of issue of the Certificate of Title is also included.
- (C) The Registrar's certification in compliance with the requirements of s 43 of the *Land Title Act 1994*.
- (D) The full name/s of the registered owner/s of the lot, their tenancy and relative shares as applicable.
- (E) 'Estate and Land' identifies the fee simple description of the lot contained in the title by reference to the lot and plan and the parish and county in which it is located.
- (F) 'Easements, Encumbrances and Interests' discloses the particulars of any lease, easement, charge etc registered against the indefeasible title. As mentioned previously, if there is a mortgage registered against the indefeasible title, a Certificate of Title cannot be generated without the consent of the mortgagee.

Cross References and Further Reading

[22-9000]

Nil.

Notes in text

[22-9050]

Note¹ – This part does not apply to water allocations.

Note² – This part does not apply to State land.

²Part 23 – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice

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²Part 23 – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice

General Law

[23-0000]

Part 7A of the *Land Title Act 1994* creates a procedure for deposit in the registry of a priority notice. A priority notice seeks to reserve the priority of instruments that are to be lodged that affect a lot or an interest in a lot.

The most common use of a priority notice is to reserve priority for a transfer and/or a mortgage intended to be lodged in relation to a lot over any instruments not specified in the priority notice lodged in relation to the same lot during the currency of the priority notice.

A priority notice, once entered, alerts all interested parties who perform a title search to the fact that lodgement of the instrument(s) listed in the notice is intended.

Legislation

[23-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Practice

Requirements of Priority Notice

[23-2000]

A priority notice must:

- be prepared using a *Priority Notice Form*;
- state the name of the person who is or will be a party to an instrument that is to be lodged and will affect the lot or an interest in the lot (the *applicant*);
- be signed by or for the *applicant*; and

- sufficiently describe:
 - the lot(s)/water allocation(s) affected by the instrument which the **applicant** is or will be a party to; and
 - each instrument to be lodged to which the notice relates (the **Transaction Instruments**) including the instrument which the **applicant** is or will be a party to; and
- state the order in which the **Transaction Instruments** are intended to be lodged.

When Priority Notice can be deposited

[23-2010]

A priority notice may only be deposited in the circumstances set out below.

- (1) In relation to freehold land.
- (2) In relation to a water allocation.
- (3) By or for an **applicant** (a person who is or will be a party to an instrument that is to be lodged that will affect the lot(s)/water allocation(s) or an interest in the lot(s)/water allocation(s)).
- (4) For **Transaction Instruments** including the instrument the **applicant** is or will be a party to.

Operation and Effect of Priority Notice

[23-2020]

A priority notice operates from the time of deposit until the earlier of:

- the time when the priority notice lapses which is:
 - the time when all the **Transaction Instruments** specified in the notice have been lodged in the order stated in the notice (see *Priority Notice Form Transaction Instruments Panel*); or
 - if an extension request has **not** been deposited: the day that is 60 days after the notice was deposited; or
 - if an extension request (*Extension of Priority Notice Form*) has been deposited: the day that is 90 days after the notice was deposited; or
- the time when the priority notice is:
 - withdrawn by the **applicant** (*Withdrawal of Priority Notice Form*); or
 - removed on order of the Supreme Court; or
 - cancelled by the Registrar.

While current, a priority notice prevents registration of any instruments affecting the lot/water allocation or an interest in the lot/water allocation other than:

- the **Transaction Instruments** when lodged in the order specified in the notice (see *Priority Notice Form Transaction Instruments Panel*);

- an instrument the lodgement of which the **applicant** has consented to. The consent must be in a *Form 18 – General Consent*, deposited with the instrument;
- an instrument of transfer or release of mortgage executed by a mortgagee whose interest was registered before the notice was deposited;
- an instrument lodged before the priority notice was deposited;
- a caveat; and
- another instrument that, if registered, would not affect an interest the subject of the notice.

Extension of Priority Notice

[23-2025]

The 60 day currency period of a priority notice can be extended by 30 days (to a currency period of 90 days) by depositing an extension request to extend the notice. Only one extension request may be deposited for a priority notice.

An extension request must:

- be prepared using an *Extension of Priority Notice Form*;
- be signed by or for the **applicant** for whom the priority notice was deposited; and
- be deposited while the priority notice is current.

Lodged Instruments that are not *Transaction Instruments*

[23-2030]

If an instrument is lodged ('A') and it is prevented from being registered by the earlier deposit of a priority notice, it will be requisitioned, advising that a priority notice has been deposited.

If the *Transaction Instruments* referred to in the priority notice (see Priority Notice Form *Transaction Instruments Panel*) are subsequently lodged within the currency period, the first instrument (A) will be requisitioned for withdrawal within 14 days. If the first instrument (A) is not withdrawn within that 14 day period, it will be withdrawn by the Registrar (s. 147 of the *Land Title Act 1994*). In a situation where the first instrument (A) would be capable of registration after the *Transaction Instruments* referred to in the priority notice are registered, it will be withdrawn and re-entered to follow them.

The result is that competing instruments are taken to have been lodged after the *Transaction Instruments* detailed in the *Transaction Instruments Panel* whilst the notice is still current.

For example:

- (1) A Priority Notice is deposited on 20 February and details a Transfer between the registered owner (Atkins) and Brown (the Purchaser/**applicant**) as a **Transaction Instrument** in the Priority Notice Form *Transaction Instruments Panel*. It is allocated a dealing number as an administrative advice and recorded in the relevant register.
- (2) A Transfer between the registered owner (Atkins) and Johns (a competing instrument not listed as a **Transaction Instrument** in the *Transaction Instruments Panel* in the priority notice) is lodged on 3 March (i.e. during the 60 day currency period of the priority notice), allocated the dealing number of XXX099093, yet prevented from being registered by the priority notice.

- (3) The transfer from Atkins to Brown (the ***Transaction Instrument*** specified in the ***Transaction Instruments Panel*** in the priority notice) is lodged on 14 April (i.e. during the 60 day currency period of the priority notice) and allocated dealing number XXX768952.

In accordance with Part 7A of the Land Title Act, the transfer from Atkins to Brown (the ***Transaction Instrument*** specified in the ***Transaction Instruments Panel*** in the priority notice) must register first and the transfer between Atkins and Johns will be taken to have been lodged immediately after the Transfer from Atkins to Brown (s. 148 of the Land Title Act).

To give effect to section 148(1) of the Land Title Act the Registrar is empowered (under s. 147(1) of the Land Title Act) to withdraw the Transfer from Atkins to Johns.

However, prior to that withdrawal, the Registrar is required to notify the person who lodged the transfer of the intended withdrawal 14 days prior to the action (s. 147(2) of the Land Title Act).

After withdrawal, the withdrawn instrument will be considered so as to determine whether it would be capable of registration after the ***Transaction Instruments*** detailed in the ***Transaction Instruments Panel*** in the priority notice have registered. If it is, it will be re-entered to follow them and taken to have been lodged immediately after the lodgement of the ***Transaction Instruments*** detailed in the ***Transaction Instruments Panel*** in the priority notice. (s. 148 of the Land Title Act). In the above scenario the transfer from Atkins to Johns cannot be registered and the transfer will be rejected.

Recording Priority Notice

[23-2040]

A priority notice will be entered into the Automated Titles System (ATS) as an administrative advice.

A priority notice notation will appear on a title search from the time of its deposit with a status of 'current' for 60 days (or 90 days if an extension request has been deposited) unless all of the ***Transaction Instruments*** specified in the notice are lodged or the notice is withdrawn, removed or cancelled. A lapsed priority notice may appear on a title search with a status of 'current' for up to a month following its lapsing until it is automatically removed from the title. This assists registry staff administering provisions of Part 7A of the Land Title Act.

Withdrawing Priority Notice

[23-2050]

A priority notice may be withdrawn by depositing a request to withdraw the notice.

The request must:

- be prepared using a *Withdrawal of Priority Notice Form* (the approved form); and
- be signed by or for the ***applicant*** for whom the priority notice was deposited.

Removing Priority Notice

[23-2060]

If the Supreme Court makes an order to remove a priority notice under s. 144 of the *Land Title Act 1994*, that order must be lodged in the registry with a *Form 14 – General Request* that the priority notice be removed. This Form 14 will attract normal lodgement fees. The ***applicant*** does not have to be notified of this order or of an application made to the Supreme Court for the order.

Cancelling Priority Notice

[23-2070]

The Registrar may cancel a priority notice if a *Form 14 – General Request* to cancel the notice is deposited outlining the basis for cancellation and the Registrar is satisfied that it is unlikely the **Transaction Instruments** listed in the *Transaction Instruments Panel* in the notice will be lodged before the notice lapses (s. 145 of the *Land Title Act 1994*). The *Form 14 – General Request* must be accompanied by a *Form 20 – Declaration* supporting the cancellation of the priority notice and any relevant documentary evidence. For information about depositing supporting documentation see ¶[60-1030]. Normal lodgement fees apply.

Before cancelling a priority notice under s. 145 of the Land Title Act, the Registrar must give written notice to the **applicant** of the Registrar's intention to cancel the priority notice at least seven days prior to cancelling the priority notice.

Notice of the Registrar's intention to cancel a priority notice required to be given under s. 145 of the *Land Title Act 1994* will be properly served if left at or sent to the address stated in the *Lodger Details Panel* for the person who deposited the notice (the lodger).

Minor Corrections

[23-2080]

The Registrar may make a minor correction to a priority notice if a written request is received and the Registrar is satisfied that the correction is minor (s. 149 *Land Title Act 1994*).

The written request must be:

- in the form of a letter or e-mail addressed to the Registrar; and
- must be sent by or on behalf of the **applicant** for whom the priority notice was deposited.

Minor corrections would include incorrect spelling of names. However, changes of names, details of **Transaction Instruments** and lots/water allocations are not considered minor corrections. For example a minor correction might be the incorrect spelling of 'Jon' rather than 'John' but would not include the name 'James' rather than 'John'.

Forms

General Guide to Completion of Forms

[23-4000]

For general requirements for completion of forms see part 59 – Forms.

A document that is lodged as an electronic conveyancing document must be accompanied by a set of lodgement instructions identifying the nominated Responsible Subscriber and the order in which the documents are to be lodged. The lodgement instructions must be digitally signed by all subscribers to the transaction.

Lodger Details

Lodger Code
Name SMITH & HAYES
Address 10 MARY STREET BRISBANE
QLD 4000
Lodger Box 123
Phone (07) 3227 5055
Email info@smithhayes.com.au
Reference SMITH:ABC

For Office Use Only

**THE BACK OF THIS FORM
MUST NOT BE USED****PRIORITY NOTICE****Jurisdiction** QUEENSLAND**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Title Reference	Lot on Plan Description
16172222	LOT 2 ON RP3467

Applicant	
Name	JOHN THOMAS CLARE

Transaction Instruments

Order

Document Type	RELEASE OF MORTGAGE
<u>Dealing No.</u>	MORTGAGE NO. 714818456
<u>Title Reference</u>	16172222

Document Type	TRANSFER
<u>Party Receiving</u>	JOHN THOMAS CLARE
<u>Title Reference</u>	16172222

Document Type	MORTGAGE
<u>Party Receiving</u>	SUNPAC FINANCE PTY LTD
<u>Title Reference</u>	16172222

The recording of this Priority Notice is requested.

Applicant Execution

Executed on behalf of JOHN THOMAS CLARE

Signer Name PETER PAUL JAMES

Signer Role SOLICITOR

Signature *P P James*

Execution Date 10 / 10 / 2017

SAMPLE

Lodger Details

Lodger Code
Name BIG CITY LAW
Address 100 QUEEN STREET
BRISBANE QLD 4000
Lodger Box 321
Phone (07) 3220 1000
Email info@bigcity.com.au
Reference DOBBY:ABC

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**THE BACK OF THIS FORM
MUST NOT BE USED****PRIORITY NOTICE****Jurisdiction** QUEENSLAND**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Title Reference	Lot on Plan Description
11223078	LOT 1 ON SP102568

Applicant

Name	BARGAIN BUYS PTY LTD
ACN	321654987

Transaction Instruments

Order

Document Type	LEASE
<u>Party Receiving</u>	BARGAIN BUYS PTY LTD
<u>Title Reference</u>	11223078
Part Land?	Y
Part Description	LEASE A ON SP345684 IN LOT 1 ON SP102568

The recording of this Priority Notice is requested.

Applicant Execution

Executed on behalf of BARGAIN BUYS PTY LTD

Signer Name HAROLD ARTHUR JAMES

Signer Role SOLICITOR

Signature *H A James*

Execution Date 10 / 10 / 2017

General Guide to Completion of *Priority Notice Form*

For more detailed instructions on the completion of the *Priority Notice Form* Panels and how to add or delete Fields within the Panels in Microsoft Word – refer to the *Guide to completion – Priority Notice Form* available from the Titles Registry forms page.

Lodger Details

[23-4010]

Complete with the Lodger Details.

Jurisdiction

[23-4020]

The Jurisdiction must always state QUEENSLAND.

Title Reference/Lot on Plan Description

[23-4030]

¹Freehold Land Description

Complete with the Title Reference(s) over which the priority notice will be deposited and insert all of the Lot on Plan Descriptions for each Title Reference. The Lot on Plan Description should always read 'Lot [no.] on [plan reference]'. Plan references must contain the appropriate prefix (e.g. 'SP' for a survey plan, 'RP' for a registered plan, 'BUP' for a building units plan, 'GTP' for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

Example:

Title Reference	Lot on Plan Description
11223078	Lot 27 on RP204939
52223988	Lot 1 on SP123456 Lot 2 on SP123456

³Water Allocation Description

Complete with the Title Reference(s) over which the priority notice will be deposited and insert the relevant description for each Water Allocation. A water allocation should be identified as 'Water Allocation', 'Allocation' or 'WA'. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

Example:

Title Reference	Lot on Plan Description
46012345	WA 27 ON AP7900

Applicant

[23-4040]

Insert the full legal name of the individual or organisation *applicant(s)* including the ACN or ARBN if applicable.

Transaction Instruments

[23-4050]

List the *Transaction Instruments* that will be lodged in the order in which they will be lodged.

Applicant Execution

[23-4070]

Execute as required.

For a company ***applicant*** executing the Priority Notice, the ACN or ARBN does not need to be included in the company name in the *Applicant Execution Panel* if it has been included in the *Applicant Panel*.

Electronic Form – The requirements for the execution and certification for the Applicant are contained in the Participation Rules (Queensland) for electronic conveyancing.

Lodger Details

Lodger Code
Name SMITH & HAYES
Address 10 MARY STREET BRISBANE
QLD 4000
Lodger Box 123
Phone (07) 3227 5055
Email info@smithhayes.com.au
Reference SMITH:ABC

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**THE BACK OF THIS FORM
MUST NOT BE USED****EXTENSION OF PRIORITY NOTICE****Jurisdiction** QUEENSLAND**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Title Reference	Lot on Plan Description
16172222	LOT 2 ON RP3467

Priority Notice Number 712345678

The extension of this Priority Notice is requested.

Applicant Execution

Executed on behalf of JOHN THOMAS CLARE

Signer Name PETER PAUL JAMES

Signer Role SOLICITOR

Signature P P James

Execution Date 10 / 10 / 2017

Guide to Completion of *Extension of Priority Notice Form*

Lodger Details

[23-5010]

Complete with the Lodger Details.

Jurisdiction

[23-5020]

The Jurisdiction must always state QUEENSLAND.

Title Reference/Lot on Plan Description

[23-5030]

Complete with the Title Reference(s) over which the priority notice was deposited and insert all of the Lot on Plan Descriptions or Water Allocation description for each Title Reference.

Priority Notice Number

[23-5040]

Insert the dealing number of the Priority Notice to be extended.

Applicant Execution

[23-5070]

Execute as required.

Electronic Form – The requirements for the execution and certification for the Applicant are contained in the Participation Rules (Queensland) for electronic conveyancing.

Lodger Details

Lodger Code
Name SMITH & HAYES
Address 10 MARY STREET BRISBANE
QLD 4000
Lodger Box 123
Phone (07) 3227 5055
Email info@smithhayes.com.au
Reference SMITH:ABC

For Office Use Only

**THE BACK OF THIS FORM
MUST NOT BE USED****WITHDRAWAL OF PRIORITY NOTICE****Jurisdiction** QUEENSLAND**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Title Reference	Lot on Plan Description
16172222	LOT 2 ON RP3467

Priority Notice Number 712345678

The withdrawal of this Priority Notice is requested.

Applicant Execution

Executed on behalf of JOHN THOMAS CLARE

Signer Name PETER PAUL JAMES

Signer Role SOLICITOR

Signature *P P James*

Execution Date 10 / 10 / 2017

Guide to Completion of *Withdrawal of Priority Notice Form*

Lodger Details

[23-6010]

Complete with the Lodger Details.

Jurisdiction

[23-6020]

The Jurisdiction must always state QUEENSLAND.

Title Reference/Lot on Plan Description

[23-6030]

Complete with the Title Reference(s) over which the priority notice was deposited and insert all of the Lot on Plan Descriptions or Water Allocation description for each Title Reference.

Priority Notice Number

[23-6040]

Insert the dealing number of the Priority Notice to be withdrawn.

Applicant Execution

[23-6070]

Execute as required.

Electronic Form – The requirements for the execution and certification for the Applicant are contained in the Participation Rules (Queensland) for electronic conveyancing.

Fees

[23-8000]

Fees payable to the registries are subject to an annual review. Refer to the online Titles Fee Calculator or see the current:

- ¹Land Title Regulation; and
- ³Water Regulation.

Cross References and Further Reading

[23-9000]

Part 1 — Transfer

Part 2 — Mortgage (National Mortgage Form)

Part 3 — Release of Mortgage

Part 4 — Request to Record Death

Part 5, 5A, 6 — Transmission Applications

Part 7 — Lease

Part 8 — Surrender of Lease

Part 9 — Easement

Part 10 — Surrender of Easement

Part 14 — General Request

Part 18 — General Consent

Part 49 — Water Allocations

Part 50 — Corporations and Companies

Part 51 — Trusts

Notes in text

[23-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This part does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 24 – Property Information (Transfer) and Property Information (Transmission Application)

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Part 24 – Property Information (Transfer) and Property Information (Transmission Application)

General Law

[24-0000]

Form 24 – Property Information (Transfer) and Form 24A Property Information (Transmission Application) are common forms deposited with the Titles Registry to collect information on behalf of government agencies other than the Titles Registry.

The information is required by the following agencies and for the purposes stated:

- Office of State Revenue – to assist with statutory obligations for the administration and collection of land tax and duty on land
- Electrical Safety Office (Department of Employment and Industrial Relations) – to monitor compliance with legislative requirements relating to electrical safety switches
- Queensland Fire and Emergency Service (Department of Community Safety) – to monitor compliance with legislative requirements relating to smoke alarms
- State Valuation Service (Department of Natural Resources and Mines) – to update information held on the valuation and sales database
- State Land Asset Management (Department of Natural Resources and Mines) – to update information in the Land Tenure Ledger
- Water Catchment Services (Department of Natural Resources and Mines) – to assist with the maintenance of the water management system
- Local governments – to assist with the updating of local government rates records and water.
- Water distributor-retailers – to assist with the maintenance of records relating to supply of retail water.

Legislation

[24-1000]

^{2, 3}Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and

- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1,3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

¶[24-2000] deleted

Lodgement

[24-2010]

The Guides to Completion of the Form 24 or the Form 24A are not to be deposited in the Titles Registry with the respective form.

Images of the Form 24 are not available to the public, and the information contained in these forms is not available from the Titles Registry.

Form 24 must accompany the Form 1 – Transfer while the Form 24A must accompany the Form 6 – Transmission Application for Registration as Devisee/Legatee of:

- ¹land where the registered proprietor is responsible for the payment of local government rates and charges (namely the fee simple, a State lease or licence, or a lease under *South Bank Corporation Act 1989*); or
- a water allocation.

^{1,3}However, a Form 24 is not required to be deposited with a transfer pursuant to s. 327 of the *Land Act 1994* (an absolute surrender to the State) or a transfer that temporarily surrenders land to the State to allow action under s. 358 of the Land Act.

²A Form 1 – Transfer with an intermediate party will necessitate a Form 24 for each contract, to supply details of the intermediaries. Only the current owner and new registered owner details are to be contained on the Form 1.

^{1,3}Version 2 of Forms 1 or 6 will be accepted with a Form 100 – Common Form, provided both were executed before 31 December 1995. A transfer, record of death or transmission by death of the fee simple that were executed between 1 May 1992 and 24 April 1994 must also be deposited with a Form 100. A Form 100 is processed as if it were a Form 24.

¶[24-2020] deleted

Supply of Correct or Additional Information

[24-2030]

State Valuation Service staff of the department examine details on the Form 24 and Form 24A when received from the Automated Titles System. If information is subsequently found to be deficient when examined, the Valuer-General or delegate may issue a notice to fix the defect to obtain the necessary information to complete the form (s. 246 of the *Land Valuation Act 2010*).

The lodger of the Form 24/Form 24A or the registered owner or holder may provide correct or additional information relevant to the form to either the Titles Registry or State Valuation Service.

The following procedures will apply for notification of correct or additional information:

- (A) If the notification is from a lawyer it may be either by –
- a statutory declaration signed by a lawyer; or
 - a letter on the firm’s letterhead signed by a lawyer.
- (B) If the notification is from a private individual it must be by way of a statutory declaration.
- In either case a new Form 24/Form 24A may be also deposited but is not mandatory.
 - Following formal notification of correct or additional information –
 - The original data in the Automated Titles System is updated by regional State Valuation Service or Titles Registry staff depending on where the notification was received.
 - A copy of the originally deposited Form 24/Form 24A together with the notification and any supporting documentation are scanned in to the registry imaging system.
 - An Update Report will be produced by the Automated Titles System and be supplied with the next data distribution to relevant agencies.

Forms

General Guide to Completion of Forms

[24-4000]

For general requirements for completion of forms see part 59 – Forms.

(This form must accompany **Titles Registry Form 1 – Transfer** when lodged in the Land Registry)*Foreign Ownership of Land Register Act 1988, Duties Act 2001, Land Valuation Act 2010, Land Tax Act 2010, Local Government Act 2009, Water Act 2000, Electrical Safety Act 2002, Fire and Emergency Services Act 1990 and South-East Queensland Water (Distribution and Retail Restructuring) Act 2009, Taxation Administration Act 2001***PART A – Transferee to complete**

Title reference [14365032]

Page 1 of 2

Electronic version – for completion before printing one-sided only.

Where insufficient space in an item, use Form 20
(Enlarged Panel).**Official use only****Mark appropriate [] with 'X'**Refer to guide for completion for further information and details
about the purpose of the collection of information.**1. Transferee**(a) Given names & surname
or Company & ACN/ABN(b) Date of birth
(dd/mm/yyyy)(c) Residential or business address
after possession

ANN MAREE FRASER

23/5/1965

6 HOWSON ST, MT GRAVATT 4122

JOHN ANDREW FRASER

15/6/1962

6 HOWSON ST, MT GRAVATT 4122

(d) Contact details after possession

(i) Phone number - 07 3222 5151

(ii) Postal address - As above [] OR complete address below
PO BOX 359, BULIMBA QLD 4121

(iii) Email address –thefrasers@myisp.com.au

(e) Name of trust - **N/A** [X] OR complete -

(f) Is transferee a foreign person / corporation?

N/A []**NO** [X]**YES** []➤ Attach completed Form 25
(Foreign Ownership Information)**Note:** The definition of a foreign person or corporation is
defined in the *Foreign Ownership of Land Register Act 1988*.
Refer to guide for completion for more information.**(N/A if only for a
Water Allocation)**

(g) Does transferee ordinarily reside in Australia?

N/A []**NO** []**YES** [X]**(N/A if only for a
Water Allocation)****2. Transaction**

(a) Date of possession (dd/mm/yyyy) – 30/11/2011

➤ The date of possession is the actual date the transferee has legal control
or ownership of the property. Usually, this is the date of settlement, or the
date as agreed to by both parties.

(b) Date of settlement (dd/mm/yyyy) – 30/11/2011

➤ The date of settlement must be completed even where it is the same as
the date of possession.**This form is comprised of two Parts**

- Part A Transferee to complete
- Part B Transferor to complete

**BOTH parts must be submitted
with the Form 1 Transfer.**

(This form must accompany Titles Registry Form 1 – Transfer when lodged in the Titles Registry)

PART B – Transferor to complete

Title reference [14365032]

Page 2 of 2

Electronic version – for completion before printing one-sided only.
Where insufficient space in an item, use Form 20 (Enlarged Panel).

Mark appropriate [] with 'X'

Refer to guide for completion for further information and
details about the purpose of the collection of information.

3. Transferor's residential or business address after settlement

357 VICTORIA RD, WYNNUM QLD 4170

4. Details of sale price (Sale price must include GST if applicable)**(a) Property excluding water allocation**

Cash \$460,000.00
Vendor terms \$
Assumption of liabilities \$
\$

Other (specify above)

Total \$460,000.00**(b) Water allocation - N/A [X] OR complete below**

Cash \$
Vendor terms \$
Assumption of liabilities \$
\$

Other (specify above)

Total \$**5. Property details****(a) Land / Water allocation description**

Lot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode
16	RP888123	15	JOHNSON RD	CLEVELAND	4163

(c) Property transferred includes:

Plant & machinery	[]	Vacant land	[]
Livestock	[]	Dwelling	[X]
Crops	[]	Multi-unit	[]
Existing right	[]	Flats	[]
Movable chattels	[]	Guest house / Private hotel	[]
Water licence	[]	Farming	[]
Interim water allocation	[]	Industrial	[]
	[]	Commercial	[]
Other (specify above)		Other	[]

(d) Current land use**(e) Water allocation - N/A [X] OR complete below**

(i) Is water allocation unsupplemented?
NO [] **YES** [] ➤ complete (ii) below

(ii) Reference number of the water allocation
dealing certificate - unsupplemented

(f) Safety switch

(i) Is an electrical safety switch installed? **N/A** [] **NO** [] **YES** [X]
(ii) Has transferee been informed in writing about its existence? **N/A** [] **NO** [] **YES** [X]

(g) Smoke alarm

(i) Is a compliant smoke alarm/s installed? **N/A** [] **NO** [] **YES** [X]
(ii) Has transferee been informed in writing about its existence? **N/A** [] **NO** [] **YES** [X]

6. Transaction information

(a) Is there an agreement in writing for the transfer of dutiable property? **NO** [] **YES** [X] ➤ If Yes, complete (b) below

(b) If Yes, provide the date of the written agreement (dd/mm/yyyy) - 1/10/2007 (leave blank if No above)

(c) Were any transferees related to or associated with any transferors at the date of the dutiable transaction? **NO** [X] **YES** [] ➤ If Yes, complete (d) below

(d) If Yes above, state the degree of relationship / association and supply evidence of value to Office of State Revenue -
..... ➤ See guide for completion

(e) Is the consideration less than the unencumbered value of the property included in this transaction? **NO** [X] **YES** [] ➤ See guide for completion

(f) Is this transaction part of an arrangement that includes other dutiable transactions? **NO** [X] **YES** [] ➤ See guide for completion

(g) Is GST payable on this transaction? See guide for completion **NO** [] **YES** [X] ➤ If Yes, complete (h) below

(h) If GST is payable, is the transaction under the margin scheme? **NO** [] **YES** [X]

(i) Is any transferor a non-Australian entity? **NO** [X] **YES** [] ➤ See guide for completion

Guide to Completion of Form 24

[24-4010]

This Guide for Completion is *not* part of the Form 24 and must *not* accompany the Form 24 and Form 1 – Transfer when lodged in the Titles Registry.

The information on the Form 24 is required for the Office of State Revenue and to monitor compliance with legislative requirements relating to electrical safety switches (Department of Employment and Industrial Relations) and smoke alarms (Department of Community Safety); and to update information held on the valuation and sales database and water management systems (Department of Natural Resources and Mines), and local authority rate records. Each agency is provided only with information relevant to their area of responsibility.

General Notes

- Two versions of this form are available –
 - The electronic version has embedded fields and may be completed in Microsoft Word or Adobe Acrobat before printing (Word version – if an embedded field expands, enter a space in it to reduce its width).
 - The printed version has visible broken lines. It must be printed and then completed by hand.
- Form 24 must accompany Titles Registry Form 1 – Transfer of either freehold (fee simple), State lease or licence, water allocation or lease under *South Bank Corporation Act 1989*.
- The transferee is responsible for the completion of items 1 and 2.
- The transferor is responsible for the completion of items 3 to 6.
- For YES, NO or N/A (NOT APPLICABLE) answers, mark appropriate [] with an 'X'.
- Insert information in the areas provided.
- If insufficient space for any item, complete and attach a Titles Registry Form 20 – Enlarged Panel.
 - In the relevant item of the Form 24, insert the words 'See Enlarged Panel' only.
 - A Form 20 may contain more than one item.
 - The Form 20 must refer to the same title reference mentioned in the Form 24, show consecutive page numbering in the top right hand corner and repeat the relevant item number and heading from the Form 24.
- Contact details for each agency are listed at ¶[24-4120].

Part A – Page 1

Title Reference – Must be completed.

- Insert the title reference mentioned in the Form 1 – Transfer (if more than one, use the first title reference only).

- The title reference inserted in Part A must be the same title reference as inserted in Part B.

Item 1

[24-4020]

Transferee

- Items 1(a), (b) and (c) have separate rows for each transferee (maximum four).
 - If insufficient space complete and attach a Titles Registry Form 20 – Enlarged Panel.
- (a) **Given Names and Surname or Company and ACN/ABN** – Must be completed
- Complete full name of each transferee in upper case as shown on the transfer.
 - For a natural person, insert name in the format [GIVEN NAMES] [SURNAME].
 - For a company, insert company name and ACN or ABN in the format [COMPANY NAME] [ACN or ABN].
- (b) **Date of Birth** – Must be completed where the transferee is a natural person
- Date of birth is used only for Office of State Revenue purposes.
 - Complete date of birth in the format [dd/mm/yyyy] beside the corresponding name of each natural person.
 - Where the transferee is other than a natural person (eg trustee) leave field blank.
- (c) **Residential or Business Address after possession** – Must be completed
- On the line beside each transferee complete the residential or business address after possession.
 - Where the address is the same as the transferee on the line above, insert ‘AS ABOVE’ on the relevant line.
 - For a natural person, complete the residential address where the transferee will reside after possession.
 - For a company, complete the registered business address where business will be conducted after possession. Do not use an agent’s address (eg not an accountant’s or solicitor’s details) or post office box.
- (d) **Contact details after possession** – Must be completed
- (i) **Phone number**
- Insert the transferee’s or authorised representative’s contact telephone number or mobile telephone number after possession to allow ready contact for correction of information on the form or to obtain further details.

(ii) **Postal Address**

- Complete a postal address after possession to enable authorised notices to be forwarded to the transferee (e.g. rates notice, valuation notice or land tax assessment).
- If the postal address is the same as the residential or the business address mark, As above [].

(iii) **Email Address-Optional**

- Insert an email address that will be used for the service of notices under the *Land Valuation Act 2010*. The Office of State Revenue and Local Governments may also use the email address for the service of notices.

(e) **Name of Trust** – Must be completed for transfers where the transferee is a trustee

- Where transferee acts as a trustee, insert the name of the trust as shown on the instrument of trust.
- If not applicable, mark N/A [].

(f) **Is transferee a foreign person/corporation?** – Not applicable to a water allocation

- If the Transfer only relates to a water allocation, mark N/A [].
- If the Transfer includes the transfer of land, mark YES [] or NO [] as indicated below.
- Mark NO [] if a transferee is not a foreign person or foreign corporation as defined in the *Foreign Ownership of Land Register Act 1988* (see definition below).
- Mark YES [] if a transferee is a foreign person or foreign corporation as defined in the *Foreign Ownership of Land Register Act 1988* (see definition below).
- If YES [] is marked, a Form 25 is required to be completed and attached to the Form 24 when submitted to the Titles Registry.

Definitions of Foreign Person and Foreign Corporation

<p>Foreign person means:</p> <ul style="list-style-type: none"> - a foreign natural person; and - a foreign corporation (including any body corporate); and - a corporation in which, on its last accounting date, a foreign natural person or a foreign corporation holds a controlling interest; and - a corporation in which, on its last accounting date, 2 or more persons, each of whom is either a foreign natural person or a foreign corporation, hold an aggregate controlling interest 	<p>Foreign natural person means a person:</p> <ul style="list-style-type: none"> - who is not an Australian citizen within the meaning of the <i>Australian Citizenship Act 2007</i> (Cwlth); and - whose continued presence in Australia is subject to a limitation as to time imposed by law; or - who is not domiciled in Australia. <p>Foreign corporation means a body (whether incorporated or unincorporated) that is formed outside Australia and its external Territories.</p>
<p>A foreign person does not include persons who have permanent residency status in Australia and are domiciled in Australia.</p>	

For more information contact the Department of Natural Resources and Mines, Foreign Ownership of Land Register.

(g) **Does transferee ordinarily reside in Australia?** – Not applicable to a water allocation

- Under the *Land Tax Act 2010*, a person does not ordinarily reside in Australia if that person has been absent for six months during a year or was absent from Australia as at the last 30 June.
- If not applicable, mark N/A [].

For more information contact the Office of State Revenue.

Item 2

[24-4030]

Transaction

(a) **Date of possession** – Must be completed for *every* transfer

- This includes a transfer where:
 - the transferee already resides in the premises; or
 - where there is no written contract of sale (eg a transfer pursuant to gift or natural love and affection; transfer pursuant to an agreement or a Court Order); or
 - the transferee does not physically move on to the property on that date (eg transfer of property in a time share scheme, where the transferee is letting the property to another party or where the premises are left vacant).
- The date of possession is the actual date the transferee has legal control or ownership of the property. Usually, this is the date of settlement, or the date as agreed to by both parties. That is, the date when the transferee is legally entitled to possession not the date when physical occupation of the property is to commence.

For more information contact the Office of State Revenue.

(b) **Date of settlement** – Must be completed for *every* transfer

- The *date of settlement* **must** be completed even where it is the same as the *date of possession*.

For more information relating to land contact the Department of Natural Resources and Mines, State Valuation Service.

For more information relating to a water allocation contact the Department of Natural Resources and Mines, Water Allocation and Planning.

Execution (Electronic Form)

[24-4035]

The requirements for the execution and certification are contained in the Participation Rules (Queensland) for electronic conveyancing.

Part B – Page 2

Title Reference – Must be completed

The title reference inserted in Part B must be the same title reference as inserted in Part A.

Item 3

[24-4040]

Transferor's residential or business address after settlement

Item 3 – Transferor's residential or business address after settlement – Must be completed

- For a natural person, complete the anticipated residential address (street address not post office box) where the transferor will reside after settlement.
- Where the transferor does not intend to have a permanent residential address after settlement; or does not yet know their new residential address, item 3 must be completed to reflect the circumstance eg 'no permanent residential address' or 'new address not known'. In these circumstances, and where a transferor has a post office box, the details of this also must be completed in addition to the above statement.
- For a company, complete the registered business address where business will be conducted after settlement. Do not use an agent's address (eg **not** an accountant's or solicitor's details) or post office box.

Item 4

[24-4050]

Details of Sale Price (Sale price must include GST if applicable)

(a) Property excluding water allocation

- Complete the details of the sales price in the field/s provided.
- 'Details of sale price' refers to the actual terms of the transfer of the property, ie what was given for the property mentioned in the transfer or what actions or events had to be carried out. Goods and Services Tax (GST) must be included as part of the sales price if applicable. Do not separate the GST component of the sale price (if any).
- The field 'Cash' refers to **any exchanging of money** for the property, whether under a contract of sale or deed; or any form of other written or verbal agreement/arrangement.
- Where details of sale price is **other** than cash (see point above), vendor terms or assumption of liabilities use the field 'Other' and complete the applicable terms of the transfer.
- In the 'Other' field do **not** insert 'contract of sale', 'agreement' or 'verbal agreement' etc where the terms of the sale include the exchange of cash (see definition above).
- For convenience, listed below are abbreviations that may be used in lieu of terms of the transfer to be inserted in the 'Other' field where cash, the assumption of liabilities or vendor terms does **not** apply.
- Where an abbreviation relevant to the terms of the transfer is not listed in the table below, insert appropriate details in the 'Other' field (eg 'EXCHANGE OF

A CAR AND BOAT FOR THE LAND', 'EXCHANGE OF LOT 1 ON SP 241369 FOR LOT 63 ON RP 136941', etc).

- Where the terms of the sale include items that may be attributed a value (eg car or other property), insert the value of these items, in the area provided.
- Where a sale price comprises an adjustment due to special conditions or side agreement which stipulates a significant rebate, discount or cash back on settlement, the following must be shown:

Cash \$ [sale price on the contract]
Vendor terms \$
Assumption of liabilities \$
[Rebate, discount or cash back] \$ [rebate or other as a negative figure]
Other (specify above)
Total \$ [net sale price]

- Inclusions that are being sold with the land (eg furniture, dishwasher, etc) should **not** be inserted in this item. See item 5(c).
- The interest being transferred (eg ½ share) should **not** be shown on the Form 24. This information must be shown in the Form 1 – Transfer only.

Sales price 'Other' field – abbreviations

Brief description of terms of the transfer	Abbreviation	Brief description of terms of the transfer	Abbreviation
Change/correction of tenancy (not severance) or to resolve ownership (inc boundary realignment)	CHANGE/CORRECTION	Retirement/resignation and/or appointment of trustee, or declaration of a trust	TRUST
Court Order inc an order under the Family Law Act	COURT ORDER	Gift or Natural love and affection	GIFT
Prize in an art union	PRIZE	Severance of joint tenancy under s. 59 of <i>Land Title Act 1994</i> or s. 322A of <i>Land Act 1994</i>	SEVERANCE OF TCY
Pursuant to terms of a will (no mention of valuable consideration)	WILL		

For more information contact the Office of State Revenue.

(b) Water Allocation

- See 4(a) above.
- For more information about water allocations refer to water management publications available on the DNRM website.

Item 5

[24-4060]

Property Details

(a) Land/Water Allocation Description – Must be completed

- There are two rows for land and/or water allocation descriptions.

- If insufficient space complete and attach a Titles Registry Form 20 – Enlarged Panel.
 - Complete the lot number/s, the plan type and the plan number/s being transferred as shown on a Current Title Search for the lot, eg for Lot 2 on SP 102938.
- (b) **Property Address** – Not applicable to a water allocation
- Complete the address of the property beside the corresponding lot/s.
 - If there is no street number, insert N/A – do not enter the lot number associated with the plan as street number.
 - Properties with multi-unit dwellings should show the unit number as well as the street number (eg 2/24 Smith St).
 - If the property is a water allocation only, leave blank.
- (c) **Property Transferred includes** – Must be completed for all transfers involving land
- Mark the inclusion/s appropriate to the property.
 - Movable chattels include movable articles or goods included with the transfer of the land, eg furniture.
 - Specify further inclusion/s in the ‘Other’ field where necessary.
 - If not applicable, leave blank, eg transfer of only a water allocation.
- For more information contact the Department of Natural Resources and Mines, State Valuation Services.
- (d) **Current Land Use** – Not applicable to water allocation
- Mark the land use/s appropriate to the property.
 - Where the relevant land use is not listed on form (eg time share) specify the appropriate land use in ‘Other’ field.
 - If the property being transferred is a water allocation only, leave this item blank. For any other property, it must be completed.

Land Use Definitions

<p>Vacant Land: Property/Land without visible improvement, eg structures.</p> <p>Dwelling: House used for single unit residential habitation usually by a family unit.</p> <p>Multi-unit: A structure which has been registered as: (a) a Building Unit or Group Title under the <i>Building Unit and Group Titles Act</i>, or (b) a community title scheme under the <i>Body Corporate and Community Management Act 1997</i>. The structure may be used for residential, industrial, commercial or mixed purposes.</p> <p>Flats: A structure containing two or more areas designed for self contained residential occupation including groups of units</p>	<p>Farming: Means the business or industry of grazing, dairying, pig farming, poultry farming, viticulture, orcharding, apiculture, horticulture, aquaculture, vegetable growing, the growing of crops of any kind, forestry or any other business or industry involving the cultivation of soils, the gathering in of crops or the rearing of livestock.</p> <p>Industrial: Includes properties used for general industry, light industry, noxious/offensive industry, harbour industry, extractive purposes and may include the following where not used for retail purposes: warehouses, bulk stores, transport terminals, service stations, oil depots, wharves, builders yards and cold stores.</p> <p>Commercial: Includes properties used for shops or shop/dwelling,</p>
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<p>held by a single Company but not registered as:</p> <p>(a) a Building Unit or Group Title under the <i>Building Units and Group Titles Act</i>, or</p> <p>(b) a community title scheme under the <i>Body Corporate and Community Management Act 1997</i>.</p> <p>Guest House/Private Hotel: An accommodation building where room only or room and meals are provided and having shared facilities (not a motel).</p> <p>Other, specify: Those not covered above. If there is any doubt as to what land use the property may be included please specify the usage here.</p>	<p>shopping group, drive in shopping centres, restaurants, motels, special tourist attractions, marina, residential institutions, car parks, retail warehouse, sales area outdoor (dealers, boats, cars), offices (professional offices, finance, banks, lending agents and brokers), funeral parlours, hospitals, convalescent homes, predominantly medical care, child care, hotels/taverns, nurseries, theatre/cinema, drive in cinemas, licensed clubs, sporting facilities/clubs, caravan parks and advertising hoardings.</p>
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For more information contact the Department of Natural Resources and Mines, State Valuation Services.

(e) **Water Allocation** – Not applicable to land

- If not applicable, mark N/A [].

(i) **Is water allocation unsupplemented?**

- Unsupplemented ie a water supply for an allocation where the reliability is not enhanced or supplemented by releases from water storage infrastructure.
- Indicate if the water allocation is unsupplemented.

(ii) **Reference number of the Water Allocation Dealing Certificate – Unsupplemented**

- If the water allocation is unsupplemented complete the certificate reference of the Notice of Proposed Transfer of Unsupplemented Water Allocation.
- If water allocation is a supplemented allocation leave blank.

For more information contact the Department of Natural Resources and Mines, Water Allocation and Planning.

(f) **Safety Switch** – Applicable to *domestic residence* only

- *Domestic residence* means a building or part of a building that is used, or designed to be used, as a single dwelling, eg a dwelling house, a home unit in a multi-unit development or a flat.

(i) **Is an electrical safety switch installed?**

- There is a requirement under law that an electrical safety switch must be installed for all general purpose socket outlets in every domestic residence.
- If not applicable, mark N/A [].

(ii) **Has transferee been informed in writing about its existence?**

- There is a requirement under law that the transferor must inform the transferee in writing about the existence or otherwise of an electrical safety switch in the home.
- If not applicable, mark N/A [].

For more information contact the Department of Employment and Industrial Relations),
Electrical Safety Office.

(g) **Smoke Alarm** – Applicable to *domestic dwellings* only

- *Domestic dwelling* means a Class 1a building (a detached house or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, townhouse or a villa unit) or a Class 2 building (a building containing two or more sole-occupancy units each being a separate dwelling).

(i) Is a compliant smoke alarm/s installed?

- There is a requirement under the *Fire and Emergency Services Act 1990* that from 1 July 2007 the required number of smoke alarm/s that comply with Australian Standard 3786 have been installed in the domestic dwelling.
- If not applicable, mark N/A [].

(ii) **Has transferee been informed in writing about its existence?**

- There is a requirement under law that the transferor must inform the transferee in writing about the existence or otherwise of a smoke alarm/s in the domestic dwelling.
- If not applicable, mark N/A [].

For more information contact the Department of Community Safety, Queensland Fire and Emergency Service.

Item 6

[24-4070]

Transaction Information

(a) **Is there an agreement in writing for the transfer of dutiable property?** – Must be completed

- Examples of an agreement in writing include a contract of sale or any agreement in writing that has provision for the transfer of the property.
- If a written agreement has been entered into for the property being transferred, mark **YES** [].
- If there is no written agreement, mark **NO** [].

(b) **Date of written agreement** – Must be completed if section 6(a) is marked YES

- State the date the written agreement was executed.
- If there is no written agreement, leave blank.

For more information contact the Office of State Revenue.

(c) **Were any transferees related to or associated with any transferors at the date of the dutiable transaction?** – Must be completed

- A relationship includes by blood or marriage or de facto to the third degree (eg father to son, uncle to niece). An association may be with a person as individual or in the capacity of a related body corporate, director, shareholder or through a partnership agreement or as trustee or beneficiary of the same or another trust.
- If the transferor and transferee are related or associated at the date of the transfer, mark **YES** [].
- If there is no relationship or association at the date of the transfer, mark **NO** [].

For more information contact the Office of State Revenue.

(d) **State the degree of relationship or association and supply evidence of value** – Must be completed if section 6(c) is marked YES

- If the transferor and transferee are related or associated at the date of the transfer, state the relationship.
- If the transferor and transferee are related or associated at the date of the transfer, independent evidence of value of the property must be provided to the Office of State Revenue.
- For residential property only, the Office of State Revenue accepts as evidence of value a written opinion or market appraisal as at the date of the transfer, including three comparable sales, from a local real estate agent.
- If there is no relationship or association at the date of the transfer, leave blank.

For more information contact the Office of State Revenue.

(e) **Is the consideration less than the unencumbered value of the property included in this transaction?** – Must be completed

- Unencumbered value is the value of the property without regard to any encumbrance/liability (eg mortgage or lien), and it is the value the property would achieve if sold on the open market.
- Where the consideration is less than the unencumbered value of the property, provide independent evidence of value of the property to the Office of State Revenue. See 6(b) above for further information.
- If the consideration is equal to or more than the unencumbered value of the property, mark **NO** [].

For more information contact the Office of State Revenue.

(f) **Is this transaction part of an arrangement that includes other dutiable transactions?** – Must be completed

- If this transaction forms part of an arrangement that includes other dutiable transactions, provide the Office of State Revenue full details of the other transactions.
- If there are no other transactions relating to this property transfer, mark **NO** [].

For more information contact the Office of State Revenue.

(g) **Is GST payable on this transaction?** – Must be completed

- GST is payable on this transaction if the transferor is registered, or required to be registered, for GST, and conducting an enterprise as defined by the ATO.
- Mark **NO** [] to this question if the sale price quoted in item 4 is GST free and does not require an amount for GST to be remitted to the ATO.
- Mark **YES** [] to this question if the sale price quoted in item 4 includes a GST amount to be remitted to the Australian Tax Office (ATO).

For more information contact the Australian Tax Office <www.ato.gov.au> or your tax accountant.

(h) **Is this transaction under the margin scheme?** – Must be completed if section 6(g) is marked YES.

- The Margin Scheme is a different way of working out the GST payable when you sell your property.
- Whether you can use the margin scheme depends on when you purchased your property and the nature of the acquisition.
- **Mark NO** [] if the property was not sold using the Margin Scheme.
- **Mark YES** [] if you have sold this property using the Margin Scheme.
- If GST is not payable on the transaction, leave blank.

For more information contact the Australian Tax Office <www.ato.gov.au> or your tax accountant.

(i) **Is any transferor a non-Australian entity?** – Must be completed

- A “non-Australian entity” refers to:
 - Individuals who are not Australian citizens (regardless of whether they are permanent residents);
 - Companies incorporated outside Australia;
 - Trusts with a country of tax residence that is not Australia; and
 - Other bodies (e.g. body politic, corporation sole) formed outside Australia.
- Mark **NO** [] if none of the transferors meet the definition of a non-Australian entity as detailed above.
- Mark **YES** [] if a transferor meets the definition of a non-Australian entity as detailed above.
 - If **YES** [], please note that each non-Australian transferor will be contacted to provide an identity details annexure to the Office of State Revenue via a secure online form. A paper-based form will be available to non-Australian transferors without email access.

For more information, contact the Office of State Revenue.

PROPERTY INFORMATION (TRANSMISSION APPLICATION)(This form must accompany **Titles Registry Form 6 – Transmission Application** when lodged in the Land Registry)*Foreign Ownership of Land Register Act 1988, Land Valuation Act 2010, Land Tax Act 2010, Local Government Act 2009, Water Act 2000, Electrical Safety Act 2002, Fire and Emergency Services Act 1990 and South-East Queensland Water (Distribution and Retail Restructuring) Act 2009***Applicant (devisee/legatee) to complete**

Page 1 of 1

Electronic version – for completion before printing.

Where insufficient space in an item, use Form 20
(Enlarged Panel).**Mark appropriate [] with 'X'**

Refer to guide for completion for further information.

Official use only**1. Deceased's last residential address**

25 BLACKWOOD STREET, STAFFORD QLD 4053

2. Applicant

(a) Given names & surname or Company & ACN/ABN	(b) Date of birth (dd/mm/yyyy)	(c) Residential or business address after possession
JOHN EDWARD SIMPSON	15/6/1960	14 VIEW DRIVE, FERNY GROVE QLD 4055

(d) Contact details after possession

(i) Phone number – 07 3851 0022

(ii) Postal address - As above [X] OR complete address below

(iii) Email address – john.simpson@myisp.com.au

(e) Is applicant a foreign person / corporation? **N/A** [] **NO** [X] **YES** [] ➤ Attach completed Form 25
(Foreign Ownership Information)

Note: The definition of a foreign person or corporation is defined
in the *Foreign Ownership of Land Register Act 1988*.

(f) Does applicant ordinarily reside in Australia? **N/A** [] **NO** [] **YES** [X]**3. Property details**

(a) Land / Water allocation description	(b) Property address												
<table border="0"> <tr> <th>Lot</th> <th>Plan type & no.</th> <th>Street no.</th> <th>Street name</th> <th>Suburb/Town/Locality</th> <th>Postcode</th> </tr> <tr> <td>12</td> <td>RP343922</td> <td>25</td> <td>BLACKWOOD STREET</td> <td>STAFFORD</td> <td>4053</td> </tr> </table>	Lot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode	12	RP343922	25	BLACKWOOD STREET	STAFFORD	4053	
Lot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode								
12	RP343922	25	BLACKWOOD STREET	STAFFORD	4053								

(c) Property transferred includes (d) Current land use (e) Water allocation - **N/A** [X] OR complete below

Plant & machinery []	Vacant land []	(i) Is water allocation unsupplemented? NO [] YES [] ➤ complete (ii) below
Livestock []	Dwelling [X]	
Crops []	Multi-unit []	(ii) Reference number of the water allocation dealing certificate - unsupplemented
Existing right []	Flats []	
Movable chattels []	Guest house/ Private hotel []	
Water licence []	Farming []	
Interim water allocation []	Industrial []	
Other (specify above) []	Commercial []	
	Other (specify above) []	

(f) Safety switch

(i) Is an electrical safety switch installed?	N/A []	NO []	YES [X]
(ii) Has applicant been informed in writing about its existence?	N/A []	NO []	YES [X]

(g) Smoke alarm

(i) Is a compliant smoke alarm/s installed?	N/A []	NO []	YES [X]
(ii) Has applicant been informed in writing about its existence?	N/A []	NO []	YES [X]

Guide to Completion of Form 24A

[24-4080]

This Guide for Completion is not part of the Form 24A and must not accompany the Form 24A and Form 6 – Transmission Application when lodged in the Titles Registry.

The information on the Form 24A is required for the Office of State Revenue and to monitor compliance with legislative requirements relating to electrical safety switches (Department of Employment and Industrial Relations) and smoke alarms (Department of Community Safety), and to update information held on the valuation and sales database and water management systems (Department of Natural Resources and Mines), and local authority rate records. Each agency is provided only with information relevant to their area of responsibility.

General Notes

- Two versions of this form are available –
 - The electronic version has embedded fields and may be completed in Microsoft Word or Adobe Acrobat before printing (Word version – if an embedded field expands, enter a space in it to reduce its width).
 - The printed version has visible broken lines. It must be printed and then completed by hand.
- Form 24A must accompany Titles Registry Form 6 – Transmission Application by a devisee/legatee of freehold (fee simple), State lease or licence, water allocation or lease under *South Bank Corporation Act 1989*.
- The applicant referred to in the Form 24A is the applicant (devisee/legatee) in the Transmission Application.
- For YES, NO or N/A (NOT APPLICABLE) answers, mark appropriate [] with an 'X'.
- Insert information in the areas provided.
- If insufficient space for any item, complete and attach a Titles Registry Form 20 – Enlarged Panel.
 - In the relevant item of the Form 24A, insert the words 'See Enlarged Panel' only.
 - A Form 20 may contain more than one item.
 - The Form 20 must refer to the first title reference mentioned in the Form 6 – Transmission Application, show consecutive page numbering in the top right hand corner and repeat the relevant item number and heading from the Form 24A.
- Contact details for each agency are listed at ¶[24-4120].

Item 1

[24-4090]

Deceased's last residential address – Must be completed

- Insert the last residential address of the deceased.

Item 2

[24-4100]

Applicant

- Items 2(a), (b) and (c) have separate rows for each applicant (maximum four).
 - If insufficient space, complete and attach Titles Registry Form 20 – Enlarged Panel.
- (a) **Given Names and Surname or Company and ACN/ABN** – Must be completed
- Complete full name of each applicant in upper case as shown on the Transmission Application.
 - For a natural person, insert name in the format [GIVEN NAMES] [SURNAME].
 - For a company, insert company name and ACN or ABN in the format [COMPANY NAME] [ACN or ABN].
- (b) **Date of Birth** – Must be completed where the applicant is a natural person
- Date of birth is used only for Office of State Revenue purposes.
 - Complete date of birth in the format [dd/mm/yyyy] beside the corresponding name of each natural person.
- (c) **Residential or Business Address after possession** – Must be completed
- On the line beside each applicant complete the residential or business address after possession.
 - Where the address is the same as the applicant on the line above, insert ‘AS ABOVE’ on the relevant line.
 - For a natural person, complete the residential address where the applicant will reside after possession.
 - For a company, complete the registered business address where business will be conducted after possession. Do not use an agent’s address (eg **not** an accountant’s or solicitors details) or post office box.
- (d) **Contact details after possession** – Must be completed
- (i) **Phone number**
- Insert the applicant’s or authorised representative’s contact telephone number or mobile telephone number after possession to allow ready contact for correction of information on the form or to obtain further details.

(ii) **Postal Address**

- Complete a postal address after possession to enable authorised notices to be forwarded to the applicant (eg rate notice, valuation notice or land tax assessment).
- If the postal address is the same as the residential or the business address, mark As above [].

(iii) **Email Address-Optional**

- Insert an email address that will be used for the service of notices under the *Land Valuation Act 2010*. The Office of State Revenue and Local Governments may also use the email address for the service of notices

(e) **Is applicant a foreign person/corporation?** – Not applicable to a water allocation

- The *Foreign Ownership of Land Register Act 1988* only applies to land.
- If the applicant is a foreign person or foreign corporation as defined in the *Foreign Ownership of Land Register Act*, a Form 25 is required to be completed and attached to the Form 24A when submitted to the Titles Registry.
- If not applicable, mark N/A [].

Definitions of Foreign Person and Foreign Corporation

<p>Foreign person means:</p> <ul style="list-style-type: none"> - a foreign natural person; and - a foreign corporation (including any body corporate); and - a corporation in which, on its last accounting date, a foreign natural person or a foreign corporation holds a controlling interest; and - a corporation in which, on its last accounting date, 2 or more persons, each of whom is either a foreign natural person or a foreign corporation, hold an aggregate controlling interest 	<p>Foreign natural person means a person:</p> <ul style="list-style-type: none"> - who is not an Australian citizen within the meaning of the <i>Australian Citizenship Act 2007</i> (Cwlth); and - whose continued presence in Australia is subject to a limitation as to time imposed by law; or - who is not domiciled in Australia. <p>Foreign corporation means a body (whether incorporated or unincorporated) that is formed outside Australia and its external Territories.</p>
<p>A foreign person does not include persons who have permanent residency status in Australia and are domiciled in Australia.</p>	

For more information contact the Department of Natural Resources and Mines, Foreign Ownership of Land Register.

Item 3

[24-4110]

Property Details

(a) **Land/Water Allocation Description** – Must be completed

- There are two rows for land and/or water allocation descriptions.
- If insufficient space complete and attach Land Registry Form 20 – Enlarged Panel.
- Complete the lot number/s, the plan type and the plan number/s being transmitted as shown on a Current Title Search for the lot, eg Lot 2 on SP 102938.

(b) **Property Address** – Not applicable to a water allocation

- Complete the address of the property beside the corresponding lot/s.
- Properties with multi-unit dwellings should show the unit number as well as the street number (eg 2/24 Smith St).
- If there is no street number, insert N/A – do **not** enter the lot number associated with the plan as the street number.
- If the property is a water allocation only, leave blank.

(c) **Property Transferred includes** – Must be completed for all transmissions involving land

- Mark the inclusion/s appropriate to the property.
- Specify further inclusion/s in the ‘Other’ field where necessary.
- If not applicable, leave blank, eg transmission of only a water allocation.

For more information contact the Department of Natural Resources and Mines, State Valuation Services.

(d) **Current Land Use** – Not applicable to a water allocation

- Mark the land use/s appropriate to the property.
- Where the relevant land use is not listed on the form (eg time share) specify the appropriate land use in the ‘Other’ field.
- If the property being transmitted is a water allocation only, leave this item blank. For any other property, it must be completed.

Land Use Definitions

<p>Vacant Land: Property/Land without visible improvement, eg structures.</p> <p>Dwelling: House used for single unit residential habitation usually by a family unit.</p> <p>Multi-unit: A structure which has been registered as: (a) a Building Unit or Group Title under the <i>Building Unit and Group Titles Act</i>, or (b) a community title scheme under the <i>Body Corporate and Community Management Act 1997</i>. The structure may be used for residential, industrial, commercial or mixed purposes.</p> <p>Flats: A structure containing two or more areas designed for self contained residential occupation including groups of units held by a single Company but not registered as: (a) a Building Unit or Group Title under the <i>Building Units and Group Titles Act</i>, or (b) a community title scheme under the <i>Body Corporate and Community Management Act 1997</i>.</p> <p>Guest House/Private Hotel: An accommodation building where room only or room and meals are provided and having shared facilities (not a motel).</p> <p>Other, specify: Those not covered above. If there is any doubt as to what land use the property may be included please specify the usage here.</p>	<p>Farming: Means the business or industry of grazing, dairying, pig farming, poultry farming, viticulture, orcharding, apiculture, horticulture, aquaculture, vegetable growing, the growing of crops of any kind, forestry or any other business or industry involving the cultivation of soils, the gathering in of crops or the rearing of livestock.</p> <p>Industrial: Includes properties used for general industry, light industry, noxious/offensive industry, harbour industry, extractive purposes and may include the following where not used for retail purposes: warehouses, bulk stores, transport terminals, service stations, oil depots, wharves, builders yards and cold stores.</p> <p>Commercial: Includes properties used for shops or shop/dwelling, shopping group, drive in shopping centres, restaurants, motels, special tourist attractions, marina, residential institutions, car parks, retail warehouse, sales area outdoor (dealers, boats, cars), offices (professional offices, finance, banks, lending agents and brokers), funeral parlours, hospitals, convalescent homes, predominantly medical care, child care, hotels/taverns, nurseries, theatre/cinema, drive in cinemas, licensed clubs, sporting facilities/clubs, caravan parks and advertising hoardings.</p>
--	--

For more information contact the Department of Natural Resources and Mines, State Valuation Services.

(e) **Water Allocation** – Not applicable to land

- If not applicable, mark N/A [].

(i) **Is water allocation unsupplemented?**

- Unsupplemented, ie a water supply for an allocation where the reliability is not enhanced or supplemented by releases from water storage infrastructure.
- Indicate if the water allocation is unsupplemented.

(ii) **Reference number of the Water Allocation Dealing Certificate – Unsupplemented**

- If the water allocation is unsupplemented complete the certificate reference of the Notice of Proposed Transfer of Unsupplemented Water Allocation.
- If water allocation is a supplemented allocation leave blank.

For more information contact the Department of Natural Resources and Mines, Water Allocation and Planning.

(f) **Safety Switch** – Applicable to *domestic residence* only

- *Domestic residence* means a building or part of a building that is used, or designed to be used, as a single dwelling, eg a dwelling house, a home unit in a multi-unit development or a flat.
- (i) **Is an electrical safety switch installed?**
- There is a requirement under law that an electrical safety switch must be installed for all general purpose socket outlets in every domestic residence.
 - If not applicable, mark N/A [].
- (ii) **Has applicant been informed in writing about its existence?**
- There is a requirement under law that the personal representative must inform the applicant in writing about the existence or otherwise of an electrical safety switch in the home.
 - If not applicable, mark N/A [].

For more information contact the Department of Employment and Industrial Relations, Electrical Safety Office.

(g) **Smoke Alarm** – Applicable to *domestic dwelling* only

- *Domestic dwelling* means a Class 1a building (a detached house or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, townhouse or a villa unit) or a Class 2 building (a building containing two or more sole-occupancy units each being a separate dwelling).
- (i) **Is a compliant smoke alarm/s installed?**
- There is a requirement under the *Fire and Emergency Services Act 1990* that from 1 July 2007 the required number of smoke alarm/s that comply with Australian Standard 3786 have been installed in the domestic dwelling.
 - If not applicable, mark N/A [].
- (ii) **Has applicant been informed in writing about its existence?**
- There is a requirement under law that the personal representative must inform the applicant in writing about the existence or otherwise of a smoke alarm/s in the domestic dwelling.
 - If not applicable, mark N/A [].

For more information contact the Department of Community Safety, Queensland Fire and Emergency Service.

Contact Details for Further Information

[24-4120]

Queensland Treasury Office of State Revenue www.osr.qld.gov.au	Dept of Natural Resources and Mines www.dnrm.qld.gov.au		Dept of Employment and Industrial Relations www.justice.qld.gov.au	Dept of Community Safety www.qfes.qld.gov.au
Client Contact Centre Ph. 1300 300 734	State Valuation Services See note below	Water Allocation and Planning Ph 13 74 68	Electrical Safety Office http://www.worksafe.qld.gov.au/ safetyswitches Ph. 1300 362 128	Queensland Fire and Emergency Service www.qfes.qld.gov.au Ph: 13 74 68
	Foreign Ownership of Land Register Ph. 1300 255 750			

Note – For all enquiries related to information required for the valuation roll contact your local office of the Department of Natural Resources and Mines and request to speak to a valuations administration officer.

Cross References and Further Reading

[24-9000]

Nil.

Notes in text

[24-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

¹Part 25 – Foreign Ownership Information

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¹Part 25 – Foreign Ownership Information

General Law

Foreign Ownership of Land Register

[25-0000]

The Foreign Ownership of Land Register is a public register of all land in Queensland held by foreign persons or foreign companies as defined in the *Foreign Ownership of Land Register Act* 1988.

Notification of Foreign Ownership

[25-0010]

Foreign persons and trustees of foreign persons who had an interest in land at the commencement of the Act were required, within 12 months after the commencement of the Act, to lodge a notification of foreign ownership (s 17 of the *Foreign Ownership of Land Register Act* 1988).

Foreign persons or trustees of foreign persons who acquire an interest in land must lodge a notification of foreign ownership within 90 days of the acquisition (s 18 of the *Foreign Ownership of Land Register Act* 1988).

If a foreign person or a trustee of a foreign person disposes of an interest in land, a notification of that disposal must be lodged within 90 days of the disposal (s 18A of the *Foreign Ownership of Land Register Act* 1988).

If a person or a trustee of a person ceases to be foreign, notification must be lodged within 90 days (s 19 of the *Foreign Ownership of Land Register Act* 1988).

A person who holds an interest in land and who subsequently becomes a foreign person or a trustee of a foreign person must lodge a notification within 90 days (s 20 of the *Foreign Ownership of Land Register Act* 1988).

Exemptions from Notification

[25-0020]

The following persons are exempt from the requirements of notification:

- a personal representative of a deceased person is not required to lodge a notification in respect of the interest in land vested in him/her as personal representative (s 18(5)(a) of the *Foreign Ownership of Land Register Act* 1988); and
- a person beneficially entitled to an interest in the land of a deceased person is not required to lodge a notification before lodgement of documents to vest the interest in the person (s 18(5)(b) of the *Foreign Ownership of Land Register Act* 1988).

Foreign Person Acquiring an Interest in Land

[25-0030]

An obligation to notify is triggered upon a 'foreign person' 'acquiring' an 'interest in land'. These terms are defined in schedule 1 of the *Foreign Ownership of Land Register Act* 1988.

'Foreign person' means:

- a foreign natural person – being a person who is not an Australian citizen within the meaning of the *Australian Citizenship Act* 2007 (Cth) and either whose continued presence in Australia is subject to a limitation as to time imposed by law or who is not domiciled in Australia;
- a foreign corporation – being an incorporated or unincorporated body that is formed outside Australia and its external territories;
- a corporation in which a foreign natural person or a foreign corporation holds a controlling interest or in which two or more foreign natural persons or foreign corporations hold an aggregate controlling interest.

‘Interest in land’ includes an estate or interest:

- in land and any improvements on the land;
- in a licence or permit granted under the *Land Act* 1994;
- in a miner’s homestead as defined in the *Land Act* 1994.

However, ‘interest in land’ does not include:

- a security interest in land;
- an estate or interest in an easement over land;
- the estate or interest of a lessee of freehold land or a sublessee of leasehold land where the term of a lease or a sublease, as the case may be, including those available under all options to renew, does not exceed 25 years;
- minerals, crude oil, natural gas, petroleum or petroleum deposits;
- certain land granted under the *Mineral Resources Act* 1989, the *Coal Mining Act* 1925, the *Petroleum Act* 1923 or the *Petroleum (Submerged Lands) Act* 1982;
- an agreement given force by an Act of Parliament for development of mineral deposits;
- a carbon abatement interest under the *Land Act* 1994 or *Land Title Act* 1994;
- a covenant under the *Land Act* 1994 or *Land Title Act* 1994;
- a plantation licence under the *Forestry Act* 1959; or
- a profit a prendre under the *Land Act* 1994 or *Land Title Act* 1994.

‘Acquired’ is widely defined to include obtaining, gaining, receiving or acquiring by purchase, exchange, lease, will, devolution, operation of law, grant, gift or enforcement of a security.

Penalties for Non-Compliance

[25-0040]

Sections 24 and 25 of the *Foreign Ownership of Land Register Act* 1988 prescribe penalties for non-compliance or giving false or misleading information. Specified officers of a corporation that has committed an offence are also deemed to have committed an offence (s 26 of the *Foreign Ownership of Land Register Act* 1988).

If a foreign person is convicted of an offence in respect of land, the land may be forfeited to the State (ss 29 to 37 of the *Foreign Ownership of Land Register Act* 1988). The Supreme Court may also make a restraining order passing management and control of an interest in land to a person named in the order (ss 38, 39 and 40 of the *Foreign Ownership of Land Register Act* 1988).

Practice

[25-2000]

Notifications required under the *Foreign Ownership of Land Register Act* 1988 are completed on a Form 25 – Foreign Ownership Information in cases where the transferee/beneficiary in a Form 1 – Transfer and a Form 6 – Transmission by Death are foreign persons.

Images of the Form 25 are not available to the public.

Forms

General Guide to Completion of Forms

[25-4000]

For general requirements for completion of forms see part 59 – Forms.

1. Property Details

Lot	Plan	No.
11	RP	893999

This form is only required to be completed by or on behalf of a foreign person or company as defined in the Foreign Ownership of Land Register Act (Note: a foreign person does not include persons who have permanent residency status in Australia and are domiciled in Australia.)

This form must accompany:

- Form 1 - Transfer (of freehold or state lease) and Form 24 - Property Information (Transfer); or
- Form 6 - Transmission Application to a devisee/legatee (of freehold or state lease) and Form 24A - Property Information (Transmission Application); or
- Form 7 - Lease (of freehold) where the term of the lease is 25 years or more.

2. Details to be completed by or on behalf of a foreign transferee / purchaser PLEASE X WHICHEVER [] IS APPLICABLE ON THIS FORM

Foreign Country : SINGAPORE

Natural Person [X]	OR	Company/Corporation Wholly Foreign Controlled []	OR	Company/Corporation Partly Foreign Controlled []
				% Foreign:
				Country of Foreign Shareholders

I declare that JAMES RONALD MURRAY and HELEN MARGARET MURRAY is a foreign person / company within the meaning of the Act and that particulars contained in this form are to the best of my knowledge true and correct.

K J Brown
..... signature

M L Brady
.....
Signature of declarant

KAY JANE BROWN
..... full name

MICHAEL LAWRENCE BRADY
.....
Full name of declarant

COMMISSIONER FOR DECLARATIONS #63885
..... qualification

SOLICITOR
.....
15 Crombie Street, Inala Qld 4077

Witness

As authorised under relevant Oaths/Evidence Act

1/11/2007
Execution Date

.....
Business address and profession of the declarant where the declarant is not the foreign person named above

Privacy Statement

Collection of this information is authorised by Foreign Ownership of Land Register Act 1988 and is used to maintain the publicly searchable registers. For more information about privacy in DNRM see the department's website.

Guide to Completion of Form 25

[25-4010]

The information collected on Form 25 is required for entry on the Foreign Ownership of Land Register, which is a public register of all land in Queensland held by a foreign person or foreign company as defined in the *Foreign Ownership of Land Register Act 1988*.

This Form, if required to be completed, is to be attached, together with a Form 24, to Form 1 – Transfer and with a Form 24A to Form 6 – Transmission Application for Registration as Devisee/Legatee.

Item 1

[25-4020]

Insert lot and plan number as per Item 2 on Forms 1 or 6.

Item 2

[25-4030]

Where there is more than one foreign person or foreign company purchasing a property, it will be assumed that they are the same nationality unless otherwise stated.

Declaration

[25-4040]

The declarant may be any of the following:

- the foreign person/s identified as the transferee;
- a solicitor acting for the transferee (**Note:** the signature of the solicitor must still be witnessed in accordance with the relevant Oaths/Evidence Act); or
- a person authorised to execute documents on behalf of the foreign company/corporation in accordance with the articles of association of the company/corporation.

Execution (Electronic Form)

[25-4045]

The requirements for the execution and certification are contained in the Participation Rules (Queensland) for electronic conveyancing.

Cross References and Further Reading

[25-9000]

Nil.

Notes in text

[25-9050]

Note ¹ – This part does not apply to water allocations.

¹Part 29 – Profit a prendre

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¹Part 29 – Profit a prendre

General Law

[29-0000]

A profit a prendre is an interest that arises by agreement between two parties and relates to the right of one party to enter upon the land of the other and to extract or remove part of the land's substance (e.g. sand, gravel, trees, etc).

Profits a prendre were not recorded in the Land Registry until amendments to the *Land Title Act* 1994, that commenced on 13 July 1997 and amendments to the *Land Act* 1994, that commenced on 6 May 2004 made specific provision for their registration. This situation has existed even though relevant Torrens legislation envisaged the registration of profits a prendre and the repealed *Real Property Act* 1861 provided for registration of easements and incorporeal rights.

³In this part a lease under the *Land Act* 1994 means a lease that allows the land held under the lease to be used for agricultural or timber plantation purposes (s 373F of the *Land Act* 1994).

The following types of profit a prendre are recognised:

- appurtenant profits which relate to or fulfil a need of a dominant parcel of freehold land or lease under the *Land Act* 1994;
- profits in gross that benefit the grantee personally and are not attached to other freehold land or lease under the *Land Act* 1994;
- profits in common in which the proprietors of both a dominant and a servient parcel share the enjoyment of a right to some substance of the encumbered freehold land or lease under the *Land Act* 1994, however, these are not common in Australia.

Both an appurtenant profit and profit in gross may be mortgaged. However, only a profit in gross may be sold, the subject of a gift, or pass to a beneficiary by will or intestacy.

Every profit a prendre must be granted for a specific period that can be based on either a date or the occurrence of an event.

Legislation

[29-1000]

The functions of the Chief Executive under the *Land Act* 1994 relating to the keeping of registers are carried out by the Registrar of Titles under delegation made under s 393 of that Act.

Practice

Requirements of Profits a prendre

[29-2000]

For a profit a prendre to be registered in the Land Registry it must be prepared in a Form 29 – Profit a prendre. Full particulars of the lot, or lease under the *Land Act* 1994 that is burdened must be shown in Item 2 and if a lot, or lease under the *Land Act* 1994 is benefited, its particulars are to be shown below those of the burdened lot, or lease under the *Land Act* 1994.

Both the purpose and the term or event on which the profit a prendre profit ceases must be stated. The specific rights that relate to the stated purpose(s) may be fully defined either by an attached Form 20 – Schedule, a prior registered standard terms document or a combination of them.

The profit a prendre must be validly executed by both the grantor and grantee and witnessed.

In accordance with s 373G of the *Land Act* 1994 a lease under the *Land Act* 1994 may be made the subject of a profit of prendre only with the written approval of the Minister.

A profit a prendre is registrable even if the lot(s), or lease(s) under the *Land Act* 1994 burdened and the lot(s), or lease(s) under the *Land Act* 1994 benefited have, or will have, the same registered owner or holder or if the registered owner or holder of the benefited lot(s), or lease(s) under the *Land Act* 1994 has an interest in the burdened lot(s), or lease(s) under the *Land Act* 1994.

Transactions involving registered profits a prendre (eg transfers, transmissions, etc) will be recorded on the title(s) for the burdened lot, or lease under the *Land Act* 1994 and the benefited lot, or lease under the *Land Act* 1994, if applicable.

Survey requirements of Profit a prendre over part of a lot

[29-2050]

A plan of survey or explanatory format plan is required to precede a profit a prendre if the interest affects part of the lot, or lease under the *Land Act* 1994. If the profit a prendre is for the whole of the lot, or lease under the *Land Act* 1994, no plan is required.

Plans for profits a prendre purposes must comply with directions 4.8.2 and 19 of the Registrar of Titles Directions for the Preparation of Plans. A plan must not describe a profit a prendre as proposed and there is no requirement for a profit a prendre to be lodged immediately after the plan. See also part 21 – Plans and Associated Documents, esp ¶[21-2100]).

Transfer Duty

[29-2100]

A duty notation is required.

Removing Profits a prendre from Titles

[29-2200]

A profit a prendre may be released or removed from the title.

A profit a prendre is released from a title under the provisions of ss 97L (1) and (2) of the *Land Title Act* 1994 or ss 373O(1) and (2) of the *Land Act* 1994. The grantee of a profit a prendre may release a profit a prendre from the title by surrendering it to the extent shown in the release (see part 33 – Release of Covenant/Profit a prendre, esp ¶[33-2200]).

A profit a prendre may be removed from a title under the provision of s 97L(3) of the *Land Title Act* 1994 or s 373(O)(3) of the *Land Act* 1994. A profit may be removed from the title by any interested party, if the specified period of time has expired or the event upon which it is based has occurred (see part 14 – General Request, esp ¶[14-2425]).

Profits a prendre are not extinguished merely because the same person becomes the owner or lessee of the benefited and burdened lots, or leases under the *Land Act* 1994, acquires an interest or a greater interest. Extinguishment can only occur if:

- the owner of the benefited lot, or the lessee of the lease under the *Land Act* 1994, or grantee of the profit a prendre asks the Registrar to extinguish it; or
- ²the Registrar creates a single title for the benefited and burdened lots.

Amending Profits a prendre

[29-2300]

A profit a prendre may be amended by lodgement of a Form 13 – Amendment of Profit a prendre. (see part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement, esp ¶[13-2130]).

Forms

General Guide to Completion of Forms

[29-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Grantor KRISTINA MARIA JOHNSON	Lodger (Name, address, E-mail & phone number) SMYTHE & CO. SOLICITORS 45 ADELAIDE STREET BRISBANE QLD 4000 mail@smytheco.com.au (07) 3227 9850	Lodger Code 490
---	---	---------------------------

2. Description of Profit A Prendre/Lot on Plan burdened LOT 33 ON RP587601	County STANLEY	Parish MITCHELL	Title Reference 11567215
Description of Lot on Plan benefited (if applicable) LOT 34 ON RP587601	STANLEY	MITCHELL	11567216

3. Grantee Given names IVAN GEORGE	Surname/Company name and number JOHNSON	(include tenancy if more than one and interest if not fee simple)
--	--	---

4. Purpose TO REMOVE FLOODED GUM AND SPOTTED GUM TREES	5. Termination date or Occurrence 30 JUNE 2010
---	--

6. Consideration \$55,000.00
--

7. Grant/Execution

The Grantor grants to the Grantee for the above consideration a profit a prendre for the purpose stated in item 4 and the Grantor and Grantee covenant with each other in terms of:- *the attached schedule; *~~the attached schedule and document no. _____~~; * document no. _____

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

P L Fish

.....signature

PETA LAUREL FISH

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

P L Fish

.....signature

PETA LAUREL FISH

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

21/11/2007
Execution Date

K M Johnson

Grantor's Signature

22/11/2007
Execution Date

I G Johnson

Grantee's Signature

Title Reference [11567215]

(The terms and conditions of the agreement are to be set out here)

Guide for Completion of Form 29

Item 1

[29-4010]

Insert the full name(s) of the registered owner or lessee as grantor.

Item 2

[29-4020]

Insert the 'Lot on Plan' descriptions of all burdened and if applicable benefited lots, or leases under the *Land Act* 1994 comprised in the profit a prendre.

Item 3

[29-4030]

Insert the full name(s) of the grantee(s) and tenancy (if applicable).

Item 4

[29-4040]

Insert the purpose of the profit a prendre.

Item 5

[29-4050]

Insert the termination date or a reference to the event that terminates the profit a prendre.

Item 6

[29-4060]

Insert monetary or other consideration.

Item 7

[29-4070]

Complete where indicated and execute as required.

¶[29-6000] deleted

Case Law

[29-7000]

Nil.

Fees

[29-8000]

Fees payable to the registries are subject to an annual review. See the current:

- ²*Land Title Regulation* 2005 – Schedule 2, item numbers 2(h), 2(k) and 2(m).
- ³*Land Regulation* 2009 – Schedule 11, item numbers 2(a)(i), 2(a)(ii) and 2(f); and

Cross References and Further Reading

[29-9000]

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 14 – General Request

Part 33 – Release of Covenant/Profit a prendre

Megarry and Wade, *The Law of Real Property*, 5th edn, London, Stevens, 1984

Bradbrook and Neave, *Easements and Restrictive Covenants*, Butterworths, 1986

Bradbrook, MacCallum and Moore, *Australian Real Property Law*, LBC Information Services, 1991

Notes in text

[29-9050]

Note¹ – This part does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

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Part 30 – Mortgage Priority

General Law

[30-0000]

Under the provisions of the *Land Title Act 1994* and the *Land Act 1994*, the priority of mortgages may be altered. Form 30 – Mortgage Priority is the appropriate form.

Amendment of Priority of Mortgages

[30-0010]

Section 177(1) of the *Land Title Act 1994* and s. 297(1) of the *Land Act 1994* provide that instruments or documents must be registered in the order in which they are lodged. Section 178(1) of the *Land Title Act* and s. 298(1) of the *Land Act* provide that registered instruments or documents have priority according to when each of them were lodged and not according to when they were executed. Section 178(2) of the *Land Title Act* and s. 298(2) of the *Land Act* provide that an instrument or document is taken to be lodged on the date and at the time endorsed on the instrument or document by the Registrar unless the contrary is proved.

Section 77 of the *Land Title Act* and s. 344 of the *Land Act* allow the priority of registered mortgages to be amended by registration of a Form 30 – Mortgage Priority.

For further information see ¶[30-2010] and ¶[30-2020].

Legislation

[30-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the *Water Act*, the *Land Title Act* applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the *Land Title Act* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the *Land Act* relating to the keeping of registers are carried out by the Registrar of Titles under delegation made under s. 393 of that Act.

Practice

Amendment of Priority of Mortgages

¶[30-2000] deleted

Order of Priority

[30-2010]

The Form 30 must specify the order of priority of all affected registered mortgages and be executed by all mortgagees affected by the Form 30. On registration of the Form 30, the mortgages have priority in the order specified.

The granting of priority to a mortgage, over another that was registered before it, involves the grantor (the mortgagee in the mortgage being postponed – hence ‘giving priority’) agreeing with the grantee (the mortgagee receiving priority) to the re-arranged priority.

Multiple Mortgages

[30-2020]

Where more than one mortgagee agrees to the priority of their mortgages being postponed in favour of another mortgagee, a separate Form 30 is not required for each postponed mortgage, provided the same title or group of titles are affected by all mortgages involved.

Details of all mortgages postponing priority and the one receiving priority are to be set out in Item 2. However, the grantee (mortgagee receiving priority) must execute separately with each grantor (mortgagee postponing priority) at Item 6. That is, if two mortgages postpone priority in favour of another, the correct number and order of executions would be:

- the first postponing mortgagee;
- the mortgagee receiving priority;
- the second postponing mortgagee; and
- the mortgagee receiving priority a second time.

Generally, multiple executions at Item 6 would require the use of a Form 20 – Schedule to accommodate all the executions.

Forms

General Guide to Completion of Forms

[30-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



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209 ADELAIDE STREET
BRISBANE QLD 4000
info@bests.com.au
(07) 3227 2325

Lodger

Code
459

1. Priority particulars

Mortgage No. being postponed 700896408
Mortgage No. receiving priority 720000282

2. Consequent Order of Priority

Dealing Nos. 720000282.....
700896408.....

3. Lot on Plan Description

LOT 33 ON RP67670

Title Reference

11943034

4. Grantor (Mortgagee of the mortgage being postponed)

XYZ SECURITIES PTY LTD ACN 400 736 948

5. Grantee (Mortgagee of the mortgage receiving priority)

ZZ ADVANCES PTY LTD ACN 307 489 643

6. Request/Execution

The Grantor grants to the Grantee the priority of mortgages as indicated in item 2.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

A D Lien

..... Signature

ARNOLD DOUGLAS LIEN

..... full name

JUSTICE OF THE PEACE (C.DEC) 89339

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

12/10/2007

Execution Date

J E Bourke

XYZ SECURITIES PTY LTD

by its duly authorised attorney

JAMES EDGAR BOURKE under

Power of Attorney No. 701001010

Grantor's Signature

..... signature

(seal)

or full name of company

..... full name

to be shown

..... qualification

15/10/2007

Execution Date

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

D J Tomlins, Director
DOUGLAS JOHN TOMLINS

D Harris, Director/Secretary
DAVID IAN HARRIS

Grantee's Signature

Guide to Completion of Form 30

Item 1 [30-4010]

Insert dealing number of mortgages being postponed and receiving priority.

Item 2 [30-4020]

Show the consequent priority.

Item 3 [30-4030]

^{1,2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

e.g. Lot on Plan Description	Title reference
Lot 27 on RP 204939	11223078

^{2,3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

e.g. Lot on Plan Description	Title reference
WA 27 on AP 7900	46012345

^{1,3}State Land

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for crown plans).

e.g. Lot on Plan Description	Title reference
Lot 27 on CP LIV1234	46012345

Item 4 [30-4040]

Insert full name of grantor (mortgagee granting the priority).

Item 5 [30-4050]

Insert full name of grantee (mortgagee receiving the priority).

Item 6 [30-4060]

Execute as indicated.

Duty [30-4070]

There is no duty notation required.

¶[30-6000] deleted

Case Law

[30-7000]

Nil.

Fees

[30-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1,2}Land Title Regulation;
- ^{1,3}Land Regulation; and
- ^{2,3}Water Regulation.

Cross References and Further Reading

[30-9000]

Part 2 – Mortgage (National Mortgage Form)

Duncan and Vann, *Property Law and Practice*, Law Book Company Limited (loose-leaf service)

Queensland Conveyancing Law and Practice, CCH Australia Limited (loose-leaf service)

Notes in text

[30-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

¹Part 31 – Covenants

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¹Part 31 – Covenants

General Law

[31-0000]

A covenant is a voluntary agreement that creates an obligation by a deed entered into by the parties. Covenants may be of a positive nature in that they require the performance of an action. They may also be negative or restrictive, that is one of the parties is forbidden from undertaking or performing a specified action.

Chapter 6 Part 4A Division 8A of the *Land Act* 1994 and Part 6 Division 4A of the *Land Title Act* 1994 allow covenants to be registered in favour of the State, another entity representing the State, or a local government for the purposes specified in the legislation.

A covenant must be validly executed and include a description sufficient to positively identify the subject lots or land. It must also fully set out the agreed terms and conditions.

Both the covenantor (the owner of freehold land or holder of State owned land) and the covenantee (the State, an entity representing the State or a local government) must execute the covenant. If the land is leased from the State, the Minister that administers the *Land Act* 1994 must consent to a covenant affecting that land.

Section 97A(2A) of the *Land Title Act* 1994 and s 373A(2A) of the *Land Act* 1994 provide that a covenant may be registered even if the covenantor and the covenantee are the same entity.

On registration, a covenant complying with the legislation attaches to the land and binds the owner or holder and all successors in title until it is released.

A registered covenant is taken not to be registered under the *Land Act* 1994 or the *Land Title Act* 1994 to the extent that it is inconsistent with the legislation.

Practice

[31-2000]

A covenant must be prepared in a Form 31 – Covenant.

²A document creating a covenant may only be registered if the approval of the Minister is obtained and lodged with the document (s 373B(1)(d) of the *Land Act* 1994.

Types of covenants

[31-2020]

A covenant under the *Land Title Act* 1994 must:

- relate to the use of a lot or part of a lot; or
- relate to the use of a building built or proposed to be built on a lot; or
- be aimed directly at preserving a native animal or plant; or a natural or physical feature of the lot that is of cultural or scientific significance; or

- be for ensuring that all lots that are subject to the covenant are transferred together to another person (the lots subject to the covenant may be freehold, non-freehold or a combination of freehold and non-freehold); or
- be for ensuring that a lot and a registered lease for another freehold lot or part of a lot that are subject to the covenant are transferred together to another person.

A covenant under the *Land Act* 1994 must:

- be for ensuring that all other land that is subject to the covenant is transferred together to another person (the lots subject to the covenant may be freehold, non-freehold or a combination of freehold and non-freehold); or

if non-freehold land is the subject of a lease, other than a trustee lease, or is land over which a person holds a road licence, a covenant to which the land is subject may:

- relate to the use of the land or part of the land; or
- relate to the use of a building built or proposed to be built on a land; or
- be aimed directly at preserving a native animal or plant; or a natural or physical feature of the land that is of cultural or scientific significance.

‘Use’ covenants under s 97A(3)(a) of the *Land Title Act* 1994 or s 373A(4)(a) of the *Land Act* 1994 may be used to achieve a local government planning objective, provided they are consistent with the local government’s planning scheme and any conditions of development approval, as well as complying with the *Land Title Act* 1994 and/or the *Land Act* 1994.

Examples of ‘use’ covenants that are in compliance with the legislation include:

- that a building on the lot/land must be used for educational purposes
- that the covenant area must be used for noise attenuation purposes
- that a building on the lot/land is not to be used for residential purposes
- that the lot/land may be used only for organic farming
- that a building on the lot/land must not be used for a stated commercial purpose
- that the lot/land is to be used only for the purpose of construction of buildings used for the development of technology (a definition of ‘buildings used for the development of technology’ should be included)
- that the lot/land is to be used only for the purpose of construction of water-sensitive residential housing (a definition of ‘water-sensitive residential housing’ should be included).

A subsection is included in the legislation to identify ‘use’ covenants which are *not* allowed by the legislation. These include:

- the requiring of adherence to an architectural, construction or landscaping standard
- a statement, acknowledgement or obligation relating to the use of other lots or land
- a condition precedent to using a lot or land for a stated purpose or any purpose

- regulation of the conduct of the owner of a lot or land that is unrelated to, or is ancillary to, use of the lot or land.

For further clarification and explanation, covenants imposing the following conditions do not comply with the legislation:

- an obligation to ensure that vehicular access to a lot or land is gained from a named street (regulating conduct ancillary to use of the lot or land)
- an obligation to keep a fence painted blue (imposing a landscaping standard)
- an obligation to construct any house on the lot or land within a stated height limit, facing a particular direction, or using split level or elevated construction techniques (a construction or architectural standard and/or regulating conduct ancillary to the use of the lot or land)
- an obligation not to use a lot or land for residential purposes until it is connected to water services (a condition precedent).

‘Preservation’ covenants under s 97A(3)(b) of the *Land Title Act* 1994 or s 373A(4)(b) of the *Land Act* 1994 may be used as a tool to assist in the preservation of native animals and plants, and natural or physical features of cultural or scientific significance.

Examples of preservation covenants include:

- a covenant for the purpose of preserving native vegetation (imposing an obligation not to remove such vegetation)
- a covenant for the purpose of preserving a bora ring (imposing an obligation not to disturb the area containing the bora ring)
- a covenant for preserving the natural and physical features of the lot or land being the natural slope of the land in the covenant area
- a covenant for the purpose of preserving native plants and preserving the natural features of the lot or land, including the water and soil in accordance with a management plan (the management plan should be identified, but not included as part of the covenant).

An example of a covenant that does not comply with the legislation would be a covenant providing that earthworks on a lot shall not exceed a maximum height of 2.0 metres.

Covenants ‘tying parcels of land’ may be registered under s 97A(3)(c) of the *Land Title Act* 1994 or s 373A(3) of the *Land Act* 1994. An example is a covenant ensuring that the lots described in Item 2 of the Covenant are to be transferred to the same person.

Purposes for which covenants may not be used

[31-2040]

Restrictions on other dealings

Apart from a covenant under s 97A(3)(c) of the *Land Title Act* 1994 or s 373A(3) of the *Land Act* 1994, a covenant cannot prevent the registered owner/covenantor or any other person from registering an interest in the subject lot or land.

For example, a covenant cannot prohibit the registered owner from granting a lease over the covenant area, nor from granting a lease except on specified terms. The following provisions would be unacceptable and unenforceable in a covenant:

- The Covenantor must not enter into any agreement for lease in respect of any part of the Covenant Area unless the lease is for a term not less than five years.
- The Covenantor must not grant any easement over the covenant area.

Matters to be dealt with by easements

Covenants may not provide for anything capable of being the subject of an easement.

Example –

- a covenant acknowledging that a lot or land may be used for temporary parking.

Securing payment of money

Covenants may not secure the payment of money or money's worth under a condition of a development approval or an infrastructure agreement under the *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009*. Example –

- an obligation to pay to the local authority agreed infrastructure contributions.

Integrated Planning Act 1997 and Sustainable Planning Act 2009

Under s 2.1.25 and s 3.5.37 of the *Integrated Planning Act 1997* or s 87 and s 349 of the *Sustainable Planning Act 2009*, a covenant may not be inconsistent with a planning scheme or with development approvals.

A covenant may not impose an obligation that is contrary to the *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009*. For example, under s 3.5.32 of the *Integrated Planning Act 1997* or s 347(1)(d) of the *Sustainable Planning Act 2009*, a local authority must not require an access restriction strip as a condition of development approval. Therefore it is not possible to register a covenant such as:

- The covenantor shall use the Covenant area to restrict access to lot 3 from Brown Street.

However, the following would be an acceptable alternative:

- The covenantor shall not use nor permit the use of the Covenant area for the purpose of driving any vehicles or machinery thereon. (In this case the Covenant area would need to be described by a survey plan.)

Compliance with Legislation

[31-2060]

A registered covenant is taken not to be registered under the *Land Title Act 1994* or the *Land Act 1994* to the extent that it is inconsistent with the legislation. Under s 97AA of the *Land Title Act 1994* and s 373AB of the *Land Act 1994*, the registration of covenants which are contrary to the legislation (eg pertaining to ancillary matters, landscaping and construction standards etc) would have no effect. Obligations described in such covenants may be conditions of development approval or contained in a local government's building code, but these are matters which depend on the *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009*, and are outside the scope of the *Land Act 1994* and the *Land Title Act 1994*. Under the *Integrated*

Planning Act 1997 or the *Sustainable Planning Act 2009*, development approvals and infrastructure agreements statutorily run with the land, and are binding on successors in title.

Requirements for a Covenant

[31-2100]

A covenant must contain the full particulars of all lots or land that are subject to it. The covenant must describe the undertaking given by the covenantor. To clarify the intent of a covenant, inclusion of reference to the relevant legislation is required (eg ‘Pursuant to s 97A(3)(a)(i) of the *Land Title Act 1994*’ or ‘Pursuant to s 373A(4)(a)(i) of the *Land Act 1994*’).

The certificate of title, if issued, must be deposited for cancellation or a request made to dispense with production.

Survey requirements of a covenant over part of a lot or land

[31-2150]

A plan of survey or explanatory format plan is required to precede a covenant if the interest affects part of the lot or land. Building envelope sketches, diagrams, sketches and similar are not acceptable alternatives. If the covenant is for the whole of the lot or land, no plan is required.

Plans for a covenant must comply with directions 4.8.2 and 21 of the Registrar of Titles Directions for the Preparation of Plans. A plan must not describe a covenant as a ‘Proposed Covenant’ and there is no requirement for a covenant to be lodged immediately after the plan (see also part 21 – Plans and Associated Documents, esp ¶[21-2110]).

A covenant may be included with a survey of lots or land on a plan of subdivision.

Release of Covenant

[31-2200]

A covenant may be wholly or partly released by registering a Form 33 – Release of Covenant.

A partial release of covenant must clearly specify the extent to which the covenant is released.

If a covenant restricted several uses and was to be released from less than all of the uses, the use to be released can be described in item 5 of the Form 33 or if insufficient space, in a Form 20 – Enlarged Panel annexed to the Form 33.

A partial release of part of the area affected by a covenant must be defined on a survey plan (see the Registrar of Titles Directions for the Preparation of Plans for covenants).

A covenant that is for ensuring that lots or land remains in the same ownership can only be partially released if at least two lots or parcels of land remain subject to the covenant after the partial release.

The release of covenant must be signed by the covenantee (see also ¶[33-2100]).

Amendment of Covenant

[31-2300]

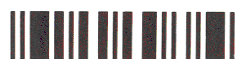
Covenants may be amended by a Form 13 – Amendment. However, an amendment may not increase or decrease the area of land affected or add or remove a party. If non-freehold is involved, written approval of the amendment by the Minister is required (see ¶[13-2110]).

Forms

General Guide to Completion of Forms

[31-4000]

For general requirements for completion of forms see part 59 – Forms.



Dealing Number

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(07) 3227 9850

Lodger
Code
490

1. Covenantor

JOHN DAVID BROWN

2. Description of Covenant / Lot on Plan	County	Parish	Title Reference
LOT 4 ON RP800006	SMITH	SMITHSON	22331100
LOT 5 ON RP800006	SMITH	SMITHSON	22331101

3. Covenantee

SMITHSON CITY COUNCIL

4. Description of Covenant (include reference to relevant section of legislation)

PURSUANT TO SECTION 97A(3)(c) OF THE LAND TITLE ACT 1994

5. Execution

The Covenantor being the registered owner of the lot described in item 2 covenants with the Covenantee in respect of the covenant described in item 4 and:- *the attached schedule; ~~*the attached schedule and document no.~~; ~~document no.~~

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

A D Lein

..... signature

ARNOLD DOUGLAS LEIN

..... full name

JUSTICE OF THE PEACE (C.DEC) 89339

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

13/9/2007
Execution Date

.....
Covenantor's Signature

J D Brown

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

15/9/2007
Execution Date

.....
Covenantor's Signature

I L Hope

Appointed Officer
IAN LEO HOPE

Dealing Number



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(07) 3227 9850

Lodger

Code
490

1. Covenantor

JOHN DAVID BROWN

2. Description of Covenant / Lot on Plan

COVENANT A ON SP800106

County

SMITH

Parish

SMITHSON

Title Reference

22331101

3. Covenantee

SMITHSON CITY COUNCIL

4. Description of Covenant (include reference to relevant section of legislation)

PURSUANT TO SECTION 97A(3)(b) OF THE LAND TITLE ACT 1994

5. Execution

The Covenantor being the registered owner of the lot described in item 2 covenants with the Covenantee in respect of the covenant described in item 4 and:- *the attached schedule; ~~*the attached schedule and document no.~~; ~~document no.~~

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

A D Lein

..... signature

ARNOLD DOUGLAS LEIN

..... full name

JUSTICE OF THE PEACE (C.DEC) #89339

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

18/9/2007
Execution Date

J D Brown
.....
Covenantor's Signature

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

20/9/2007
Execution Date

I L Hope
Appointed Officer
IAN LEO HOPE
.....
Covenantor's Signature

Guide to Completion of Form 31

Item 1

[31-4010]

Insert full name(s) of the covenantor, [registered owner(s) of freehold or holder(s) of non-freehold].

Item 2

[31-4020]

Insert the 'Lot on Plan' descriptions for all lots or land affected by the covenant.

If the covenant applies to only part of the lot or land, then the covenant must be described in a manner similar to the following:

'Covenant A on SP 123567'.

In such cases, a plan will be required to be lodged in the land registry. The plan may be a survey plan or, if the registrar approves, an explanatory plan may be used to graphically represent the area affected by the covenant (see Survey Requirements ¶[31-2150]).

Item 3

[31-4030]

Insert the full name of the covenantee (ie the State, another entity representing the State or a local government).

Item 4

[31-4040]

Include a description of the covenant and the relevant statutory provision. A covenant must be pursuant to either (a) or (b) or (c) in s 97A(3) of the *Land Title Act* 1994 and/or (3) or (4)(a) or (4)(b) in s 373A of the *Land Act* 1994. A covenant cannot be pursuant to more than one of these paragraphs, although more than one covenant may be registered over the same lot or land for different purposes. Examples –

- 'Pursuant to s 97A(3)(a)(ii) of the *Land Title Act* 1994 any building on the lot may only be used for residential purposes.'
- 'Pursuant to s 97A(3)(b)(i) of the *Land Title Act* 1994 and the terms of the attached Schedule.'
- 'Pursuant to s 97A(3)(a)(i) of the *Land Title Act* 1994 relating to the use of the lot in terms of the attached Schedule.'
- 'Pursuant to s 97A (3)(c) of the *Land Title Act* 1994' relating to the future transfer of lots to a single ownership.

If space in item 4 is insufficient the description of the covenant may be set out in a Form 20 – Schedule attached to the Form 31, in which case the panel should refer to the Schedule'.

The covenant must include a statement of its purpose. In the first example above, the purpose is stated in item 4. If the statement of purpose is not in item 4, then it must be included in the Schedule.

Item 5**[31-4050]**

Covenants must be validly executed by the covenantor and covenantee (the State, another entity representing the State or a local government).

For execution by a local government see ¶[60-0920]. Execution on behalf of the State or an entity representing the State must be in accordance with relevant legislation.

A covenant that involves non-freehold land must have the written approval of the Minister. Such requirement is in addition to it being executed for and on behalf of the State of Queensland.

Duty**[31-4060]**

There is no duty notation required on a Form 31 – Covenant.

¶[31-6000] deleted

Case Law**[31-7000]**

***Townsville Port Authority v Max Locke, Registrar of Titles* [2004] QCA 294**

In this case the Queensland Court of Appeal considered the meaning of ‘relate to the use of’ a lot, part of a lot or a building in s 97A(3)(a). Williams J stated:

‘to be registrable the covenant must relate to a purpose for which a building proposed to be built on the lot can be used or otherwise be related to a use to be made or not to be made of that land.’

Fees**[31-8000]**

Fees payable to the land registry are subject to an annual review. See the current

- ²*Land Title Regulation* 2005 – Schedule 2, item numbers 2(h), 2(m) and 4(3)(a)(ii); and
- ³*Land Regulation* 2009 – Schedule 11, item numbers 2(e), 2(f) and s 62(4)(a)(ii).

Cross References and Further Reading**[31-9000]**

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 33 – Release of Covenant/Profit a prendre

Notes in text

[31-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to freehold land.

Note ³ – This numbered section, paragraph or statement does not apply to State land.

¹Part 32 – Building Management Statements

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¹Part 32 – Building Management Statements

General Law

[32-0000]

A building management statement (BMS) is an instrument/document by which the registered owners of lots or lessees under the *Land Act* 1994 in a development agree to reciprocal provisions that benefit and burden their lots (s 54A(2)(b) of the *Land Title Act* 1994 and s 294B(2)(b) of the *Land Title Act* 1994).

A BMS is analogous to reciprocal easements with management covenants.

A BMS must provide for the supply of utility services, access, support and shelter and insurance arrangements. They may also contain provisions for a range of administrative matters as set out in s 54C(2) of the *Land Title Act* 1994 and s 294D(2) of the *Land Act* 1994.

A BMS affecting freehold and non freehold land may be dealt with under s 54J of the *Land Title Act* 1994 and s 294J of the *Land Act* 1994.

A BMS under the *Land Act* 1994 only applies to transport land as defined in Schedule 6 of the *Land Act* 1994 (s 294A of the *Land Act* 1994).

For a BMS to be registered it must:

- identify the lots to which it applies (s 54A(2)(a) of the *Land Title Act* 1994 or s 294B(2)(a) of the *Land Act* 1994) (the term lot is taken to include common property s 41C of the *Land Title Act* 1994);

and have for freehold land:

- at least one of the lots entirely or partly **contained**, in one or more buildings; or
- at least one of the lots entirely or partly **containing**, one or more buildings (s 54A(3) of the *Land Title Act* 1994);

and have for transport land under the *Land Act* 1994:

- each lot entirely or partly **contained**, in one or more buildings; or
- each lot entirely or partly **containing**, one or more buildings (s 294B(3) of the *Land Act* 1994);

and must comprise:

- at least two volumetric format lots; or
- one or more volumetric format lots **and** one or more standard format lots (s 54B(2) of the *Land Title Act* 1994 or s 294C(2) of the *Land Act* 1994); (s 54B(3) of the *Land Title Act* 1994 provides that in s 54B a reference to standard format lot or volumetric format lot is taken to include a reference to common property, providing the common property is created on registration of a building format plan or volumetric format plan);

and,

- the lots must form a single continuous area of land (s 54AA of the *Land Title Act* 1994 or s 294BA of the *Land Act* 1994).

A BMS may be registered even if all of the lots to which it applies are registered in the name of a single owner or lessee under the *Land Act* 1994.

On registration, a reference to the BMS is recorded on the title for every lot involved.

Examination undertaken by the Registrar will generally involve addressing compliance with the mandatory requirements only.

A BMS can be amended by registering an amendment, however, every owner of the lots or lessee under the *Land Act* 1994 to which it applies must sign the amendment. The lots to which it applies cannot be changed by amendment see part 13, esp ¶[13-2150].

A BMS is not automatically extinguished if one person becomes the registered owner or lessee under the *Land Act* 1994 of all the lots to which it applies. Extinguishment of a BMS only occurs on registration of an extinguishment signed by the registered owners or lessees under the *Land Act* 1994 of all lots involved see part 34, esp ¶[34-2000].

Practice

Requirements of Building Management Statement

[32-2000]

A BMS that is to be registered against the title to the lots involved must be prepared in a Form 32 – Building Management Statement.

For further information see ¶[32-0000].

A BMS must contain provisions that benefit and burden the lots to which it applies and the lots must be wholly or partly contained in, or wholly or partly contain a building. The BMS must be signed by the registered owner or the lessee under the *Land Act* 1994 of every lot. If the lots form part of a community titles scheme the body corporate of the scheme is taken to be the registered owner and may sign the statement (s 54I(b) of the *Land Title Act* 1994).

²All relevant Certificates of Title that exit for the lots must be produced.

Every BMS **must** contain provisions for the supply of services, access, support and shelter and insurance arrangements.

They **may** also contain provisions about:

- the establishment and operation of a management group;
- the imposition of levies and how levied amounts are to be kept and spent;
- property maintenance;
- architectural and landscaping standards;
- the resolution of disputes;
- rules for services and facilities common to lots;
- administrative arrangements;

- extinguishment;
- proposed future development.

Dispute resolution provisions, if included, may include referral for arbitration other than to a court, however, they may not preclude final determination by a court of competent jurisdiction. Optional provisions may be set out in an attached schedule or in a registered standard terms document.

Rights of access, support and shelter or any other right that is included in a BMS that would appear to be in the nature of an easement, operate and are effective without the registration of any further instrument/document.

Amendment of Building Management Statement

[32-2040]

A BMS may be amended by registering an amendment that is prepared in a Form 13 – Amendment (see ¶[13-2150]).

Extinguishment of Building Management Statement

[32-2050]

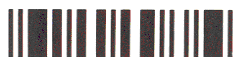
A BMS may be extinguished or partially extinguished by registering an extinguishment in Form 34 – Extinguishment of Building Management Statement (see part 34).

Forms

General Guide to Completion of Forms

[32-4000]

For general requirements for completion of forms see part 59 – Forms.



Dealing Number

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Lodger (Name, address, E-mail & phone number)

SMYTHE & CO.
SOLICITORS
45 ADELAIDE STREET
BRISBANE QLD 4000
info@smytheco.com.au
(07) 3227 9850

Lodger

Code
490

1. Registered Owners/State Lessees

HIGHRISE DEVELOPMENT PTY LTD ACN 124123 457

2. Lot on Plan	Description of affected land	County	Parish	Title Reference
	LOT 143 ON SP900567	STANLEY	NORTH BRISBANE	50002571
	LOT 144 ON SP900567	STANLEY	NORTH BRISBANE	50002572

3. Execution

The Registered Owners/State Lessees of the lots referred to in item 2 reciprocally grant and agree to the terms and conditions of the Building Management Statement contained in:- ~~*the attached schedule;~~ ~~*the attached schedule and document no.;~~ *document no. 700587641.

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

..... signature
..... full name
..... qualification

(seal)
or Full name
of company
to be shown

20/11/2007
Execution Date

W Smith, Director
WILLIAM THOMAS SMITH

P Jones, Secretary
PAUL JOHN JONES

**Registered Owner's/
State Lessee's Signature**

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

..... signature
..... full name
..... qualification

/ /
Execution Date

**Registered Owner's/
State Lessee's Signature**

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Guide to Completion of Form 32

Item 1

[32-4010]

Insert the full name(s) of the registered owner(s) or lessee(s) under the *Land Act* 1994 and refer to the lots in Item 2 by parcel number.

Item 2

[32-4020]

Insert the ‘Lot on Plan’ descriptions of all lots comprised in the BMS with a parcel reference to identify each with one or more of the registered owners or lessees under the *Land Act* 1994 in Item 1.

Item 3

[32-4030]

The registered owner(s) or lessee(s) under the *Land Act* 1994 must complete and execute as required.

Duty

[32-4040]

A duty notation is not required on a Form 32 – Building Management Statement.

¶[32-6000] deleted

Case Law

[32-7000]

Nil.

Fees

[32-8000]

Fees payable to the land registry are subject to an annual review. See the current:

- ²*Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m);
- ³*Land Regulation* 2009 – Schedule 11, item numbers 2(e) and 2(f).

Cross References and Further Reading

[32-9000]

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 34 – Extinguishment of Building Management Statement

Notes in text

[32-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.

¹Part 33 – Release of Covenant/Profit a prendre

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¹Part 33 – Release of Covenant/Profit a prendre

General Law

[33-0000]

A covenant or profit a prendre that is registered in the Registry creates a charge over the lot(s) or land described in it and requires compliance with the obligations contained in the instrument or document.

The grantee may execute a release of a covenant or profit a prendre and on registration in the Land Registry, the charge is discharged to the extent shown in the release.

Practice

[33-2000]

The appropriate form for a release of either a covenant or a profit a prendre is a Form 33 – Release of Covenant/Profit a prendre.

Release of Covenant

[33-2100]

A covenant may be wholly or partly released by registering a Form 33 – Release of Covenant.

A partial release of covenant must clearly specify the extent to which the covenant is released. If a covenant restricted several uses and was to be released from less than all of the uses, the use to be released can be described verbally and that description of an obligation may be included in item 5 of the Form 33 or if insufficient space, in a Form 20 – Enlarged Panel annexed to the Form 33.

For a partial release of part of the area affected by a covenant the area being released or the area not being released must be defined on a survey plan (see the Registrar of Titles Directions for the Preparation of Plans for the requirements for a plan for an area for a covenant).

A covenant that is for ensuring that lots or land remains in the same ownership can only be partially released if at least two lots or parcels of land remain subject to the covenant after the partial release.

The release must be signed by the covenantee.

Release of Profit a prendre

[33-2200]

Under the provisions of ss 97L(1) and (2) of the *Land Title Act* 1994 or ss 373O(1) and (2) of the *Land Act* 1994 a profit a prendre may be released to the extent shown in the release.

A profit a prendre may be partially released i.e. so far as it relates to:

- part of the land; or
- some of the substances that may be taken from the land. For example, a profit that entitles a party to take trees and gravel might be partially released so that the trees are excluded leaving only the right to take gravel.

The release must clearly specify the extent to which the profit a prendre is being released.

If the release does not release the whole of the land from the profit a prendre, the area being discharged or the area not being discharged must be defined on a survey plan.

A Form 33 – Release of Covenant/Profit a prendre signed by the covenantee/grantee must be lodged to register a release of a profit a prendre.

Lodgement fees are payable.

A release of a profit a prendre requires a duty notation.

Forms

General Guide to Completion of Forms

[33-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



OFFICE USE ONLY

Privacy Statement

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1. Type/Dealing No. of instrument/document being released	Lodger (Name, address, E-mail & phone number)	Lodger Code
Type of Instrument/Document PROFIT A PRENDRE	SMYTHE & CO. SOLICITORS 45 ADELAIDE STREET BRISBANE QLD 4000 mail@smytheco.com.au (07) 3227 9850	490
Dealing Number 723651098.....		

2. Lot on Plan Description	County	Parish	Title Reference
LOT 33 ON RP857601	STANLEY	MITCHELL	11567215
LOT 34 ON RP857601	STANLEY	MITCHELL	11567216

3. Grantor/Covenantor
KRISTINA MARIA JOHNSON

4. Grantee/Covenantee
IVAN GEORGE JOHNSON

5. Execution by Grantee/Covenantee

*Full Surrender

The Grantee/Covenantee releases the covenant/profit a prendre in item 1 so that the covenant/profit a prendre is extinguished.

*Partial Surrender

~~The Grantee/Covenantee releases the covenant/profit a prendre in item 1 so far as relates to the land in item 2:-~~

~~*so far as relates to a part of the land being~~

~~*so far as relates to the substance taken from the land being~~

*delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

P L Fish

.....signature

PETA LAUREL FISH

.....full name

SOLICITOR

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

15/11/2007

Execution Date

I G Johnson

Grantee's/Covenantee's Signature

Guide to Completion of Form 33

Item 1

[33-4010]

Insert the type of instrument/document and dealing number of the instrument/document to be released.

Item 2

[33-4020]

The description of the lot should be 'Lot [number] on [Plan reference]'. The 'County', 'Parish' and 'Title Reference' for each lot must also be completed.

Item 3

[33-4030]

Insert the full name of the covenantor/grantor.

Item 4

[33-4040]

Insert the full name of the covenantee/grantee.

Item 5

[33-4050]

Complete and execute where indicated.

¶[33-6000] deleted

Case Law

[33-7000]

Nil.

Fees

[33-8000]

Fees payable to the land registry are subject to an annual review. See the current:

- ²*Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m);
- ³*Land Regulation* 2009 – Schedule 11, item numbers 2(e) and 2(f)

Cross References and Further Reading

[33-9000]

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 29 – Profit a prendre

Part 31 – Covenants

Notes in text

[33-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to freehold land.

Note ³ – This numbered section, paragraph or statement does not apply to State land.

¹Part 34 – Extinguishment of Building Management Statements

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Notes in text	[34-9050]

¹Part 34 – Extinguishment of Building Management Statements

General Law

[34-0000]

A building management statement (BMS) may be extinguished or partially extinguished by registering an extinguishment. Extinguishment or partial extinguishment only occurs on registration of an extinguishment that is signed by every registered owner or lessee under the *Land Act* 1994 of all of the lots to which the BMS applies.

A BMS is not automatically extinguished if one person becomes the owner of all the freehold lots or the lessee of all the lots under the *Land Act* 1994 to which it applies.

Practice

[34-2000]

An extinguishment or partial extinguishment of a BMS is prepared in a Form 34 – Extinguishment of Building Management Statement.

A BMS may be partially extinguished to remove a lot that is not contained in, or does not contain, a building or part of a building.

For a full or partial extinguishment, the registered owner(s) of all the freehold lots or lessee(s) of all the lots under the *Land Act* 1994 to which the BMS applies must execute the BMS. However, where lots affected by the BMS form part of a community titles scheme the extinguishment may be signed by the body corporate. A certified copy of the resolution agreeing to the extinguishment of the BMS is to be deposited with the extinguishment.

²A certificate of title is not required to be lodged with an extinguishment or partial extinguishment if the request is accompanied by evidence (eg a certified copy of the notice of a meeting and a certified copy of the minutes of the meeting including a record of the resolution agreed to) the registrar reasonably requires to allow registration of the extinguishment (s 154(2)(f) of the *Land Title Act* 1994).

For a full extinguishment of a BMS, the consents of all registered mortgagees to which the BMS applies are required (s 54H(4)(b) of the *Land Title Act* 1994 or s 294I(4)(b) of the *Land Act* 1994). For a partial extinguishment, only the consents of registered mortgagees of lots to be removed from the BMS are required (s 54H(4)(a) of the *Land Title Act* 1994 or s 294I(4)(a) of the *Land Act* 1994).

A BMS is not extinguished automatically if all of the lots come into common ownership. If all lots do come into common ownership and the owner(s) or lessees(s) under the *Land Act* 1994 intend to extinguish the BMS, an extinguishment must be lodged and registered.

Forms

General Guide to Completion of Forms

[34-4000]

For general requirements for completion of forms see part 59 – Forms.

**EXTINGUISHMENT OF
BUILDING MANAGEMENT STATEMENT**



Dealing Number

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Lodger (Name, address, E-mail & phone number)

SMYTHE & CO.
SOLICITORS
45 ADELAIDE STREET
BRISBANE QLD 4000
mail@smytheco.com.au
(07) 3227 9850

**Lodger
Code**
490

1. Dealing number of instrument/document being extinguished

723568901

2. Lot on Plan Description of affected land	County	Parish	Title Reference
LOT 143 ON SP900567	STANLEY	NORTH BRISBANE	50002571
LOT 144 ON SP900567	STANLEY	NORTH BRISBANE	50002572

3. Registered Owners/State Lessees

HIGHRISE DEVELOPMENT PTY LTD ACN 124123 457

4. Execution

The Registered Owners/State Lessees identified in item 3 agree to the extinguishment of the building management statement in item 1.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

..... signature	(seal) or Full name of company to be shown	W Smith, Director WILLIAM THOMAS SMITH
..... full name		P Jones, Secretary PAUL JOHN JONES
..... qualification	25/11/2007 Execution Date Registered Owner's/ State Lessee's Signature

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

..... signature		
..... full name		
..... qualification	/ / Execution Date Registered Owner's/ State Lessee's Signature

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Guide to Completion of Form 34

Item 1

[34-4010]

Insert the dealing number of the BMS to be extinguished.

Item 2

[34-4020]

Insert the 'Lot on Plan' descriptions of all lots comprised in the BMS with a parcel reference to identify each with one or more of the registered owners or lessee(s) under the *Land Act* 1994 in Item 3.

Item 3

[34-4030]

Insert the full name(s) of all registered owner(s) or lessee(s) under the *Land Act* 1994 and refer to the lots in Item 2 by parcel number.

Item 4

[34-4040]

Execute as required.

¶[34-6000] deleted

Case Law

[34-7000]

Nil.

Fees

[34-8000]

Fees payable to the land registry are subject to an annual review. See the current:

- ²*Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m);
- ³*Land Regulation* 2009 – Schedule 11, item numbers 2(e) and 2(f).

Cross References and Further Reading

[34-9000]

Part 20 – Schedule, Enlarged Panel, Additional Page or Standard Terms Document

Part 32 – Building Management Statements

Notes in text

[34-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.

¹Part 36 – Carbon Abatement Interest

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¹Part 36 – Carbon Abatement Interest

General Law

[36-0000]

A carbon abatement interest is an interest in land which is created under legislation upon registration of a Form 36 – Carbon Abatement Interest. A carbon abatement interest provides for the exclusive legal right to the economic benefits of carbon sequestration on the land. A carbon abatement interest may be granted in land which is freehold, State leasehold, unallocated State land, State forest or reserve.

The provisions below provide for the creation and registration of carbon abatement interests.

- *Land Act* 1994 Chapter 6 Part 4 Division 8C
- *Land Title Act* 1994 Part 6 Division 4C
- *Forestry Act* 1959 Part 6C

A carbon abatement interest in freehold land is registered under the registration provisions of the *Land Title Act* 1994 while a carbon abatement interest in any non-freehold land is registered under the registration provisions of the *Land Act* 1994.

In relation to non-freehold land with respect to carbon abatement interests, the term ‘owner’ is defined in s 373R of the *Land Act* 1994.

The grantor and grantee of a proposed carbon abatement interest may be the same person.

For freehold land, exclusive of a deed of grant in trust, the owner of the land holds the right to the carbon in the carbon abatement product. For non-freehold land (including unallocated State land) and deeds of grant in trust, the State, pursuant to s 21 of the *Land Act* 1994, issues the tenure subject to conditions and one of those conditions is the reservation of the right to the carbon in the carbon abatement product, to the State.

A carbon abatement interest may be created over the whole of a lot or part of a lot.

A carbon abatement interest may only be registered if:

- (a) the proposed grantor of the interest is the owner of the land; and
- (b) the registrar/chief executive is satisfied the owner (proposed grantor) is the holder of the right to deal with the carbon abatement product for the land; and
- (c) all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant;
- (d) there are no existing carbon abatement interests registered for part of the land to which the proposed carbon abatement interest relates

Once created, a carbon abatement interest may be amended, transferred, mortgaged, surrendered or passed to a beneficiary of the holder’s interest in the land.

A holder of a carbon abatement interest may apply to the administrator of a Commonwealth scheme for the declaration of an offsets project as an eligible offsets project on land under the *Carbon Credits (Carbon Farming Initiative) Act* 2011 (Cth). (See [52-0125].

Legislation

[36-1000]

The functions of the Chief Executive under the *Land Act* 1994 relating to the keeping of registers are carried out by the Registrar of Titles under delegation made under s 393 of that Act.

Practice

Requirements of a Carbon Abatement Interest

[36-2000]

A carbon abatement interest is created by registering a Form 36 – Carbon Abatement Interest.

The grantor must be the registered owner of the freehold land or the owner of the non-freehold land which is to be the subject of the carbon abatement interest.

A carbon abatement interest may be registered over freehold land or non-freehold land (unallocated State land, State leasehold, State forest or reserves).

The grantee is the proposed holder of the carbon abatement interest and must be a person or legal entity that is entitled to hold an interest in land. The grantee may be the same person or entity as the grantor.

A termination date or an event that is certain must be stated and should allow a period of either 25 years or at least 100 years.

The full details of the consideration must be shown.

The terms of the carbon abatement interest must be set out in an attached schedule, a standard terms document or both. The standard terms document referred to must be of the appropriate class of document and must also be first registered.

The grantor and the grantee must properly execute the form and have the execution witnessed where necessary.

A duty notation is required.

Additional Requirements

[36-2050]

Consent by Person with an Affected Registered Interest

A consent on Form 18 – General Consent from each person with a registered interest in the land whose interest may be affected by the proposed carbon abatement interest must be deposited.

Part of the Land

A plan of survey must be lodged and registered to identify the area the subject of a carbon abatement interest where the carbon abatement interest is for part of a lot. A plan must not describe a carbon abatement interest as proposed. There is no requirement for a carbon abatement interest to be lodged immediately after the plan. Survey plan requirements for a carbon abatement interest over part of a lot are set out in the Registrar's Directions for the Preparation of Plans. For further information see [21-2115].

Freehold land

Relevant certificates of title, if they exist, are required to be deposited with a proposed carbon abatement interest in freehold land.

Minister's Consent where Interest is in Non-Freehold Land and Freehold Land held as Deed of Grant in Trust

The consent of the relevant Minister on Form 18—General Consent is required to be deposited:

- (a) if a lessee is granting the carbon abatement interest and the land is within a State forest, timber reserve or forest entitlement area—the Minister administering the *Forestry Act* 1959; and
- (b) if the proposed carbon abatement interest is in, freehold land held as a deed of grant in trust, land subject to a lease or land subject to a licence or a reserve —the Minister administering the *Land Act* 1994.

Alternatively, if the State is a party to the Carbon Abatement Interest (i.e. a grantor), the consent on a Form 18 is not required.

Interest granted by the Lessee of a Term Lease or Licensee of an Occupational Licence

If the carbon abatement interest is being granted by the lessee or licensee and the proposed term of the carbon abatement interest is for a period greater than the remaining term of the lease or licence e.g. the term lease is for 30 years and the carbon abatement interest is for 100 years, the State must be a party to the interest and approve the terms of the document (s 373V of the *Land Act* 1994). The Form should be completed as indicated at [36-4010 to 36-4070] with the following variations:

- Item 1 of the form must show the lessee and licensee **and** The State of Queensland (represented by [name of department]) as reversionary owner as grantors (e.g. Bill Smith and The State of Queensland [represented by the Department of Natural Resources and Mines] as reversionary owner);
- Item 6 may refer to a standard terms document that contains details identifying what will happen to the carbon abatement interest on ending of the term lease or licence; and
- Item 6 must be executed by the the lessee/licensee **and** The State of Queensland (represented by [name of department]) as grantors.

Interest granted over a Perpetual lease, a Reserve or a Deed of Grant in Trust

- If the carbon abatement interest is being granted by the lessee of a perpetual lease, or the trustee of a reserve or the trustee of a deed of grant in trust, the form should be completed as indicated in part [36-4010] to [36-4070].

The Minister administering the *Land Act* 1994 must approve the terms of the document on a Form 18—General Consent.

Interest granted by the Lessee of a Term Lease where the Lease has been granted over a State Forest

If the carbon abatement interest is being granted by the lessee of a term lease over a State forest and the proposed term of the carbon abatement interest is for a period greater than the remaining term of the lease e.g. the term lease is for 30 years and the carbon abatement interest is for 100 years, the State must be a party to the interest and approve the terms of the document (s 373V of the *Land Act* 1994). In these instances two Form 36 – Carbon Abatement Interests are required to be lodged, with one Form 36 identifying the grantor as the lessee of the term lease recorded over the State lease title and the second Form 36 identifying the grantor as the State of

Queensland (represented by [name of department]) recorded over the State Forest title. The Forms should be completed as indicated in part [36-4010] to [36-4070] of the Land Title Practice Manual with the following variations:

- Item 1 of the first Form 36 must show the lessee as the grantor and Item 1 of the second Form 36 must show the State of Queensland (represented by [name of department]) as the grantor;
- Item 6 of the first Form 36 may refer to a standard terms document identifying what will happen to the carbon abatement interest on the lessee ceasing to be the lessee; and
- Item 6 of the first Form 36 must be executed by the lessee and Item 6 of the second Form 36 must be executed by the State of Queensland (represented by [name of department]) as grantors.

The Minister administering the *Forestry Act* 1959 must approve the terms of the first Form 36 on a Form 18—General Consent.

Note: When a carbon abatement interest, granted over a term lease over a State forest, is being either fully or partially surrendered, two Form 37s are required to be lodged with one Form 37 dealing with the surrender from the State lease title and the other Form 37 dealing with the surrender from the State forest title.

Interest granted by the State of Queensland over Unallocated State land

- If the carbon abatement interest is being granted by the State, the form should be completed as indicated in part [36-4010] to [36-4070].

Surrender of a Carbon Abatement Interest

[36-2100]

A carbon abatement interest may be surrendered by registering a Form 37 – Surrender of Carbon Abatement Interest. The interest may be partially surrendered to the extent shown in the form or fully surrendered.

For more information see part 37 – Surrender of Carbon Abatement Interest.

Removing a Carbon Abatement Interest

[36-2200]

Where a request is made, a carbon abatement interest may be removed from the relevant title:

- where the period of time for which the interest was intended to exist has ended (as stated at Item 4 of the Form 36); or
- where an event upon which the interest was intended to end has happened (as stated at Item 4 of the Form 36); or
- under an Act of the Commonwealth.

For more information see part 14 – General Request, esp ¶[14-3015]).

Amending a Carbon Abatement Interest

[36-2300]

A carbon abatement interest may be amended by registration of a Form 13 – Amendment of Carbon Abatement Interest.

For more information see part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest, esp ¶[13-2160].

Forms

General Guide to Completion of Forms

[36-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number

Duty Imprint



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Grantor		Lodger (Name, address, email & phone number)	Lodger Code (if any)
BILL JONES		JONES & CO SOLICITORS 54 ADELAIDE STREET BRISBANE QLD 4000 mail@jonesco.com.au (07) 3227 9850	490
THE STATE OF QUEENSLAND (REPRESENTED BY THE DEPARTMENT OF NATURAL RESOURCES AND MINES) AS REVERSIONARY OWNER			
2. Description of Carbon Abatement Interest/ Lot on Plan			Title Reference
Carbon Abatement Interest A on SP123456			14621222
3. Grantee	Given names	Surname/Company name and number	(include tenancy if more than one and interest if not fee simple)
JASON SCOTT		SMITH	
4. Termination date or Event			
01/10/3013			
5. Consideration			
\$66,000.00			

6. Grant/Execution

The Grantor grants to the Grantee for the above consideration a Carbon Abatement Interest and the Grantor and Grantee covenant with each other in terms of:- *the attached schedule; * the attached schedule and document no. 720123123; *document no. _____

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the *Land Title Act 1994*

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Grantor's Signature

/ /
Execution Date

.....
Grantee's Signature

Title Reference [14621222]

(The terms and conditions of the agreement are to be set out here)

SAMPLE

Guide for Completion of Form 36

Item 1

[36-4010]

Insert the full name(s) of all grantor(s) of the carbon abatement interest (e.g. the owner, see [36-0000] or the owner and The State of Queensland (represented by The State of Queensland) as reversionary owner, see [36-2050]).

Item 2

[36-4020]

Whole of the Land

Insert the 'Lot on Plan' descriptions and title references of all lots subject to the carbon abatement interest.

Part of the Land

If the carbon abatement interest applies to only part of the lot, then the carbon abatement interest must be described in a manner similar to the following:

'Carbon Abatement Interest A on SP 123567'.

The title reference of the relevant lot must also be included.

In such cases, a plan of survey is required to be first registered in the land registry.

Item 3

[36-4030]

Insert the full name(s) of the grantee(s) and tenancy (if applicable).

Item 4

[36-4040]

Insert the termination date or a reference to the event that terminates the carbon abatement interest.

Item 5

[36-4050]

Insert monetary or other consideration.

Item 6

[36-4060]

Complete where indicated and execute as required.

Case Law

[36-7000]

Nil.

Fees

[36-8000]

Fees payable to the registries are subject to an annual review. See the current:

- ²*Land Title Regulation* 2015— Schedule 2.
- ³*Land Regulation* 2009 – Schedule 11.

Cross References and Further Reading

[36-9000]

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest

Part 14 – General Request

Part 37 – Surrender of Carbon Abatement Interest

Part 52 – Administrative Advices

Notes in text

[36-9050]

Note¹ – This part does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

¹Part 37 – Surrender of Carbon Abatement Interest

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¹Part 37 – Surrender of Carbon Abatement Interest

General Law

[37-0000]

Section 97U of the *Land Title Act 1994* and section 373Y of the *Land Act 1994* provide that the registrar may register a surrender of carbon abatement interest on lodgement of an instrument or document which surrenders the interest. On registration of the surrender the interest is surrendered to the extent shown in the instrument or document.

Legislation

[37-1000]

The functions of the Chief Executive under the *Land Act 1994* relating to the keeping of registers are carried out by the Registrar of Titles under delegation made under s. 393 of that Act.

Practice

Surrender of Carbon Abatement Interest

[37-2000]

A carbon abatement interest may be surrendered by registering a Form 37 – Surrender of Carbon Abatement Interest. The interest may be partially surrendered to the extent shown in the form or fully surrendered.

A surrender of a carbon abatement interest is executed by the grantor and grantee and lodged in a Form 37 – Surrender of Carbon Abatement Interest.

If the carbon abatement is to be only partly surrendered, the surrendered portion must be capable of precise definition. If the surrendered portion is not capable of precise definition, the area to be surrendered, or the area to remain subject to the carbon abatement interest, must be defined by a plan of survey drawn in accordance with direction 6 of the Registrar of Titles Directions for the Preparation of Plans. Alternatively the carbon abatement interest should be fully surrendered and a new carbon abatement interest created.

The consent of the relevant Minister on Form 18—General Consent is required to be deposited if the area to be surrendered is:

- (a) land within a State forest, timber reserve or forest entitlement area—the Minister administering the *Forestry Act 1959*; or
- (b) freehold land held as a deed of grant in trust, land subject to a lease or land subject to a licence or a reserve—the Minister administering the *Land Act 1994*.

Alternatively, if the State is a party to the Form 37 (i.e. a grantor) and executes the Form 37 as a grantor, the consent on a Form 18 is not required.

Note: When a carbon abatement interest, granted over a term lease over a State Forest, is being either fully or partially surrendered, two Form 37s are required to be lodged with one Form 37 dealing with the surrender from the State lease title and the other Form 37 dealing with the surrender from the State forest title.

Note: If the title subject to the carbon abatement interest is also subject to an administrative advice, Notice of Carbon Farming Initiative Project under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), and the carbon abatement interest is being fully surrendered from the

subject title, a Form 14—General Request to remove the administrative advice should also be lodged with the Form 37—Surrender of Carbon Abatement Interest.

The Certificate of Title must be deposited, if issued, or a request made to dispense with production.

Lodgement fees are payable and a duty notation is required.

Forms

General Guide to Completion of Forms

[37-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised legislation and is used to maintain the publicly searchable records. For more information about privacy see the department's website.

1. Dealing number of Carbon Abatement Interest being surrendered	Lodger (Name, address, E-mail & phone number)	Lodger Code
723651098	TOWN & CO. SOLICITORS 45 ADELAIDE STREET BRISBANE QLD 4000 mail@town&.com.au (07) 3227 9850	490
2. Lot on Plan Description	Title Reference	
LOT 37 ON RP857601	13894001	
3. Grantor		
KRISTINA MARIA JOHNSON		
4. Grantee		
IVAN GEORGE JOHNSON		
5. Surrender/Execution		

Surrender of Carbon Abatement Interest

***Full Surrender** The Carbon Abatement Interest in item 1 is surrendered from 19/12/2012.

***Partial Surrender** The Carbon Abatement Interest in item 1 is surrendered from ____/____/____

*so far as relates to the land in item 2.

*so far as relates to part of the Carbon Abatement Interest area identified on/as ____.

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the *Land Title Act 1994*

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Grantee's Signature

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Grantor's Signature

Guide to Completion of Form 37

Item 1 [37-4010]

Insert the dealing number of the carbon abatement interest to be surrendered.

Item 2 [37-4020]

The description of the lot should be 'Lot [number] on [Plan reference]'. The 'Title Reference' for each lot must also be completed.

Item 3 [37-4030]

Insert the full name of the grantor.

Item 4 [37-4040]

Insert the full name of the grantee.

Item 5 [37-4050]

At Item 5, there are paragraphs applicable to a full and to a partial surrender. When completing the Form, the paragraph not applicable to the situation is to be ruled through.

The grantor and the grantee must execute the form.

Case Law [37-7000]

Nil.

Fees [37-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current • ²Land Title Regulation; and

- ³Land Regulation.

Cross References and Further Reading [37-9000]

Part 59 – Forms

Notes in text [37-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to freehold land.

Note ³ – This numbered section, paragraph or statement does not apply to State land.

^{1,2}Part 39 – High-density Development Easement

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^{1,2}Part 39 – High-density Development Easement

General Law

[39-0000]

As part of urban densification and urban renewal, one type of development is the creation of small lot subdivisions, where lot sizes are much smaller than traditional development lot sizes, typically 70m² to 300m². The size of these lots necessitates unique architectural solutions to provide suitable living spaces. Part 6 Division 4AA of the *Land Title Act* 1994 provides for the registration of statutory easements over lots, containing buildings (terrace type houses) with shared common walls. These easements are now referred to as high-density development easements.

These lots are being created as standard format lot subdivisions rather than community title schemes under the *Body Corporate and Community Management Act* 1997 and therefore the statutory easement provisions in Part 6A Division 5 of *Land Title Act* 1994 for community titles schemes do not apply.

Purpose of High-density Development Easement

[39-0010]

The purposes for high-density development easements are limited to one or more of the following:

- (a) support;
- (b) shelter;
- (c) projections;
- (d) maintenance of building close to boundary;
- (e) roof water drainage.

Creation of High-density Development Easement

[39-0020]

High-density development easements may only be created over 2 small adjoining lots, and only if—

- a) any of the following applies—
 - (i) a wall of a building situated on 1 of the adjoining lots is also a wall of a building situated on the other adjoining lot, and the wall is on the common boundary of the 2 adjoining lots;
 - (ii) a wall of a building is situated on 1 of the adjoining lots is adjacent to a wall of a building situated on the other adjoining lot, each wall is constructed on the same foundation and the foundation is on the common boundary of the 2 adjoining lots;

- (iii) a wall of a building situated on 1 of the adjoining lots is adjacent to a wall of a building situated on the other adjoining lot, each wall is constructed on a separate foundation and each foundation is adjacent to the common boundary of the 2 adjoining lots; or
- b) a relevant development approval, under which a requirement for a circumstance mentioned in paragraph (a)(i), (ii) or (iii) applies as a condition, applies to both adjoining lots.

Each lot to which a high-density development easement relates is benefitted and burdened by the high-density development easement to the extent necessary to give effect to the purposes for which the high-density development easement is created.

High-density development easements are not required to be identified on a plan of survey. The size and location of a high-density development easement is limited to the size and location of the structures, and to the extent necessary to give effect to the high-density development easement.

A high-density development easement may not be limited wholly or partly in height or in depth.

A person may grant a high-density development easement to himself/herself as owner of both the lots (s 86 of the *Land Title Act* 1994).

A high-density development easement may not be amended (s 91 of the *Land Title Act* 1994).

Currency of High-density Development Easement

[39-0030]

High-density Development Easement to take effect in the future

A high-density development easement that is to take effect at some future time cannot be registered. Under the provisions of s 85B of the *Land Title Act* 1994, on registration of a high-density development easement, a high-density development easement is created.

Practice

Creation of High-density Development Easement

[39-2000]

High-density development easements are created by a grant of high-density development easement under the provisions of Part 6 Division 4AA of the *Land Title Act* 1994.

High-density Development Easement Created by Grant

[39-2010]

Under s 82 of the *Land Title Act* 1994, high-density development easements are created upon the registration of a Form 39 – High-density Development Easement.

A high-density development easement may only be created by registering a high-density development easement and the high-density development easement must state the purpose/s of the high-density development easement referring to specific provisions of Part 6 Division 4AA of the *Land Title Act* 1994, and identify the affected land.

A high-density development easement from a person to himself/herself created by registering a high-density development easement cannot include covenants.

When the Form 39 – High-density Development Easement is lodged, the Certificates of Title (if issued) for both affected lots must be deposited for cancellation.

Lodgement fees are payable and a duty notation is required.

Consent to High-density Development Easement by Lessee

[39-2020]

In view of the provisions of s 184(1) of the *Land Title Act* 1994, a new high-density development easement requires the consent of every affected lessee of any lot affected by the high-density development easement. The consent must be given on a Form 18 – General Consent and be deposited with the Form 39 – High-density Development Easement.

Merger of a High-density Development Easement within a Lot

[39-2030]

If the Registrar creates a single indefeasible title for a number of lots and those lots comprise both the lots the subject of a high-density development easement, the high-density development easement is extinguished by virtue of s 87(b) of the *Land Title Act* 1994.

Similarly, if lots subject of a high-density development easement are amalgamated into one lot by survey, on creation of the indefeasible title for the amalgamated lot the high-density development easement is extinguished by virtue of s 87(b) of the *Land Title Act* 1994.

Modification or Extinguishment of a High-density Development Easement by Surrender

By Order of the Court

[39-2040]

Section 181 of the *Property Law Act* 1974 enables the court to modify or extinguish a high-density development easement. The court has power to:

- (a) order any person to execute any instrument/s in registrable form to give effect to the order; and
- (b) order the production of any Certificate of Title, deed or other instrument relating to any land.

If the court orders that the applicant is to execute instrument/s for giving effect to the order, the Registrar's requirements in the following cases are set out below:

- (a) If the court order modifies some or any of the purposes and therefore the statutory provisions applying to the high-density development easement, then a Form 14 – General Request to register the order of the court is lodged, together with a copy of the order and the Certificates of Title for both the affected lots (if issued).
- (b) If the court order is for the full surrender of the high-density development easement, then a Form 40 – Surrender of High-density Development Easement, together with the Certificates of Title for both the affected lots (if issued) are lodged. A copy of the court

order is required if any person authorised by the court, other than the registered proprietor of the lots, has executed any instrument.

For information about depositing supporting documentation see [60-1030].

See also part 40 – Surrender of High-density Development Easement.

Forms

General Guide to Completion of Forms

[39-4000]

For general requirements for completion of forms see part 59 – Forms.

QUEENSLAND TITLES REGISTRY
Land Title Act 1994**HIGH-DENSITY DEVELOPMENT EASEMENT**

Duty Imprint

FORM 39 Version 1
Page 1 of [Total]

Dealing Number

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Privacy Statement

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1. Registered Owners	Lodger (Name, address, email & phone number)	Lodger Code (if any)
DAVID JOHN TYSON	BROWN & CO 34 QUEEN STREET BRISBANE QLD info@browns.com.au (07) 3224 5398	
MICHAEL WAYNE SMITH		

2. Lot on Plan Descriptions of Affected Land	County	Parish	Title Reference
LOT 3 ON SP123456	STANLEY	CHUWAR	15432099
LOT 6 ON SP134567	STANLEY	CHUWAR	16253266

3. Consideration

\$1.00

4. Purpose/s of High-density Development Easement

- Support (section 95 Land Title Act 1994)
- ~~Shelter (section 96 Land Title Act 1994)~~
- ~~Projections (section 96A Land Title Act 1994)~~
- ~~Maintenance of building close to boundary (section 96B Land Title Act 1994)~~
- ~~Roof water drainage (section 96C Land Title Act 1994)~~

Note: rule through if purpose is not applicable

5. Grant/Execution

The registered owners identified in item 1 reciprocally grant the High-density Development Easement over the land identified in item 2, for the purpose/s stated in item 4, and covenant with each other in terms of Division 4AA of the Land Title Act 1994.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date.....
Registered Owner's Signature

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date.....
Registered Owner's Signature

Guide to Completion of Form 39

General

[39-4010]

A Form 39 – High-density Development Easement is used when a high-density development easement is granted under Part 6 Division 4AA of the *Land Title Act* 1994.

Item 1

[39-4020]

Insert the full name of the parties to the high-density development easement as shown on the current title search, ie the registered owners of both lots affected by the high-density development easement. If the registered owner is a tenant in common, all tenants in common must join in one high-density development easement and not grant high-density development easements individually.

Item 2

[39-4030]

Lot on Plan Descriptions of Affected Land

Insert the lot on plan descriptions of the affected land.

Item 3

[39-4040]

Insert the monetary or other consideration.

Item 4

[39-4050]

The inapplicable purposes must be deleted by being ruled through.

Item 5

[39-4060]

All registered owners of the lots the subject of the high-density development easement must execute as required. Separate executions are required for each registered owner, even if they are the same for both lots.

See also part 60 – Miscellaneous, esp ¶[60-0900] *ff*.

Case Law

[39-7000]

Nil

Fees

[39-8000]

Fees payable to the titles registry are subject to an annual review. See the current:

- *Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m);

Cross References and Further Reading

[39-9000]

Part 40 – Surrender of High-density Development Easement

Part 60 – Miscellaneous, esp ¶[60-0900], ff

Notes in text

[39-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This part does not apply to State land.

^{1,2}Part 40 – Surrender of High-Density Development Easement

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^{1,2}Part 40 – Surrender of High-Density Development Easement

General Law

[40-0000]

A high-density development easement is wholly extinguished by the registration of a surrender of that high-density development easement. As the high-density development easement benefits and burdens both lots, the registered owners of both affected lots must execute a surrender of the high-density development easement. The owner of one of the affected lots cannot, alone, effect the surrender of a high-density development easement.

Practice

Surrender of High-density Development Easement

[40-2000]

The owners of both of the affected lots must together execute the Form 40 – Surrender of High-density Development Easement.

The Certificates of Title for both of the affected lots (if issued) must be deposited for cancellation.

The consent, in Form 18 – General Consent, of any registered mortgagees of the affected lots must also be lodged. Further, the consent of any lessee that receives a benefit from the high-density development easement is also required (s 90(3) and (4) of the *Land Title Act* 1994). Where a mortgagee has ‘consented’ to the surrender by lodging the duplicate Certificate of Title for cancellation, the Form 18 – General Consent is not required.

A high-density development easement may not be partially surrendered.

Lodgement fees are payable and a duty notation is required

Forms

General Guide to Completion of Forms

[40-4000]

For general requirements for completion of forms see part 59 – Forms, esp ¶[59-2000].

QUEENSLAND TITLES REGISTRY
Land Title Act 1994**SURRENDER OF HIGH-DENSITY
DEVELOPMENT EASEMENT**

Duty Imprint

FORM 40 Version 1
Page 1 of 1

Dealing Number

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Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Dealing number of High-density Development Easement being surrendered	Lodger (Name, address, email & phone number)	Lodger Code (if any)
712345678	BROWN & CO 34 QUEEN STREET BRISBANE QLD info@browns.com.au (07) 3224 5398	123
2. Lot on Plan Descriptions of Affected Land	County	Parish
LOT 3 ON SP123456	STANLEY	CHUWAR
		Title Reference
		15432099
LOT 6 ON SP134567	STANLEY	CHUWAR
		16253266
3. Registered Owners		
DAVID JOHN TYSON		
MICHAEL WAYNE SMITH		

4. Surrender/Execution*** Surrender**

The registered owners surrender the High-density Development Easement in item 1 so that the High-density Development Easement is extinguished.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date.....
Registered Owner's Signature

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date.....
Registered Owner's Signature

Guide to Completion of Form 40

Item 1

[40-4010]

Insert the dealing number of the high-density development easement being surrendered (eg 701233245).

Item 2

[40-4020]

Insert the lot on plan descriptions of the affected land. The County, Parish and Title reference for the lots must also be inserted.

Item 3

[40-4030]

Insert the full names of the registered owners of the affected land. If the registered owners of both lots affected by the high-density development easement are the same, the names of the registered owner/s must be inserted twice. If the registered owner is a tenant in common, all tenants in common must join in the one surrender and not surrender the high-density development easement individually.

Item 4

[40-4040]

All registered owners of the lots the subject of the high-density development easement being surrendered must execute as required. Separate executions are required for each registered owner, even if they are the same for of both lots.

See also part 60 – Miscellaneous, esp ¶[60-0900] *ff*.

Case Law

[40-7000]

Nil.

Fees

[40-8000]

Fees payable to the titles registry are subject to an annual review. See the current:

- *Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m);

Cross References and Further Reading

[40-9000]

Part 39 – High-Density Development Easement

Part 60 – Miscellaneous, ¶[60-0900] *ff*

Notes in text

[40-9050]

Note ¹ – This part does not apply to water allocations.

Note ² – This part does not apply to State land.

^{1, 2}Part 45 –Community Title Schemes

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^{1, 2}Part 45 –Community Title Schemes

General Law

[45-0000]

The *Body Corporate and Community Management Act 1997* (the ‘BCCMA’) impacts on a significant proportion of the State’s population. The Act fully replaced the *Building Units and Group Titles Act 1980* at the end of the transitional period except for those developments registered under the specified Acts referred to in s 326 of the BCCMA.

Provisions set out in the *South Bank Corporation Act 1989* apply to bodies corporate created under that Act.

The BCCMA was the subject of an extensive review and was amended by the *Body Corporate and Community Management Act and Other Legislation Amendment Act 2003* which commenced on 4 March 2003. The amendments to the BCCMA provided for but was not limited to:

- the transfer of the ‘titling’ provisions of the BCCM Act to the *Land Title Act 1994*
- greater efficiency in processes involving progressive development of schemes
- allowing a body corporate to own a lot in the scheme for the purpose of allowing a letting agent to reside in the scheme
- providing more guidance in the establishment and adjustment of lot entitlements
- resolving matters associated with the compulsory acquisition of part of a scheme
- enhancing the creation of a layered scheme from a number of existing schemes
- increased obligations on the original owner (developer) of the scheme
- enhanced consumer protection in the buying and selling of lots in a community titles scheme.

¶[45-1000] deleted

Practice

Community Titles Schemes in the Land Registry

Basic Attributes of a Community Titles Scheme

[45-2000]

The *Body Corporate and Community Management Act 1997* (‘BCCMA’) provides for the establishment of community titles schemes over freehold land. A community titles scheme consists of at least two lots and common property.

The following instruments must be lodged to create a community titles scheme:

- a plan of survey, in the appropriate format; and
- a first community management statement (CMS).

The first CMS identifies the scheme land (scheme land comprises all lots and the common property for the scheme) and may also include land other than the land in the accompanying plan of subdivision. All of the lots designated on the plan need not be included in the scheme.

On registration of the plan and the first CMS the following are created:

- a body corporate for the scheme; and
- indefeasible titles for each lot and the common property in the scheme.

Generally, all lots in a community titles scheme should be registered in one name. However, lots owned by different registered owners may be combined in a community titles scheme provided there is no impact on ownership of the lots created by the scheme to prevent creation of indefeasible titles for every lot. If there is an impact on the lots which are created by virtue of the differing ownership, then the registry will require implementing documents to resolve the ownership (see ¶[21-2330]).

The following is provided as an example where there are no land titling ownership issues to resolve:

The subdivision of two lots, each owned by a different person, to create a community titles scheme of five lots and common property where the subdivision is undertaken so that three of the scheme lots come entirely from one of the original lots and the remaining two scheme lots come entirely from the other original lot.

Land cannot be common property for more than one community titles scheme.

Types of Schemes

[45-2020]

The BCCMA allows for the creation of basic schemes and layered arrangements. Both basic schemes and layered arrangements may be developed in stages.

A basic scheme is one where land is subdivided into lots and common property to create a scheme with a single body corporate.

A layered arrangement is a grouping of community titles schemes under a principal scheme (s 18 of the BCCMA). Samples of diagrams included in this part are based on diagrams of examples of layered arrangements shown in Schedule 1 of the BCCMA.

Staged subdivisions occur when an original lot(s) is subdivided into scheme lots and common property and one or more of the scheme lots is then further subdivided. There is a range of permitted methods of dealing with staged subdivisions (see ¶[45-2680]).

A CMS may provide for the scheme to be a 'lease-back scheme' pursuant to s 17 of the BCCMA.

Seal of Body Corporate

[45-2040]

The seal of a body corporate must include the full name for the body corporate, for example:

'Body corporate for Seaview community titles scheme 1234.'

The words ‘community titles scheme’ on the seal may be abbreviated to ‘CTS’, for example:

‘Body corporate for Seaview CTS 1234.’

Executions Under Body Corporate Seal

[45-2060]

Whenever a body corporate authorises the recording of an instrument or document in the Registry, it must be signed under the seal of the body corporate.

By a Body Corporate of a Scheme Where the Standard Module, Small Schemes Module, Accommodation Module or Commercial Module Regulations Apply

If an instrument or document is not signed under seal by at least two committee members, one being the chairperson or secretary (or the secretary or treasurer with another for small schemes), the Registrar of Titles, will require evidence of the authority for the execution. Suitable evidence would be a copy of the ordinary resolution, signed under the body corporate seal by a committee member. For more information about the deposit of supporting documentation see [60-1030].

Where positions on the body corporate have not been filled because the first annual general meeting of the body corporate has not been held, a new CMS may be signed by the original owner under the body corporate seal provided a statutory declaration by the original owner stating that the first annual general meeting has not been held is deposited.

In situations where all scheme lots are owned by the same registered owner and no resolution has been passed regarding the affixing of the seal, it is to be affixed in one of the following ways:

(a) where the registered owner is a natural person and –

(i) is also the sole owner –

‘AB chairperson/secretary, the sole registered owner for an on behalf of the Body Corporate for [scheme name] community titles scheme [number].’

See CMS Example 5.

(ii) is a joint tenant or a tenant in common –

‘AB chairperson/secretary, the nominee of DEF and GHI the sole registered owners for an on behalf of the Body Corporate for [scheme name] community titles scheme [number].’

(b) where the registered owner is a corporation –

‘AB chairperson/secretary, the nominee of XYZ Pty Ltd the sole registered owner for an on behalf of the Body Corporate for [scheme name] community titles scheme [number].’

Where a body corporate manager has been engaged by a body corporate and is executing an instrument or document on their behalf, a copy of the resolution which authorises the body corporate manager to affix the body corporate seal must be deposited with the instrument or document when lodged. The resolution must be made in accordance with the regulation module that applies to the scheme and be certified by the body corporate under the body corporate seal. If the body corporate manager is a company, the body corporate seal must be affixed together

with an execution by the company in a manner permitted by law (e.g. under the seal of the company with the designations of the signatories shown).

See CMS Example 6.

By a Body Corporate of a Specified Two-lot scheme

A specified two-lot scheme body corporate may execute a document as follows:

- (a) the body corporate seal is attached to the document in the presence of—
- the owner of each lot or each owner's representative; or
 - if one person owns both lots, by the owner of the lots or the representative of the owner.

The designation of each signatory must be shown adjacent to their signature, for example 'Lot Owner' or 'Lot Owner Representative'.

If there are two or more co-owners of a lot, the signature of only one co-owner is required;

or

- (b) the manner in which a lot owner agreement directs or authorises (for example by a body corporate manager). A certified copy of the lot owner agreement authorising the engagement of the manager or the other manner of execution, must be deposited with the document (see 60-1030).

Reserving a Name for a Scheme

[45-2080]

See part 14, esp ¶[14-2500]¶

[45-2100] to ¶[45-2120] deleted

Community Management Statement – Principal Document and Basic Requirements

Purpose of a Community Management Statement

[45-2140]

A CMS is a document that identifies scheme land and provides particulars of the scheme in keeping with s 66 of the BCCMA. The particulars include:

- the name of the community titles scheme;
- the name of the body corporate;
- the name and address of the original owner for a first CMS;
- the applicable regulation module;
- a schedule of lot entitlements (contributions and interests);
- the service location diagrams as required by s 66(1)(d) as they relate to the scheme;

- the by-laws (including identification and allocation to lots of any exclusive use areas);
- a future development concept drawing etc if applicable; and
- anything else relating to the regulation module.

Requirements to Record a CMS

[45-2160]

A CMS is not an instrument under the *Land Title Act* 1994 and must be presented with a Form 14 – General Request to be recorded (see part 14, esp ¶[14-2600]). A CMS may only include those things that the BCCMA and the adopted regulation module provide it must or may include.

An existing CMS for a community titles scheme cannot be amended. However, a new CMS for the scheme may be recorded to replace an existing statement.

Execution of a CMS

[45-2180]

First CMS

A first CMS must be executed by the original owner of the scheme land. For further information see example 1.1 First CMS – Basic Scheme.

New CMS

A new CMS must be executed by the body corporate in the manner set out in the regulation module applicable to the scheme. A new CMS must be lodged in the Titles Registry within three (3) months of the date of execution/consent.

For further information see [45-2060] and example 1.2 New CMS – Basic Scheme.

Requirements for a First CMS

[45-2200]

A first CMS must be lodged in the Land Registry with the plan of survey that creates the lots and common property for the scheme. It cannot be recorded unless it is signed by the person(s) who, on establishment of the scheme, is/are the original owner(s). The following requirements of s 66 of the BCCMA must also be completed in the CMS:

- (a) the name of the scheme;
- (b) the regulation module applicable to the scheme;
- (c) the name of the body corporate;
- (d) the description of all scheme land (including common property);
- (e) the full name and address of the original owner;
- (f) the number of the plan deposited with the CMS; and
- (g) completed Schedules A, B, C, D and E.

A local government community management notation certificate signed by an authorised officer/delegate must be endorsed by the relevant local government. That officer's/delegate's full name and designation must be shown.

Requirements for a New CMS

[45-2220]

A new CMS that is to be recorded in the Land Registry must be lodged within three months of being consented to by the body corporate. The following requirements of the BCCMA must also be provided:

- (a) the name of the scheme, including the community titles scheme number;
- (b) the regulation module to be adopted for the scheme;
- (c) the description of all scheme lots (including common property) and if applicable, any additional lot(s) being added to the scheme;
- (d) the full name and address of the original owner applicable to any new lots added to the scheme;
- (e) the number of the plan deposited with the CMS if applicable; and
- (f) completed Schedules A, B, C, D and E.

Item 7 – Local government community management statement notation must be completed by:

- the relevant local government by an authorised officer/delegate; or
- inserting the words 'Not applicable pursuant to s 60(6) of the *Body Corporate and Community Management Act 1997*', if such is the case.

Section 60(6) exempts the requirement for a local government notation if there is no difference between the existing CMS and the new CMS for any issue that the local government could have regard to.

Services Location Diagrams and Statutory Easements for a Community Titles Scheme

[45-2230]

The first CMS and any subsequent new CMS for a scheme where the development approval by the local authority was given on or after 4 March 2003 must include a services location diagram (SLD) for scheme land that is in standard format lots. For a building format plan or volumetric format plan a SLD is required over the common property up to the 'footprint of the building'. It is accepted that a private yard is not common property, however, having regard to the fact that a private yard is 'standard format' in principle (unlimited in height and depth) and outside of the building footprint, a SLD should be prepared if service easements are extant on the private yard.

Where a staged development existed prior to 4 March 2003, a SLD is required for subsequent stages creating lots and common property.

The body corporate must also lodge a request to record a new CMS including a SLD in the following circumstances:

- (a) because of a change in the service easements for the standard format lots included in a community titles scheme, a SLD (the '**original diagram**') included in the community

management statement no longer reflects the location of the current service easements;
or

- (b) a SLD is not included in the community management statement and, after the commencement of s 70, a service easement ('**new easement**') is established for a standard format lot included in the scheme.

The new CMS is to be lodged within one year of when either (a) or (b) above apply.

Item 6 of the Form 14 Request to record new CMS (or first CMS) is to reflect the amendment or inclusion of a SLD.

Schedule D of the CMS form is to include a statement referencing the inclusion of a SLD and annexing the diagrams by way of alpha identifier to this Schedule. The type of statutory easement must be identified in schedule D preferably in the form of a matrix. An example matrix relevant to a building format plan is reproduced for reference:

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on SP12347	Support, shelter and services	
Lot 2 on SP12347	Support, shelter and services	
Lot 3 on SP12347	Support, shelter and services	
Lot 4 on SP12347	Support, shelter and services	

Persons other than a licensed surveyor may prepare a SLD and certification is not required.

Practice Requirements for Recording CMS and Changing a Scheme

[45-2240]

Each CMS lodged, will be allocated a CMS number (a unique identification number) and will be subjected to examination at the discretion of the Registrar of Titles.

The CMS number will be allocated at the time the CMS is lodged in the Land Registry. The CMS number is generated automatically by the Automated Titles System and is printed on the adhesive label that will be attached to the CMS. A second adhesive label is printed and attached to the Form 14 – General Request. The second label will show the dealing number and identify the CMS as either a 'first' or 'new' CMS.

The CMS number allocated to the first CMS that established a community titles scheme will be retained as the permanent reference and will be used for any new CMS lodged during the life of the scheme. The CMS number appears on every indefeasible title created for lots comprised in the scheme, including the common property.

Recording a First CMS Lodged with the Plan Establishing a Community Titles Scheme

[45-2260]

A Form 14 – General Request to record a first CMS and a CMS must be lodged with every plan of subdivision that establishes a community titles scheme. The request and the plan are registered on the existing indefeasible title(s) and the CMS number is brought forward to the indefeasible title created for the scheme common property. The titles created for the lots in the scheme are noted with a reference to the CMS eg 'community management statement 1234' following the description in the 'estate and land' details on the title. No separate notation as to a first or subsequent CMS is made on the indefeasible titles for the lots in the scheme.

Changing a Scheme by a New CMS

[45-2280]

A community titles scheme may be changed by, or in conjunction with, the recording of a new CMS. The scheme is changed when the new CMS is recorded in the Land Registry.

To amend any or all of the provisions contained in a CMS, a complete new CMS must be registered. A Form 14 – General Request must be used in the same manner as for the first CMS and contain a request to the effect that the first CMS be superseded by the CMS included in that request. To facilitate examination, the Request also identifies any schedule(s) which have been changed. On registration, the latest CMS becomes the CMS for the scheme but retains the original CMS number. For example, where land is to be added to a community titles scheme, Item 4 of a new CMS must include reference to the additional parcel as well as the existing scheme lots to identify all of the scheme land. The Request to record a new CMS is registered on the title for the additional parcel and the title for common property for the scheme.

Recording a New CMS

[45-2300]

A new CMS is recorded by the registration of a Form 14 – General Request to record the ‘new’ CMS. This occurs only on the indefeasible titles for the scheme common property and any lot(s) being added to or removed from the scheme.

A new CMS may be lodged with or without a plan. However, a new CMS must be lodged with every plan that subdivides scheme land.

Changing the Name of a Scheme

[45-2320]

An essential prerequisite to changing the name of a scheme by the body corporate is to check that the proposed new name is available for use. To ensure that the name remains available it is advisable that the proposed name be reserved. A reservation of name for this purpose is recorded for the proposed scheme on registration of a Form 14 – General Request. See part 14, esp ¶[14-2500].

A change of name for a scheme is made by recording a new CMS to record the change of name only or may be included with other changes when recording a new CMS.

Where a change of name of a community titles scheme is to be recorded, Items 1 and 5 of the Form 14 – General Request must show the new name, Item 2 must describe the common property in the former name and Item 3 must also show the former name. Item 6 should state that the new CMS is changing the name of the scheme and any other amendments, if applicable, and may be worded as follows:

‘I hereby request that: the new community management statement deposited herewith which amends the scheme name (and Schedules A and C and Item 2 regulation module, if applicable) be recorded as the community management statement for [scheme name] community titles scheme [scheme number].’

If the Form 14 is executed by the body corporate the seal of the new name must be affixed.

The CMS must show the new name in Items 1 and 3, Item 4 must describe the common property in the new name and should be signed under the seal of the new name.

Searching Community Title Schemes

[45-2340]

To search a community titles scheme, the searcher must provide either the name of the community titles scheme (eg Seaview), the community titles scheme number (eg 1234) or the plan number of a lot in the scheme (eg SP902468).

The following searches relevant to schemes are available and each provides particular information.

A Community Titles Scheme Search Statement attracts a regulated fee and reveals:

- the name of the community titles scheme;
- the name of the body corporate and its latest recorded address;
- the community management statement number; and
- the lots and title references for the lots in the scheme, including the common property title reference.

A search of the title for the common property attracts a regulated fee and reveals:

- the name of the community titles scheme;
- the name of the body corporate and its latest recorded address;
- all registered interests over the common property land;
- the dealing number of the current CMS; and
- where applicable, the dealing number(s) of any by-laws which were recorded before the commencement of the *Body Corporate and Community Management Act 1997*.

As from 13 July 1997, every instrument (eg lease or easement) that relates to the common property for a community titles scheme is registered only on the title for the common property (i.e. not on the plan as was the practice prior to that date).

A copy of the registered plan for the scheme may be obtained on request and payment of the regulated fee.

A search of a first CMS or new CMS attracts a regulated fee and comprises a copy of the Form 14 – Request to record CMS and the CMS.

A search of a standard CMS attracts a regulated fee and comprises:

- a copy of the standard CMS; and
- copies of all by-laws recorded in the Land Registry.

The copies of the registered by-laws are made available owing to the legislative requirements which authorise a standard CMS. Those requirements relate to bodies corporate in existence prior to the commencement of the *Body Corporate and Community Management Act 1997*, and will apply where a new CMS has not been recorded.

A standard CMS is a CMS created under s 339(5)(a) of the *Body Corporate and Community Management Act 1997*. The re-numbered transitional provision (which was formerly s 285(5)(a) of the *Body Corporate and Community Management Act 1997*) provides that a scheme in existence prior to 13 July 1997 retains its existing by-laws. Accordingly, all registered by-laws as part of a search of a standard CMS.

Copies of other instruments recorded on the registered plan will be provided on payment of the regulated fee.

Accessing the CMS

[45-2360]

A copy of a first or new CMS may be obtained by reference to the dealing number. That reference may be obtained from either a search of the indefeasible title for the common property for the scheme or a Community Title Scheme Search Statement. Only the latest CMS for a scheme will be provided if a request for a copy of the CMS number is received.

Title for Common Property

[45-2380]

When a community titles scheme is established, the Registrar must create an indefeasible title for the common property for the scheme, however, no certificate of title can be issued for common property (s 41C of the *Land Title Act 1994*). The indefeasible title for common property can be searched on payment of the prescribed fee.

The common property for a community titles scheme is owned by the registered owners of the lots included in the scheme. They hold the common property as tenants in common in shares proportionate to the scheme's interests schedule (i.e. the lot entitlements for the respective lots). However, the body corporate is taken to be the registered owner of the common property for dealings with the fee simple. See s 41C(3) of the *Land Title Act 1994*.

The fee simple title for common property cannot be mortgaged. The common property may not be sold or transferred other than in accordance with s 41C(3) of the *Land Title Act 1994*.

In a search of an indefeasible title for common property, the body corporate will be displayed as the registered owner and the address for service of notices as recorded will also be revealed (required by s 315 of the BCCMA), for example:

REGISTERED OWNER

BODY CORPORATE FOR SEAVIEW COMMUNITY TITLES SCHEME 1234

SERVICE ADDRESS

GPO Box 10000

BRISBANE QLD 4001

If a body corporate manager has been recorded for a scheme, this will be displayed in the 'Service Address' field of the search, for example:

REGISTERED OWNER

BODY CORPORATE FOR SEAVIEW COMMUNITY TITLES SCHEME 1234

SERVICE ADDRESS

A BODY CORPORATE MANAGEMENT PTY LTD

GPO Box 10000

BRISBANE QLD 4001

The 'Estate and Land' field of the search will show, for example:

COMMON PROPERTY OF SEAVIEW COMMUNITY TITLES SCHEME 1234

Change of Address of a Body Corporate

[45-2400]

The address for service of notices on the body corporate for a community titles scheme is the address recorded on the indefeasible title for the common property. The address is a requisite of the Form 14 – General Request with the first CMS for a scheme.

To change the address of a body corporate, a Form 14 – General Request by the body corporate requesting that a new address for service be recorded must be lodged. Alternatively, a change of service address may be incorporated as a component being amended in a new CMS provided the regulated lodgement fee for each transaction is paid (see also part 14, esp ¶[14-2700]).

Body Corporate Dealing with Scheme Land

Body Corporate Acquisition of and Dealing with a Lot Included in its own Scheme

[45-2420]

Chapter 2 Part 5 Division 3 of the BCCMA provides for a body corporate of a community titles scheme to acquire and/or deal with a lot included in its own scheme.

For a body corporate the interest in a lot included in its own scheme is restricted to:

- 1 registering an easement for one or more basic utility services (s 44 of the BCCMA); or
- 2 acquiring a lot to create additional common property (s 37 of the BCCMA); or
- 3 acquiring a lot after the original owner control period has ended and converting the lot to common property and subsequently registering a lease for a residence for a letting agent and/or service contractor (s 40 of the BCCMA).

Body Corporate May Deal with Land as Common Property

[45-2440]

A body corporate may acquire additional land to be included in the common property for the community titles scheme. If additional land is acquired for common property, it becomes part of the scheme land for the community titles scheme and the transfer and a new CMS must be recorded (see ¶[45-2540]).

When additional common property is acquired for a scheme, all mortgages must be discharged before it can be transferred to the body corporate. This requirement is mandatory as the fee simple interest in common property cannot be subject to mortgage (s 41C(3) of the *Land Title Act 1994*).

A body corporate may also dispose of part of the common property. A plan of subdivision, a transfer of the part of the common property being sold and a new CMS are required (see ¶[45-2580]).

However, when dealing with land as common property a body corporate must not carry on a business (s 96 of the BCCMA) (see also ¶[45-2520]).

Acquiring a Lot for Conversion to Common Property for a Residence for a Letting Agent or Service Contractor

[45-2445]

The following steps/instruments are required:

- 1 Interests currently registered over the lot must be dealt with (eg any mortgages must be released or leases surrendered).
- 2 Transfer of the lot to the body corporate.
- 3 Plan of survey converting the lot to common property.
- 4 New CMS.
- 5 Lease to the letting agent and/or service contractor.

When dealings of this nature are lodged the Registrar is assuming that the original owner control period has ended (s 40(1) of the BCCMA). Requisitions will only issue where it is obvious that the application is within the control period. All the dealings must be registered simultaneously.

The requirements of the instruments lodged are as follows:

Survey Plan

- The survey plan must only be for the purpose of creating the additional common property. This precludes any other actions/surveys being dealt with on the same plan.
- The plan is to be signed by the body corporate.
- The approval of the local government is not required (s 50(g)(iii) of the *Land Title Act* 1994).

New CMS

- Item 6 of the Form 14 – Request for new CMS must clearly indicate that the conversion of the lot to CP is pursuant to s 40 of the BCCMA. This will identify that the intent of the New CMS is to lease the new common property to a letting agent or service contractor.
- Other schedules are not precluded from being amended, provided they satisfy all other requirements.
- If the conversion is in a layered arrangement, then a new CMS for the principal scheme must also be lodged.

Lease

- A Certificate under the Regulation Module is to be deposited with the Lease.
- There is no requirement to ensure lease term and any amendments comply with relevant regulation module.

- If the term of the lease with options for renewal is more than 10 years the approval of the local authority is **not** required to be deposited.
- The leased area may be described as part of the common property being ‘formerly Lot 4 on SP [number]’ or a new plan of survey or explanatory plan may be lodged.

Reconversion requirements

[45-2450]

The following instruments are required to be lodged:

- 1 Surrender, cancellation or determination of the lease to the letting agent and/or service contractor.
- 2 Plan of survey converting the common property to a lot.
- 3 New CMS.
- 4 Transfer of the lot from the body corporate to the new owner.

All the dealings must be registered simultaneously. The requirements of the instruments are as follows:

Surrender of Lease

The usual land registry requirements for surrender of lease apply.

Survey Plan

- The survey plan must only be for the purpose of converting the common property to a lot in the scheme.
- The plan is to be signed by the Body Corporate.
- The approval of the local government is not required (s 50(g)(iii) of the *Land Title Act* 1994).

New CMS

- Item 4 of the Form 14 – Request to register new CMS is amended by including the new lot in the scheme land.
- Item 6 of the Form 14 – Request to register new CMS is to include wording similar to ‘for converting part of the common property to a lot pursuant to s 40 of the BCCMA.
- Schedule A of the CMS is amended by including the new lot in the scheme.
- The Form 14 – Request and the New CMS are signed by the body corporate.

Transfer of Lot from the Body Corporate to purchaser

- The Form 1 – Transfer is signed by the body corporate.
- A certificate under the Regulation Module must be deposited.

¶[45-2460] deleted

Adding or Excluding a Lot to/from a Community Titles Scheme

Adding a Lot to a Community Titles Scheme

[45-2480]

A lot may be added to an existing community titles scheme, provided s 115H(4) of the *Land Title Act* 1994 is satisfied in that the lot to be added must form a continuous area of land with part of existing scheme land. To add a lot to an existing scheme, a new CMS that specifies the lot(s) to be added must be lodged and registered. However, a lot within another existing community titles scheme may not be added to a community titles scheme.

The Form 14 – Request to record the new CMS must be completed as follows:

- Item 2 - include both the description and title reference for the common property and the lot to be added;
- Item 3 and Item 5 - show the name of the registered owner of the lot to be added and the name of the body corporate;
- Item 6 - the lot being added to the scheme must be identified, and state that Item 4 and Schedule A of the CMS are being amended; and
- be signed by either a solicitor or both the registered owner of the lot to be added and the body corporate.

The CMS must be signed by the registered owner of the lot to be added and the body corporate for the scheme.

On registration of the CMS the community titles scheme number will be noted on the indefeasible title for the additional lot(s).

Excluding a Lot from Scheme Land in a Community Titles Scheme

[45-2500]

A lot may be excluded from a community titles scheme by lodging and registering a new CMS that identifies the lots remaining in the scheme. However, a lot may only be excluded if:

- the excluded lot is capable of being held as a separate lot in either a standard or volumetric format plan; and
- at least two lots will remain in the scheme.

If the lot to be excluded is a lot identified on a group title plan the lot must be first converted, by a plan of survey, to a standard format lot on a survey plan.

The Form 14 – General Request to record the new CMS must be completed as follows:

- Item 2 - include both the description and title reference for the common property and the lot to be excluded;
- Item 3 and Item 5 - show the name of the registered owner of the lot to be excluded and the name of the body corporate;

- Item 6 - the lot(s) being excluded from the scheme must be identified, and state that Item 4 and Schedule A of the CMS are being amended; and
- be signed by either a solicitor or the body corporate.

On recording the new CMS, the community titles scheme number will be removed from the indefeasible title for the excluded lot(s).

Subdividing Common Property to Create a New Lot within the Scheme

[45-2520]

Additional lot(s) may be created from the common property in a community titles scheme. In these instances, the following documents must be lodged in the order shown:

- 1 a survey plan that is signed by the body corporate that defines the additional lot(s) (a certificate authorising the transaction in accordance with the relevant regulation module, and a statement that s 96 of the BCCMA is not contravened, signed under the seal of the body corporate must be deposited with the survey plan); and
- 2 a transfer from the body corporate to the intended owner of each new lot; and
- 3 a new CMS that reflects the changes to Item 4 and Schedule A.

All of the documents are recorded on the indefeasible title for the common property in the scheme.

Lot to be Added to Common Property

[45-2540]

If all or part of a lot outside a community titles scheme is to be added to the common property for the scheme, the new lot must adjoin the scheme (unless permitted otherwise) to ensure the scheme remains a single, continuous area of land (s 115H of the *Land Title Act 1994*).

A lot or part of a lot within a scheme may also be added to the common property for the scheme.

Section 49DA of the *Land Title Act 1994* Applies

Where a lot or part of a lot, within a community titles scheme is to be converted into additional common property, and Schedule B or the concept plan in the current recorded CMS for a scheme indicates this, the common property will be created on registration of a plan that spatially identifies the area of additional common property without additional documentation being required (s 49DA of the *Land Title Act 1994*). [See 45-2680].

Section 49DA of the *Land Title Act 1994* Does Not Apply

Where s 49DA of the *Land Title Act 1994* does not apply (that is, Schedule B or the concept plan in the current recorded CMS for a scheme does not indicate that the lot is intended to be converted into additional common property) and only part of a lot is being added, it must first be subdivided by either a standard, building or volumetric format plan (as appropriate) to designate the area that is being transferred to the body corporate as a separate lot, if applicable. In these instances, the following documents must be lodged in the order shown:

- 1 a plan of subdivision (if required);
- 2 a transfer to the body corporate of the lot that is to become common property;

- 3 a new CMS to bring the lot into the scheme (if required);
- 4 a compiled plan, signed by the body corporate, converting the acquired lot to common property. The description on this plan must be 'common property subdividing (the lot/plan description of the lot acquired)'; and
- 5 a new CMS that incorporates the additional common property.

The plan (1), transfer (2) and plan (4) will be recorded on the indefeasible title for the lot(s) being converted to common property. The Request to record the new CMS will be recorded on the indefeasible title for scheme's common property. On the indefeasible title for scheme's common property it will also be noted that additional common property has been added to the scheme by virtue of the plan and transfer.

Where s 49DA of the *Land Title Act* 1994 does not apply and the whole of a lot is to be added, steps 2 to 5 above must be followed.

It is not necessary for the new common property to be amalgamated with the existing common property by a plan of amalgamation.

Lot to be Added to a Community Title Lot

[45-2560]

This option is generally not available in a community titles scheme that comprises lots created by a building format plan. However, if the scheme comprises only part of a building, another lot within that building may be added to the scheme.

All or part of a lot that is outside a community titles scheme may be added to a lot in a community titles scheme if the lot or part of the lot to be added to the scheme adjoins the scheme land. If only part of a lot is to be added, the lot must first be subdivided by either a standard or volumetric format plan to create a separate lot to add to the scheme lot. The following documents are required to be lodged in the order shown:

- 1 plan of subdivision (if required);
- 2 transfer, over the lot to be transferred, in favour of the registered owner of the community title lot;
- 3 a new CMS to bring the lot into the scheme;
- 4 compiled plan in the appropriate format amalgamating the community titles lot and the lot being added;
- 5 a new CMS which amends Item 4 and Schedule A.

The Form 14 – General Request to record the new CMS (3) must state in Item 2 the land description and title reference for the common property for the scheme and the lot on plan description and title reference for the lot(s) to be included. Item 6 should refer to the lot(s) to be included in the community titles scheme and the schedule(s) to be amended.

Items 3 and 5 of the Form 14 should also include the owner of the lot. Both the body corporate and the registered owner of the lot added to the scheme must execute in Item 8 of the CMS.

The transfer (2) and plan (4) are recorded over their relative indefeasible titles simultaneously. The Request to record the new CMS (5) is recorded on the indefeasible title for common property for the scheme and the indefeasible title for the lot.

Part of Common Property to be Excised from a Community Titles Scheme

[45-2580]

Before part of the common property in a community titles scheme can be excised from the common property for the scheme, the part must first be designated as a separate lot by a standard or volumetric format plan.

Part of Common Property on a Standard or Volumetric Format Plan being Excised

[45-2600]

If the part of the common property that is being excised is a standard or volumetric format lot, the following documents are required to be lodged in the order shown:

- 1 a standard or volumetric format plan that shows the part of the common property to be excised as a standard or volumetric lot. The plan is to be approved by the relevant planning body and be prepared in accordance with directions 8 or 10 and 12 of the Registrar of Titles Directions for the Preparation of Plans;
- 2 a transfer of the standard or volumetric lot being excised; executed by the body corporate as transferor. The transfer is to be accompanied by the certificate/s required under the relevant regulation module that authorise the transaction (e.g. s 161(6) of the *Body Corporate and Community Management (Standard Module) Regulation 2008*) and a statement under seal by the body corporate stating s 96 of the *Body Corporate and Community Management Act 1997* has not been contravened;
- 3 a new CMS that identifies the extent of the scheme land by reference to the scheme land at item 4 and to the plan at item 6 of the CMS; and
- 4 The Form 14 – General Request that accompanies the new CMS must state in Item 2 the land description and title reference for the common property for the scheme and the lot on plan description, and title reference for the lot(s) to be excised. Item 6 should refer to the lot(s) to be excised from the community titles scheme and, if applicable, the schedule(s) to be amended.

The plan, transfer and request to record new CMS will be recorded on the indefeasible title for common property for the scheme. The request to record new CMS will also be recorded on the indefeasible title for the lot to be excised.

Part of Common Property on a Building Format Plan Outside a Building or Structure Being Excised

[45-2620]

If the part of the common property that is being excised is on a building format plan and outside a building or structure, the following documents are required to be lodged in the order shown:

- 1 a standard or volumetric format plan that shows the part of the common property to be excised as a standard or volumetric lot. The plan is to be approved by the relevant planning body and be prepared in accordance with directions 8 or 10 and 12 of the Registrar of Titles Directions for the Preparation of Plans.;
- 2 a transfer of the standard or volumetric lot(s) being excised; executed by the body corporate as transferor. The transfer is to be accompanied by the certificate/s required under the relevant regulation module that authorise the transaction (e.g. s 161(6) of the *Body Corporate and Community Management (Standard Module) Regulation 2008*) and

- a statement under seal by the body corporate stating s 96 of the *Body Corporate and Community Management Act 1997* has not been contravened;
- 3 a new CMS that identifies the extent of the scheme land by reference to the scheme land at item 4 and to the plan at item 6 of the CMS; and
 - 4 The Form 14 – General Request that accompanies the new CMS must state in Item 2 the land description and title reference for the common property for the scheme and the lot on plan description, and title reference for the lot(s) to be excised. Item 6 should refer to the lot(s) to be excised from the community titles scheme and, if applicable, the schedule(s) to be amended.

Part of Common Property on a Building Format Plan within a Building or Structure Being Excised

[45-2640]

If the part of the common property that is being excised is on a building format plan and within a building or structure, the following documents may be required to be lodged in the order shown:

- 1 a volumetric format plan that shows the part of the common property to be excised as a volumetric lot. The plan is to be approved by the relevant planning body and prepared in accordance with directions 10 and 12 of the Registrar of Titles Directions for the Preparation of Plans;
- 2 a transfer of the volumetric lot being excised; executed by the body corporate as transferor. The transfer is to be accompanied by the certificate/s required under the relevant regulation module that authorise the transaction (e.g. s 161(6) of the *Body Corporate and Community Management (Standard Module) Regulation 2008*) and a statement under seal by the body corporate stating s 96 of the *Body Corporate and Community Management Act 1997* has not been contravened;
- 3 a new CMS that identifies the extent of scheme land by reference to the scheme land at item 4 and the plan at item 6 of the CMS; and
- 4 The Form 14 – General Request that accompanies to record the new CMS must state in Item 2 the land description and title reference for the common property for the scheme and the lot on plan description and title reference for the lot(s) to be excised. Item 6 should refer to the lot(s) to be excised from the community titles scheme and ,if applicable, the schedule(s) to be amended.

Depending on the individual circumstances and situation, one of the following may be required:

- 5 A further plan that amalgamates the volumetric lot being excised from the common property with an adjoining volumetric lot; OR
- 6 A Form 31 – Covenant, pursuant to s 97A (3)(c) of the *Land Title Act 1994* which links the volumetric lot being excised with another lot

A Lot or Part of a Lot Excised from a Community Titles Scheme

[45-2660]

When either a standard or volumetric area is to be excised from a community titles scheme, the following requirements apply:

- 1 if the **whole** of a standard or volumetric lot is to be excised, the following documents are required to be lodged in the order shown –
 - (i) a transfer of the lot from the registered owner to the purchaser, (if required); and
 - (ii) a new CMS for the remainder of the scheme.
- 2 if only **part** of a standard or volumetric lot is to be excised, the following documents are required to be lodged in the order shown –
 - (i) a standard or volumetric format plan that subdivides the lot affected;
 - (ii) a transfer of the lot to be excised from the registered owner to the purchaser (if required); and
 - (iii) a new CMS for the remainder of the scheme

The Form 14 – General Request to record the new CMS must state in Item 2 the land description and title reference for the common property for the scheme and the lot on plan description and title reference for the lot(s) to be excised. Item 6 should refer to the lot(s) to be excised from the community titles scheme and the schedule(s) to be amended.

The plan (if required) and transfer will be recorded on the indefeasible title for the lot being excised. The new CMS will be registered simultaneously on the indefeasible title for common property for the scheme and the indefeasible title for the lot to be excised from the scheme.

Resumptions over scheme land in a Community Titles Scheme

[45-2670]

Where part of a community titles scheme is to be resumed by a constructing authority in accordance with the *Acquisition of Land Act 1967* the following instruments must be lodged for registration:

- 1 Plan of subdivision in the appropriate format; and
- 2 Request to record new CMS; and
- 3 Resumption instrument.

The requirements for the instruments lodged are as follows:

1 Plan of subdivision

The plan may only deal with the resumption action and must be signed by the constructing authority.

2 Request to record new CMS

Only changes from the previous contribution schedule lot entitlements the subject of the resumption can be altered in Schedule A of the CMS. Differences in the contribution schedule lot entitlements must be explained.

If the resumption affects an exclusive use area or services location diagrams, Schedule E and any relative diagram must also be amended. No other alterations or amendments in the CMS are permitted.

The consent of the local government is not required in item 7 of the CMS (s 60(6)(b)(ii) of the BCCMA). However, the item must be marked 'N/A'

The Form 14 may be signed by the body corporate or a solicitor for the applicant. The CMS at Item 8 is to be signed by the body corporate.

Alternatively, if the body corporate has not signed the Form 14 and the new CMS, the constructing authority may sign the Form 14 and new CMS on behalf of the body corporate (ss 51 (7) to (9) of *Body Corporate and Community Management Act 1997*).

3 Resumption instrument

The current requirements for a resumption instrument apply (see part 14 – General Request, esp ¶[14-2320]).

Staged Subdivisions

[45-2680]

A staged subdivision exists when the first CMS for a scheme indicates that the scheme is to be developed progressively. An explanation of the staged development for the scheme is required in Schedule B of the first CMS and the explanation of the remaining development outlined in the CMS lodged with each subsequent stage until the development has been completed. Concept drawings that show how the scheme is to be progressively developed must be deposited with the CMS.

Staged subdivision is distinctly different from a decision made by one or more lot owners to re-subdivide their lot(s) and/or common property to change the shape or number of lots or add to or reduce the size of the common property. In such instances a decision to re-subdivide will not be anticipated in the first CMS or included in a development master plan.

A range of options are available for implementing the staged development of what will ultimately become a community titles scheme. Some typical methods are explained in the following paragraphs. Regardless of the option that best accommodates the needs of the scheme, all land that will be comprised in either a current or future stage of the scheme must be revealed in the first CMS so that:

- all indefeasible title(s) are noted with the CMS number;
- all lots are identified as scheme land; and
- a composite 'Schedule of Lot Entitlements' is revealed.

Where a further stage of a scheme is being created by the registration of a plan of subdivision, the additional common property created in the further stage becomes common property for the scheme on registration of the plan only if Schedule B or the concept plan contained in the current recorded CMS for the scheme indicates that additional common property may be created (s 49DA of the *Land Title Act 1994*). If s 49DA of the *Land Title Act 1994* does not apply to the creation of additional common property, the procedure outlined in [45-2540] should be followed.

A new CMS must be lodged with each subsequent plan that creates a further stage of the scheme. If a progressive subdivision is by a building format plan, common property must be created on that plan unless the plan is subdividing or amalgamating lots on a registered building format plan (s 49C(2) of the *Land Title Act 1994*).

As the fee simple interest in common property cannot be subject to mortgage (s 41C(3) of the *Land Title Act* 1994) and because every mortgagee must consent to the plan, no release of the mortgage as far as it relates to new common property is necessary.

Method 1

[45-2700]

In a situation where the base parcel for a community titles scheme consists of one or more lots, these lots may be subdivided into lots on either a standard or a volumetric format plan. The lots created are referred to in this Part as the 'original lots'.

One or more of those original lots may then be further subdivided into lots and common property by either a standard, volumetric or building format plan.

The CMS that is lodged with the first plan that creates common property for the scheme will reveal that the original lots, the subdivided lots and the common property are all part of the community titles scheme. It will also reveal the proposed development in stages for the lots.

Method 2

[45-2720]

The base parcel for a community titles scheme may be subdivided into lots and all or part of the proposed common property by either a standard or volumetric format plan.

The CMS that is lodged with that plan will reveal the proposed development in stages for the lots.

Method 3

[45-2740]

The base parcel for a community titles scheme may be subdivided into lots and all or part of the proposed common property by either a standard or volumetric format plan.

A lot may then be subdivided out of the common property and transferred to a third party for development as part of the original scheme.

The new CMS lodged with the plan that subdivides the common property will reveal that the lot is intended to remain part of the scheme and is for future subdivision.

Method 4

[45-2760]

The base parcel for a community titles scheme that is made up of standard format lots only may be subdivided by a building format plan. That plan may create building format lots and all or part of the proposed common property and leave a parcel remaining that is not common property. The remaining parcel is still a standard format lot.

The CMS that is lodged with that plan will reveal the proposed staged development of the remaining standard format lot if it is to be included in the scheme.

Layered arrangements

[45-2780]

A layered arrangement occurs when the CMS for a principal scheme indicates that one or more of the scheme lots will be further subdivided to create a separate scheme that will be a

subsidiary of the principal scheme. Diagrams A and B illustrate the potential structures of layered arrangements.

Each subsidiary scheme created retains the lot entitlements allocated to the lot of the principal scheme on registration of the plan that created the principal scheme. The CMS for the principal scheme describes in Schedule A each subsidiary scheme as ‘Community Titles Scheme [name] [number (if known)]’ instead of a lot on plan.

On registration of each plan that creates a further layer or subdivides any lot within a subsidiary scheme, a new CMS must be lodged for both the principal scheme and the subsidiary scheme. However, if scheme land for the principal scheme only is subdivided, a new CMS for the principal scheme only is required.

On creation of a subsidiary scheme, a new body corporate is established and that body corporate represents the subsidiary scheme on the body corporate for the principal scheme.

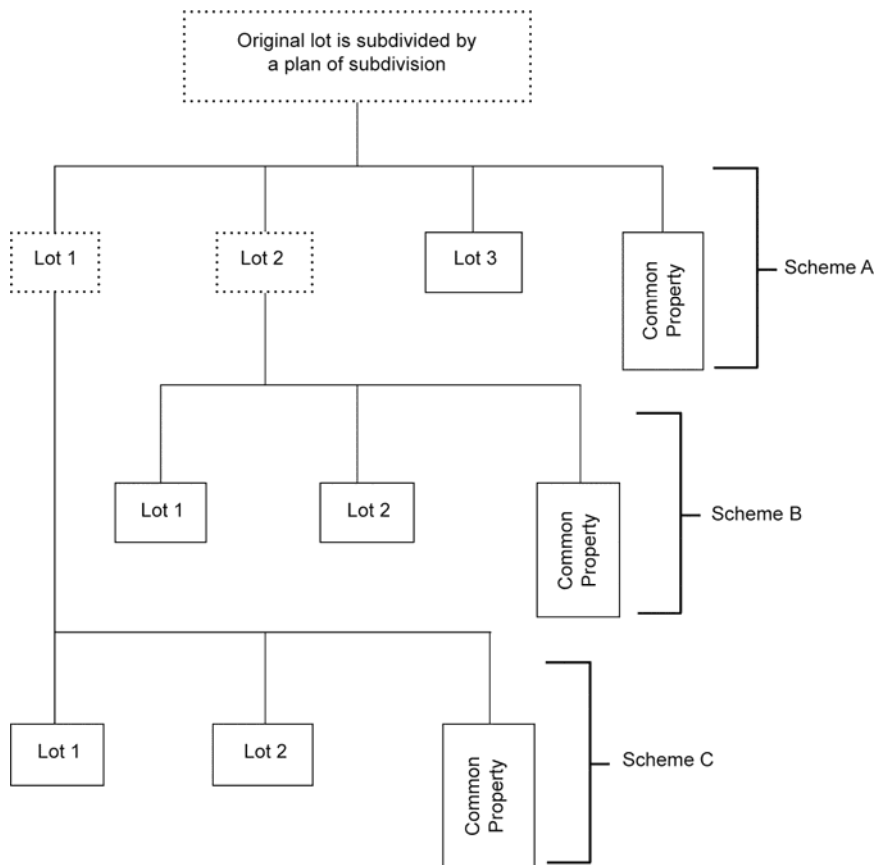
When establishing a layered arrangement, Schedule B of the CMS for the principal scheme should clearly set out details of the proposed layered development structure. If this information is disclosed in Schedule B of the CMS for the principal scheme, details of lot entitlements or plan numbers for subsidiary scheme(s) need not be shown. Each layer only requires approval by ordinary resolution of the body corporate for the scheme to which the lot being subdivided belongs, provided the CMS for the subsidiary scheme is in accordance with Schedule B of the CMS for the principal scheme. Any development that differs from Schedule B of the CMS for the principal scheme requires consent of the body corporate of the principal scheme by a resolution without dissent.

The CMS lodged with each plan that creates a subsidiary scheme must be a ‘first’ CMS and must be signed by the owner of the lot(s) being subdivided to create the scheme.

The indefeasible titles created for the lots and common property for a subsidiary scheme will show the references to their own CMS number and the CMS for the principal scheme. If a scheme is a subsidiary of another subsidiary scheme, the indefeasible titles created will refer to the CMS numbers of all higher schemes as well as its own.

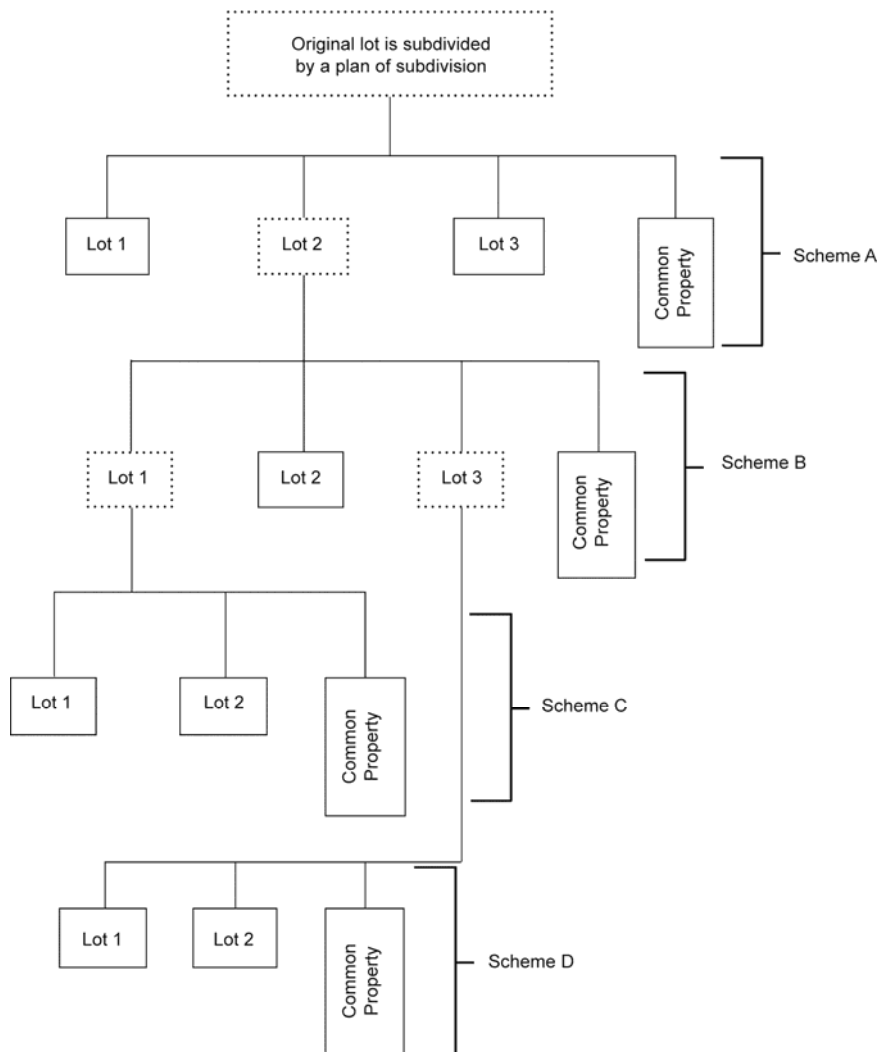
If the first CMS and if that first CMS has been replaced the current CMS, for a scheme indicates that additional common property for the principal scheme will be created on registration of a subsidiary scheme, the additional common property for the principal scheme is created on registration of the plan and CMS for the subsidiary scheme.

As the fee simple interest in common property cannot be subjected to mortgage (s 41C(3) of the *Land Title Act 1994*) and because every mortgagee must consent to the plan, no release of the mortgage, as far as it relates to the new common property, is necessary.

Diagram A – Illustration of a Simple Layered Arrangement of Schemes

Lots 1 and 2 in Scheme A are subdivided by further plans of subdivision to create basic Schemes B and C.

Accordingly, Lots 1 and 2 in Scheme A are themselves community titles schemes.

Diagram B – Illustration of a More Complex Layered Arrangement of Schemes

For the more complex **layered arrangement of community titles schemes** illustrated:

- Scheme A is the principal scheme because it is not a lot included in another community titles scheme.
- Scheme B is both a **subsidiary scheme** for Scheme A and a lot included in Scheme A, and includes three lots, two of which are community title schemes (Schemes C and D).
- Schemes C and D are both **basic schemes** because none of the lots included in either scheme is another community titles scheme.
- Schemes C and D are also **subsidiary schemes** for both Schemes A and B. However, neither Scheme C nor Scheme D is a lot included in Scheme A, but each scheme is a lot included in Scheme B.
- **Scheme land** for Scheme D consists of Lot 1, Lot 2, and the common property for Scheme D.
- **Scheme land** for Scheme C consists of Lot 1, Lot 2, and the common property for Scheme C.
- **Scheme land** for Scheme B consists of Lot 2, the common property for Scheme B, the scheme land for Scheme C and the scheme land for Scheme D.

- **Scheme land** for Scheme A consists of Lot 1, Lot 3, the common property for Scheme A, and the scheme land for Scheme B.

Definitions for Transitional Provisions

[45-2840]

‘Existing 1980 Act plan’ means:

- (a) a former building units plan or group titles plan within the meaning of s 5(1) of the 1980 Act; or
- (b) a building units plan or group titles plan registered under the 1980 Act; to which, immediately before the commencement, the 1980 Act applied, other than as a plan brought into existence for a ‘specified Act’.

‘Future 1980 Act plan’ means a building units plan or group titles plan registered under the 1980 Act after the commencement, other than a building units plan or group titles plan brought into existence for a ‘specified Act’.

‘New scheme’ means the community titles scheme established under Chapter 8 Part 1 of the BCCMA), for a 1980 Act plan.

‘1980 Act’ means the *Building Units and Group Titles Act 1980*.

‘1980 Act plan’ means an existing 1980 Act plan or a future 1980 Act plan.

‘Specified Act’ means:

- (a) *Integrated Resort Development Act 1987*; or
- (b) *Mixed Use Development Act 1993*; or
- (c) *Registration of Plans (H.S.P. (Nominees) Pty Limited) Enabling Act 1980*; or
- (d) *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty Limited) Enabling Act 1984*; or
- (e) *Sanctuary Cove Resort Act 1985*.

Existing 1980 Act Plans

[45-2860]

The following applies to each existing 1980 Act plan:

- on commencement of the BCCMA, a community titles scheme was established for each existing plan;
- the community titles scheme established is a basic scheme;
- each lot on the existing plan becomes a lot in the community titles scheme that was established;
- the scheme land for the new community titles scheme is all of the land that is included in the parcel for the existing plan;
- each item of additional common property under the 1980 Act (Part 2, Division 2) for the existing plan (other than a parcel of additional common property acquired as freehold

land and incorporated into the common property for the existing plan) became a body corporate asset for the community titles scheme that was established; and

- any exclusive use by-law that applied to an item of common property and has continuing effect under Chapter 8 Part 1, applies to that body corporate asset;
- the community titles scheme that was established is deemed to include by-laws identical to the by-laws in force before commencement of the BCCMA;
- the body corporate established under the 1980 Act for the existing plan was taken to be, without change to its corporate identity, the body corporate for the new scheme;
- a person who immediately before commencement of the BCCMA held the office of chairperson, secretary, treasurer or member of the committee of the body corporate for the existing plan continued in the corresponding office under the BCCMA as if elected or appointed to that office under the BCCMA; and
- the original proprietor for the existing plan becomes the original owner for the community titles scheme that was established.

Application of 1980 Act to Plans Not for a ‘Specified Act’

[45-2880]

A 1980 Act plan **lodged before** the commencement of the BCCMA may be registered under the 1980 Act.

An instrument (transfer, easement, etc of a lot(s) on the plan) executed for the purpose of the plan before the commencement, may be registered under the 1980 Act.

Application of 1980 Act to Plan for a ‘Specified Act’

[45-2900]

For every building units plan or group titles plan that was **registered before** commencement of the BCCMA, the 1980 Act continues to apply to the plan after commencement, subject to the specified Act.

Every building units plan or group titles plan that was **lodged** for registration under the 1980 Act **before** commencement of the BCCMA may be registered after the commencement and the 1980 Act applies on and from commencement, subject to the specified Act.

Every building units plan or group titles plan that was **lodged** for registration under the 1980 Act within six months **after** commencement of the BCCMA was registered under the 1980 Act. The 1980 Act applies to the plan on and from its registration, subject to the specified Act.

However, every plan that is lodged for registration under a specified Act on or after 13 July 1997 must comply with all provisions of the specified Act.

An instrument (transfer, easement, etc) affecting a lot on the plan that was executed for the purposes of the plan may be registered regardless of whether it was executed before or after commencement of the BCCMA.

Classification of Existing Plan

[45-2920]

The following applied immediately upon establishment of a community titles scheme for an existing plan:

- a building units plan is taken to be a ‘building format plan’ under the *Land Title Act* 1994.
- a group titles plan –
 - (a) is taken to be a ‘standard format plan’ under the *Land Title Act* 1994; and
 - (b) all easements that applied under s 15 (Support) and s 17 (Services) of the 1980 Act apply to the community titles scheme that was established on commencement of the BCCMA.

Future 1980 Act Plans

[45-2940]

The following applies to each future 1980 Act plan:

- immediately, upon registration of a future 1980 Act plan under the 1980 Act, a community titles scheme (the ‘new scheme’) is established for the future plan;
- the new scheme is a basic scheme;
- each lot on the future plan becomes a lot in the new scheme;
- the scheme land for the new scheme is all land included in the parcel for the future plan;
- the body corporate formed under the 1980 Act for the future plan is taken to be, without change to its corporate identity, the body corporate for the new scheme; and
- the original proprietor of the future plan is the original owner of the new scheme.

¶[45-2950] to ¶[45-3120] deleted

Termination of a Community Titles Scheme

[45-3140]

A community titles scheme may be terminated by lodging a plan that amalgamates all land comprised in the scheme. The plan must be prepared in keeping with the ‘Registrar of Titles Directions for the Preparation of Plans’. The plan may be compiled from the plan to be extinguished, subject to the normal requirements for compiled plans.

The plan must be signed by either the body corporate or by the person on whose application a court ordered the termination of the scheme. It becomes the instrument of application for termination as required by s 79 of the BCCMA.

Evidence of the termination, as required by Part 6A Division 7 of the *Land Title Act* 1994, and all Certificates of Title issued for lots comprised in the scheme to be terminated, must be deposited with the plan when it is lodged. Evidence of the termination may be:

- (a) a certified copy of the body corporate resolution to terminate the scheme and any agreements entered into by the parties about termination issues; or
- (b) an order of the court to terminate the scheme.

The resolution and any agreements may be certified by the secretary or any other appointed person.

On lodgement of a plan for termination of a scheme the Registrar will search the Register to determine if there is any land held as an asset that should be dealt with as part of the termination process.

On registration of the plan:

- the particulars about the scheme and its CMS will be cancelled;
- one or more indefeasible titles will be created for the new lot(s) that comprises all of the land that, immediately before the cancellation, was scheme land;
- the indefeasible title(s) will show the registered owners of all of the lots previously included in the scheme as tenants in common with shares proportionate to the lot entitlements shown in the schedule of interest in the cancelled CMS;
- the indefeasible title(s) will also show the share of each registered owner as being subject to any mortgage(s), lease(s) or other interest(s) previously registered on the cancelled title to their lot in the terminated community titles scheme.

A basic scheme is defined as a community titles scheme that has one level of management. Consequently, if terminating a layered arrangement of schemes, all subsidiary schemes must be terminated first. When all subsidiary schemes have been terminated, the principal scheme may be terminated.

Amalgamation of Existing Schemes

[45-3160]

The BCCMA provides for amalgamation of two or more community titles schemes.

Two or more schemes may be amalgamated if none of them are subsidiary schemes.

Two or more subsidiary schemes may be amalgamated if each is a lot comprised in one principal scheme and provided they are not the only lots in the principal scheme.

Schemes may only be amalgamated if the bodies corporate for each scheme agree by resolutions without dissent to the amalgamation and to the first CMS for the amalgamated scheme. If the schemes to be amalgamated are subsidiary schemes, the body corporate for the principal scheme must also consent to the amalgamation by an ordinary resolution. Alternatively, a District Court may order that two or more schemes be amalgamated.

If a District Court makes an order that two or more schemes are to be amalgamated, the court may also make orders about:

- (a) the contents of the CMS for the amalgamated scheme; and
- (b) the disposition of assets and/or liabilities of the schemes prior to the amalgamation.

When two or more schemes are amalgamated, their existence as separate schemes ends and a new scheme is created. The lots and common property of each of the amalgamated schemes become the lots and common property for the amalgamated scheme. However, schemes may not be amalgamated if the proposed scheme would not conform to the requirements of the BCCMA.

Documentation for Amalgamating Schemes

[45-3180]

The documentation required to **voluntarily** amalgamate two or more existing community titles schemes comprises:

- a Form 14 – General Request to amalgamate (no lodgement fee is applicable);
- a certified copy of each resolution is required to evidence that the schemes may be amalgamated (as 115W and 115X of the *Land Title Act* 1994); and
- a first CMS for the amalgamated scheme, with Item 7 endorsed by the local government, and a Form 14 – General Request to Register First CMS. The CMS must reflect the provisions agreed to by the previous bodies corporate for the separate schemes by resolutions without dissent.

The documentation required to amalgamate two or more existing community titles schemes to comply with a District Court order comprises:

- a Form 14 – General Request to amalgamate (no lodgement fee is applicable);
- a certified copy of the District Court order; and
- a first CMS for the amalgamated scheme, with Item 7 of the CMS endorsed by the local authority, and a Form 14 – General Request to Register First CMS.

Item 6 of the Form 14 – General Request to Register First CMS must include the name and address for service of the body corporate for the amalgamated scheme.

The name of the amalgamated scheme may be:

- a new name that has not already been registered or reserved for another scheme; or
- the name of one of the schemes being amalgamated (upon registration of the Request, the names of the schemes being amalgamated cease to exist and are available for use for the new scheme and if not used, for any other scheme).

If the schemes to be amalgamated are subsidiary schemes a new CMS for the principal scheme is also required (ss 115W and 115X of the *Land Title Act* 1994).

On registration of the Form 14 – General Request to amalgamate the following will take place:

- the CMS numbers for the schemes being amalgamated will be cancelled; and
- a new CMS number will be generated for the first CMS for the new scheme; and
- the indefeasible titles for common property in the schemes being amalgamated will be cancelled; and
- an indefeasible title for the common property for the new scheme will be created.

If any reciprocal easements have been registered on the cancelled indefeasible titles for the common property for the previous schemes they will be surrendered as part of the amalgamation process. Note: Section 87(b) of the *Land Title Act* 1994 will be relied upon to surrender any reciprocal easements. The existing indefeasible titles for the lots in the scheme will not be cancelled, however, the CMS reference for each relevant original scheme will be updated as the

CMS number created for the amalgamated scheme. Any Certificates of Title that have been issued for lots in the schemes being amalgamated need not be lodged with the Request.

Forms

General Guide to Completion of CMS Form

[45-4000]

- There must be margins free from printing and writing of not less than 10mm on all sides of the form.
- The form must be clearly printed on one side of the sheet only and be produced in a way that is permanent and allows reproduction by photographic means to the satisfaction of the Registrar in a print size no smaller than 1.8mm (10 point).
- The whole of the form, whether printed or processed, must appear on one side of one sheet only. No panel may be removed (ie the item must be shown in full even if not used).
- Forms must not be folded.
- All numbered items are to be completed or if not applicable to be either ruled through diagonally or marked N/A.
- If there is insufficient space in any item insert only the words 'see Annexure' or 'see Enlarged Panel' and attach a Form 20. Enlarged panels must be used to accommodate data that cannot be contained on the form. An enlarged panel may be used for any number of items. Schedules A to E in the CMS cannot have annexures.
- All information relating to the schedules must appear in the relevant schedule and the schedules must appear in order. Annexures or Enlarged Panels to Schedules A to E are not acceptable.
- The annexure or enlarged panel should be identified either by title reference (at least one) or the scheme name, numbered consecutively and should show the item name and number, eg Item 8 Execution by original owner/consent of body corporate.
- Annexures including enlarged panels and schedules must be consecutively numbered commencing with the form which is page 1, eg page 1 of 5. The page number must appear in the top right hand corner of each page including any sketch plans.
- Page numbering starts with CMS, Version 2 as page 1, although the Form 14 – General Request forms part of the lodgement.
- Alterations to information entered on the form should be crossed out (not erased or obliterated by painting over) and initialled by the parties. Initialling is not necessary when deleting optional items or panels ruled through.
- An Australian company name must in all circumstances be followed by its Australian Company Number or Australian Business Number.
- A form and its supporting documents should be bound with one staple at the top left hand corner.

Example 1.1 – First CMS – Basic Scheme

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

BRIGHTON VILLA COMMUNITY TITLES SCHEME

2. Regulation module

SMALL SCHEMES MODULE

3. Name of body corporate

BODY CORPORATE FOR BRIGHTON VILLA COMMUNITY TITLES SCHEME

4. Scheme land

Lot on Plan Description

COMMON PROPERTY OF
BRIGHTON VILLA COMMUNITY
TITLES SCHEME

LOTS 1 TO 4 ON SP12347

Title Reference

50046170

5. #Name and address of original owner

BRIGHTON PTY LTD ACN 007 768 903
PO BOX 727
BRISBANE QLD 4001

6. Reference to plan lodged with this statement

SP12347

first community management statement only

7. Local Government community management statement notation

I Hope

IAN HOPE - CHIEF EXECUTIVE OFFICER

..... name and designation

BRISBANE CITY COUNCIL

..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal)
or full name of
company to be shown

C Johns, Director
CHARLES JOHNS
K Brown, Director/Secretary
KENNETH BROWN

20/11/2007
Execution Date

.....
*Execution

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

SCHEDULE A SCHEDULE OF LOT ENTITLEMENTS

Lot on Plan	Contribution	Interest
Lot 1 on SP12347	1	1
Lot 2 on SP12347	1	1
Lot 3 on SP12347	1	1
Lot 4 on SP12347	1	1
TOTALS	4	4

N.B. – Any First CMS lodged after 14 April 2011 must address in Schedule A the requirements of ss 46(9) and 66(1)(db) and (dc) of the *Body Corporate and Community Management Act 1997* for all the lots in the scheme. See [45-4120].

SCHEDULE B EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND

Not applicable (or an indication that it is not applicable eg N/A).

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, the full text of the by-laws, shall be clearly set out. If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on SP12347	Support, shelter and services	
Lot 2 on SP12347	Support, shelter and services	
Lot 3 on SP12347	Support, shelter and services	
Lot 4 on SP12347	Support, shelter and services	

SCHEDULE E	DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY
-------------------	---

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use area(s) in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example 1.2 – New CMS Basic Scheme

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

BRIGHTON VILLA COMMUNITY
TITLES SCHEME 1010

2. Regulation module

SMALL SCHEMES MODULE

3. Name of body corporate

BODY CORPORATE FOR BRIGHTON VILLA COMMUNITY TITLES SCHEME 1010

4. Scheme land

Lot on Plan Description

Title Reference

COMMON PROPERTY OF
BRIGHTON VILLA COMMUNITY
TITLES SCHEME

56000010

LOT 1 ON SP12347

56000011

LOT 2 ON SP12347

56000012

LOT 3 ON SP12347

56000013

LOT 4 ON SP12347

56000014

5. #Name and address of original owner

N/A

6. Reference to plan lodged with this statement

N/A

first community management statement only

7. Local Government community management statement notation

..... signed
Not applicable pursuant to s60(6) of the *Body Corporate and Community Management Act 1997*
..... name and designation
..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal of body corporate)

C Johns, Committee Member
CHARLES JOHNS
K Brown, Secretary
KENNETH BROWN

20/12/2007
Execution Date

.....
*Execution

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

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SCHEDULE A	SCHEDULE OF LOT ENTITLEMENTS
-------------------	-------------------------------------

Lot on Plan	Contribution	Interest
Lot 1 on SP12347	1	1
Lot 2 on SP12347	1	1
Lot 3 on SP12347	1	1
Lot 4 on SP12347	1	1

TOTALS	4	4
---------------	---	---

N.B. – See [45-4120].

SCHEDULE B	EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND
-------------------	--

Not applicable (or an indication that it is not applicable eg N/A).

SCHEDULE C	BY-LAWS
-------------------	----------------

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, the full text of the by-laws, shall be clearly set out. If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D	OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED
-------------------	--

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date of the plan is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on SP12347	Support, shelter and services	
Lot 2 on SP12347	Support, shelter and services	
Lot 3 on SP12347	Support, shelter and services	
Lot 4 on SP12347	Support, shelter and services	

SCHEDULE E	DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY
-------------------	---

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use area(s) in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example 2.1 – First CMS - Staged Subdivision, First Stage (All Stages Not Included in the First CMS and No Additional Common Property to be Created)

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

GRANDVIEW HEIGHTS COMMUNITY TITLES SCHEME

2. Regulation module

STANDARD MODULE

3. Name of body corporate

BODY CORPORATE FOR GRANDVIEW HEIGHTSCOMMUNITY TITLES SCHEME

4. Scheme land

Lot on Plan Description

COMMON PROPERTY OF
GRANDVIEW HEIGHTS
COMMUNITY TITLES SCHEME

LOTS 1 TO 12 AND 99 ON
SP12348

Title Reference

50131185

5. #Name and address of original owner

GRAND VIEWS PTY LTD ACN 333 306 001
PO BOX 222
BRISBANE QLD 4001

6. Reference to plan lodged with this statement

SP12348

first community management statement only

7. Local Government community management statement notation

I Hope

..... signed

IAN HOPE - CHIEF EXECUTIVE OFFICER

..... name and designation

BRISBANE CITY COUNCIL

..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal)
or full name of
company to be shown

20/11/2007
Execution Date

B May, Director
BRIAN MAY
S Doust, Director/Secretary
STEPHEN DOUST

.....

***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

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SCHEDULE A	SCHEDULE OF LOT ENTITLEMENTS
-------------------	-------------------------------------

Lot on Plan	Contribution	Interest
Lot 1 on SP12348	1	1
Lot 2 on SP12348	1	1
Lot 3 on SP12348	1	1
Lot 4 on SP12348	1	1
Lot 5 on SP12348	1	1
Lot 6 on SP12348	1	1
Lot 7 on SP12348	1	1
Lot 8 on SP12348	1	1
Lot 9 on SP12348	1	1
Lot 10 on SP12348	1	1
Lot 11 on SP12348	1	1
Lot 12 on SP12348	1	1
Lot 99 on SP12348	1	1
TOTALS	13	13

N.B. – Any First CMS lodged after 14 April 2011 must address in Schedule A the requirements of ss 46(9) and 66(1)(db) and (dc) of the *Body Corporate and Community Management Act 1997* for all the lots in the scheme. See [45-4120].

SCHEDULE B	EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND
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Lot 99 on SP12348 is to be further subdivided by a standard format plan into 8 lots under the standard module for residential purposes.

- N.B.** – 1. Concept drawings in accordance with section 66(1)(f)(i) of the *Body Corporate and Community Management Act 1997* must also be included.
2. The purpose of any future allocations for the scheme and the stages in which the future allocations are to be made should also be included.

(Where concept drawings are annexed they should be on international sheet size A4 or A3 and comply with imaging quality requirements.)

SCHEDULE C	BY-LAWS
-------------------	----------------

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

Exclusive Use

12. The proprietors of lots identified in Schedule E are entitled to exclusive use of the areas allocated therein and as identified on sketch plans marked “A” and “B” attached hereto.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
All lots	Support, shelter and services	

SCHEDULE E DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use area(s) in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Lot on Plan	Exclusive use area
Lot 2 on SP12348	Area "1" on sketch marked "A"
Lot 4 on SP12348	Area "2" on sketch marked "A"

Or, if lots have more than one exclusive use area the purpose may be included by the addition of an extra box to the above:

Lot on Plan	Exclusive use area	Purpose
Lot 2 on SP12348	Area "1" on sketch marked "A"	Carpark
	Area "1 " on sketch marked "B"	Storage
Lot 4 on SP12348	Area "2" on sketch marked "A"	Carpark
	Area "2" on sketch marked "B"	Storage

Example 2.2 New CMS – Staged Subdivision, Last Stage

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 4

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

GRANDVIEW HEIGHTS COMMUNITY TITLES
SCHEME 1357

2. Regulation module

STANDARD MODULE

3. Name of body corporate

BODY CORPORATE FOR GRANDVIEW HEIGHTS COMMUNITY TITLES SCHEME 1357

4. Scheme land

Lot on Plan Description
SEE ENLARGED PANEL

Title Reference

5. #Name and address of original owner

NOT APPLICABLE

6. Reference to plan lodged with this statement

SP123459

first community management statement only

7. Local Government community management statement notation

I Hope

..... signed
IAN HOPE - CHIEF EXECUTIVE OFFICER

..... name and designation
BRISBANE CITY COUNCIL

..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal of body corporate)

20/12/2007
Execution Date

C Dore, Chairperson/Secretary
CARLTON DORE
G Senior, Committee Member
GEORGE SENIOR

***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

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EITHER Title Reference [56000000] OR GRANDVIEW HEIGHTS COMMUNITY TITLES SCHEME 1357

4. Scheme Land

Description of Lot	Parish	Title Reference
Common Property of Grandview Heights community titles scheme 1357		56000000
Lot 1 on SP12348		56000001
Lot 2 on SP12348		56000002
Lot 3 on SP12348		56000003
Lot 4 on SP12348		56000004
Lot 5 on SP12348		56000005
Lot 6 on SP12348		56000006
Lot 7 on SP12348		56000007
Lot 8 on SP12348		56000008
Lot 9 on SP12348		56000009
Lot 10 on SP12348		56000010
Lot 11 on SP12348		56000011
Lot 12 on SP12348		56000012
Lot 13 on SP123459		
Lot 14 on SP123459		
Lot 15 on SP123459		
Lot 16 on SP123459		
Lot 17 on SP123459		
Lot 18 on SP123459		
Lot 19 on SP123459		
Lot 20 on SP123459		

OR

4. Scheme Land

Description of Lot	Title Reference
Common Property of Grandview Heights Community Titles Scheme 1357	56000000
Lots 1 to 12 on SP12348	56000001 to 56000012
Lots 13 to 20 on SP123459	

SCHEDULE A SCHEDULE OF LOT ENTITLEMENTS

Lot on Plan	Contribution	Interest
Lot 1 on SP12348	1	1
Lot 2 on SP12348	1	1
Lot 3 on SP12348	1	1
Lot 4 on SP12348	1	1
Lot 5 on SP12348	1	1
Lot 6 on SP12348	1	1
Lot 7 on SP12348	1	1
Lot 8 on SP12348	1	1
Lot 9 on SP12348	1	1
Lot 10 on SP12348	1	1
Lot 11 on SP12348	1	1
Lot 12 on SP12348	1	1
Lot 13 on SP123459	1	1
Lot 14 on SP123459	1	1
Lot 15 on SP123459	1	1
Lot 16 on SP123459	1	1
Lot 17 on SP123459	1	1
Lot 18 on SP123459	1	1
Lot 19 on SP123459	1	1
Lot 20 on SP123459	1	1
TOTALS	20	20

N.B. – See [45-4120].

SCHEDULE B EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND

Not applicable (or an indication that it is not applicable eg N/A).

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws applicable to this statement shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

Where an exclusive use by-law is to be included the following wording may be used as the basis:

Exclusive Use

- The proprietors of lots identified in Schedule E are entitled to exclusive use of the areas allocated therein and as identified on the sketch plans marked “A” and “B” attached hereto.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
All lots	Support, shelter and services	

SCHEDULE E DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the format below. A sketch plan of the exclusive use area(s) in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example of allocation of exclusive use areas:

Lot on Plan	Exclusive Use Area
Lot 2 on SP12348	Area "1" on sketch marked "A"
Lot 4 on SP12348	Area "2" on sketch marked "A"
Lot 5 on SP12348	Area "14" on sketch marked "B"
Lot 6 on SP12348	Area "15" on sketch marked "B"

Or, if lots have more than one exclusive use area the purpose may be included by the addition of an extra box to the above:

Lot on Plan	Exclusive Use Area	Purpose
Lot 2 on SP12348	Area "1" on sketch marked "A"	Carpark
	Area "1" on sketch marked "B"	Storage
Lot 4 on SP12348	Area "2" on sketch marked "A"	Carpark
	Area "2" on sketch marked "B"	Storage

Example 3.1 – First CMS – Layered Arrangement – Principal Scheme

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

NORTHGATE HEIGHTS NO. 1 COMMUNITY
TITLES SCHEME

2. Regulation module

STANDARD MODULE

3. Name of body corporate

BODY CORPORATE FOR NORTHGATE HEIGHTS NO. 1 COMMUNITY TITLES SCHEME

4. Scheme land

Lot on Plan Description
COMMON PROPERTY OF
NORTHGATE HEIGHTS NO. 1
COMMUNITY TITLES SCHEME
LOTS 1 TO 6 ON SP12346

Title Reference
14872009

5. #Name and address of original owner

NORTHGATE PTY LTD ACN 007 090 232
PO BOX 3
BRISBANE QLD 4001

6. Reference to plan lodged with this statement

SP12346

first community management statement only

7. Local Government community management statement notation

I Hope

..... signed
IAN HOPE - CHIEF EXECUTIVE OFFICER

..... name and designation

BRISBANE CITY COUNCIL

..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal)
or full name of
company to be shown

20/11/2007
Execution Date

P Stanley, Director
PAUL STANLEY
J Adams, Director/Secretary
JORDAN ADAMS

.....
***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

SCHEDULE A SCHEDULE OF LOT ENTITLEMENTS

Lot on Plan	Contribution	Interest
Lot 1 on SP12346	1	1
Lot 2 on SP12346	1	1
Lot 3 on SP12346	1	1
Lot 4 on SP12346	1	1
Lot 5 on SP12346	1	1
Lot 6 on SP12346	1	1
TOTALS	6	6

N.B. – Any First CMS lodged after 14 April 2011 must address in Schedule A the requirements of ss 46(9) and 66(1)(db) and (dc) of the *Body Corporate and Community Management Act 1997* for all the lots in the scheme. See [45-4120].

SCHEDULE B EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND

The scheme is intended to be developed as a layered arrangement in accordance with section 66(1)(g) of the *Body Corporate and Community Management Act 1997*.

Lot 2 on SP12346 is to be further subdivided by a standard format plan into 4 lots and common property being stage 2 forming a subsidiary scheme described as Northgate Heights No. 2 community titles scheme under the Accommodation Module for holiday rental.

Lot 4 in Northgate Heights No. 2 community titles scheme is to be further subdivided by a building format plan into 4 lots and common property being stage 3 forming another subsidiary scheme described as Northgate Heights No. 3 community titles scheme under the Commercial Module for retail shop letting.

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, the full text of the by-laws applicable to this statement shall be clearly set out. If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on SP12346	Support, shelter and services	
Lot 2 on SP12346	Support, shelter and services	
Lot 3 on SP12346	Support, shelter and services	
Lot 4 on SP12346	Support, shelter and services	

SCHEDULE E DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use areas in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example 3.2 – First CMS – Layered arrangement – First Subsidiary Scheme

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

~~FIRST~~NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

NORTHGATE HEIGHTS NO. 2 COMMUNITY
TITLES SCHEME

2. Regulation module

ACCOMMODATION MODULE

3. Name of body corporate

BODY CORPORATE FOR NORTHGATE HEIGHTS NO. 2 COMMUNITY TITLES SCHEME

4. Scheme land

Lot on Plan Description
COMMON PROPERTY OF
NORTHGATE HEIGHTS NO. 2
COMMUNITY TITLES SCHEME
LOTS 1 TO 4 ON SP123462

Title Reference
50011003

5. #Name and address of original owner

NORTHGATE PTY LTD ACN 007 090 232
PO BOX 3
BRISBANE QLD 4001

6. Reference to plan lodged with this statement

SP123462

first community management statement only

7. Local Government community management statement notation

I Hope

..... signed
IAN HOPE - CHIEF EXECUTIVE OFFICER

..... name and designation

BRISBANE CITY COUNCIL

..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal of original owner)
or full name of
company to be shown

20/11/2007
Execution Date

P Stanley, Director
PAUL STANLEY
J Adams, Director/Secretary
JORDAN ADAMS

.....
***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

SCHEDULE A SCHEDULE OF LOT ENTITLEMENTS

Lot on Plan	Contribution	Interest
Lot 1 on SP123462	1	1
Lot 2 on SP123462	1	1
Lot 3 on SP123462	1	1
Lot 4 on SP123462	1	1
TOTALS	4	4

N.B. – Any First CMS lodged after 14 April 2011 must address in Schedule A the requirements of ss 46(9) and 66(1)(db) and (dc) of the *Body Corporate and Community Management Act 1997* for all the lots in the scheme. See [45-4120].

SCHEDULE B EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND

In accordance with the layered arrangements identified in Northgate Heights No. 1 Community Titles Scheme 2468.

Lot 4 on SP123462 is to be subdivided by a building format plan into 4 lots and common property being stage 3 forming a subsidiary scheme described as Northgate Heights No. 3 community titles scheme under the Commercial Module for retail shop letting.

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws applicable to this statement shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on SP123462	Support, shelter and services	
Lot 2 on SP123462	Support, shelter and services	
Lot 3 on SP123462	Support, shelter and services	
Lot 4 on SP123462	Support, shelter and services	

SCHEDULE E

DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use areas in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example 3.3 – First CMS – Layered Arrangement – Second Subsidiary Scheme

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

~~FIRST~~NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

NORTHGATE HEIGHTS NO.3 COMMUNITY
TITLES SCHEME

2. Regulation module

COMMERCIAL MODULE

3. Name of body corporate

BODY CORPORATE FOR NORTHGATE HEIGHTS NO. 3 COMMUNITY TITLES SCHEME

4. Scheme land

Lot on Plan Description

COMMON PROPERTY OF
NORTHGATE HEIGHTS NO. 3
COMMUNITY TITLES SCHEME
LOTS 1 TO 4 ON SP13624

Title Reference

50022001

5. #Name and address of original owner

NORTHGATE PTY LTD ACN 007 090 232
PO BOX 3
BRISBANE QLD 4001

6. Reference to plan lodged with this statement

SP13624

first community management statement only

7. Local Government community management statement notation

I Hope

..... signed

IAN HOPE - CHIEF EXECUTIVE OFFICER

..... name and designation

BRISBANE CITY COUNCIL

..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal of original owner)
or full name of
company to be shown

20/11/2007
Execution Date

P Stanley, Director
PAUL STANLEY
J Adams, Committee Member
JORDAN ADAMS

.....
***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

SCHEDULE A SCHEDULE OF LOT ENTITLEMENTS

Lot on Plan	Contribution	Interest
Lot 1 on SP13624	1	1
Lot 2 on SP13624	1	1
Lot 3 on SP13624	1	1
Lot 4 on SP13624	1	1
TOTALS	4	4

N.B. – Any First CMS lodged after 14 April 2011 must address in Schedule A the requirements of ss 46(9) and 66(1)(db) and (dc) of the *Body Corporate and Community Management Act 1997* for all the lots in the scheme. See [45-4120].

SCHEDULE B EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND

In accordance with the layered arrangements identified in Northgate Heights No. 1 community titles scheme 2468.

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws applicable to this statement shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of or statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on SP13624	Support, shelter and services	
Lot 2 on SP13624	Support, shelter and services	
Lot 3 on SP13624	Support, shelter and services	
Lot 4 on SP13624	Support, shelter and services	

SCHEDULE E	DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY
-------------------	---

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use areas in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example 3.4 - New CMS – Layered Arrangement – Principal Scheme with Recording of Final Subsidiary Schemes

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 4

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

NORTHGATE HEIGHTS NO. 1 COMMUNITY TITLES
SCHEME 2468

2. Regulation module

STANDARD MODULE

3. Name of body corporate

BODY CORPORATE FOR NORTHGATE HEIGHTS NO. 1 COMMUNITY TITLES SCHEME 2468

4. Scheme land

Lot on Plan Description
SEE ENLARGED PANEL

Title Reference

5. #Name and address of original owner

N/A

6. Reference to plan lodged with this statement

N/A

first community management statement only

7. Local Government community management statement notation

..... signed
Not applicable pursuant to s 60(6) of the *Body Corporate and Community Management Act 1997*
..... name and designation
..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal of body corporate)

2/12/2007
Execution Date

P Stanley, Chairperson/Secretary
PETER STANLEY
J Adams, Committee Member
JORDAN ADAMS

***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

EITHER Title Reference [50011001] OR NORTHGATE HEIGHTS NO. 1 COMMUNITY TITLES SCHEME 2468

4. Scheme Land

Description of Lot

Title Reference

Common property of
Northgate Heights No. 1
community titles
scheme 2468

50011001

Lot 1 on SP12346

50011002

Lot 3 on SP12346

50011004

Lot 4 on SP12346

50011005

Lot 5 on SP12346

50011006

Lot 6 on SP12346

50011007

Common Property of
Northgate Heights No. 2
community titles
scheme 3579

50021997

Lot 1 on SP13462

50021998

Lot 2 on SP13462

50021999

Lot 3 on SP13462

50022000

Common Property of
Northgate Heights No. 3
community titles
scheme

Lot 1 on SP13624

Lot 2 on SP13624

Lot 3 on SP13624

Lot 4 on SP13624

SCHEDULE A SCHEDULE OF LOT ENTITLEMENTS

Lot on Plan	Contribution	Interest
Lot 1 on SP12346	1	1
Lot 3 on SP12346	1	1
Lot 4 on SP12346	1	1
Lot 5 on SP12346	1	1
Lot 6 on SP12346	1	1
Northgate Heights No. 2 community titles scheme 3579	1	1
Northgate Heights No. 3 community titles scheme	1	1
TOTALS	7	7

N.B. – See [45-4120].

SCHEDULE B EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND

The scheme land is made up of a layered arrangement consisting of the principal scheme being Northgate No. 1 community titles scheme 2468 and the subsidiary scheme being Northgate Heights No. 2 community titles scheme 3579 and Northgate Heights No. 3 community titles scheme.

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws applicable to this statement shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
All lots	Support, shelter and services	

SCHEDULE E

DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use areas in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example 4 – First CMS – Progressive Subdivision by Stages

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

CAPE VIEW COMMUNITY TITLES SCHEME

2. Regulation module

STANDARD MODULE

3. Name of body corporate

BODY CORPORATE FOR CAPE VIEW COMMUNITY TITLES SCHEME

4. Scheme land

Lot on Plan Description
COMMON PROPERTY OF
CAPE VIEW COMMUNITY
TITLES SCHEME
LOT 20 ON SP10056
LOT 21 ON SP10056

Title Reference
14872009

14872009
14872009

5. #Name and address of original owner

CAPE DEVELOPMENTS PTY LTD ACN 007 903 768
LEVEL 8, 123 EAGLE STREET
BRISBANE QLD 4000

6. Reference to plan lodged with this statement

SP10056

first community management statement only

7. Local Government community management statement notation

I Hope

..... signed
IAN HOPE - CHIEF EXECUTIVE OFFICER

..... name and designation

BRISBANE CITY COUNCIL

..... name of Local Government

8. Execution by original owner/Consent of body corporate

15/10/2007
Execution Date

P Stanley
Cape Developments Pty Ltd A.C.N. 007 903 768 by its
duly constituted attorney Paul Andrew Stanley under
Power of Attorney No. 700115983

.....
***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

SCHEDULE A	SCHEDULE OF LOT ENTITLEMENTS
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Lot on Plan	Contribution	Interest
Lot 20 on SP10056	1	1
Lot 21 on SP10056	1	1
TOTALS	2	2

N.B. – Any First CMS lodged after 14 April 2011 must address in Schedule A the requirements of ss 46(9) and 66(1)(db) and (dc) of the *Body Corporate and Community Management Act 1997* for all the lots in the scheme. See [45-4120].

SCHEDULE B	EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND
-------------------	--

The scheme land is intended to be further developed progressively in two stages being stage 1 and stage 2.

Stage 1 will be created by the resubdivision of Lot 20 on SP10056 by a building format plan to create Lots 1 to 9 inclusive on SP10057 and some additional common property under the Standard Module for accommodation.

Stage 2 will be created by the resubdivision of Lot 21 on SP10056 by a building format plan to create Lots 10 to 19 inclusive on SP10058 and some additional common property under the Standard Module for accommodation.

It is intended that there will be only one body corporate namely, the body corporate for Cape View community titles scheme.

After the resubdivision of lot 20 on SP10056 by the building format plan for stage 1, the contributions and interests in the schedule of lot entitlements relating to Lots 1 to 9 inclusive on SP10057 and 21 on SP10056 are set out in Annexure “X” attached hereto. (The annexure should be on a Form 20 setting out the table of lot entitlements in a similar format to Schedule A of the CMS).

After the resubdivision of Lot 21 on SP10056 by the building format plan for stage 2, the contributions schedule lot entitlements and interests schedule lot entitlements relating to Lots 1 to 9 inclusive on SP10057 and Lots 10 to 19 inclusive on SP10058 are set out in Annexure “Y: attached hereto. (The annexure should be on a Form 20 setting out the table of lot entitlements in a similar format to Schedule A of the CMS).

The concept drawing annexed to this Schedule B is intended only to represent an indicative development plan for stage 1 and stage 2 when completed. Accordingly, it has been annexed for illustrative purposes only. The concept drawing in any plan contained in this CMS does not accurately fix or specify the location of proposed buildings or the boundaries within or outside proposed buildings or the boundaries of any exclusive use areas, all of the same being subject to final survey being undertaken after the completion of the Utility Infrastructure Works referred to in Schedule D and the completion of all other relevant civil works and landscaping works to be undertaken on the scheme land.

- N.B.** – 1. Concept drawings in accordance with section 66(1)(f) of the *Body Corporate and Community Management Act 1997* must also be included.
2. If the contribution schedule lot entitlements are not equal an explanation as to why, in accordance with sections 46(8) and 66(1)(d) of the *Body Corporate and Community Management Act 1997*, must also be included.

(Where concept drawings are annexed they should be on international sheet size A4 or A3 and comply with imaging quality requirements.)

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws applicable to this statement shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme, eg.:

1. To facilitate the progressive development of the Cape View community titles scheme, as identified in Schedule B, the original owner may, at any time, enter on the scheme land, or any part thereof, the common property and any lot in the Cape View community titles scheme to undertake works of any kind necessary or incidental to establishing utility infrastructure and utility services and connections, thereto, including the following works:
 - (a) excavation and general earthworks;
 - (b) the construction of common property areas, including roads;
 - (c) the construction on the common property of such improvements and facilities as may be considered necessary by the original owner to establish utility services, and connections thereto;
 - (d) the construction of services infrastructure whether public or private including but without limiting the generality thereof, connections for sewerage, gas, electricity, telephone, fibreoptics or any other lawful service available to the public;
 all of which are collectively called the "Utility Infrastructure Works".
2. The original owner may bring upon the scheme land any machinery, tools, equipment, vehicles and workmen to facilitate the carrying out of the Utility Infrastructure Works.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 20 on SP10056	Support, shelter and services	
Lot 21 on SP10056	Support, shelter and services	

SCHEDULE E DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the appropriate format (see Example 2 for the format). A sketch plan of the exclusive use areas in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.



Example 5 – New CMS for Existing Scheme – Small Schemes Module (Executed by a Sole Registered Owner – Natural Person)

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 3

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

FAWLTY TOWERS COMMUNITY TITLES
SCHEME 2345

2. Regulation module

STANDARD MODULE

3. Name of body corporate

BODY CORPORATE FOR FAWLTY TOWERS COMMUNITY TITLES SCHEME 2345

4. Scheme land

Lot on Plan Description

Title Reference

COMMON PROPERTY OF
FAWLTY TOWERS COMMUNITY
TITLES SCHEME 2345

19201331

LOT 1 ON BUP1331

16482001

LOT 2 ON BUP1331

16482002

LOT 3 ON BUP1331

16482003

LOT 4 ON BUP1331

16482004

5. #Name and address of original owner

N/A

6. Reference to plan lodged with this statement

N/A

first community management statement only

7. Local Government community management statement notation

..... signed
Not applicable pursuant to s 60(6) of the *Body Corporate and Community Management Act 1997*
..... name and designation
..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal of body corporate)

J Cleese, Chairperson/Secretary
JAMES CLEESE
Sole registered owner

28/12/2007
Execution Date

***Execution**

*Original owner to execute for a first community management statement

*Body corporate to execute for a new community management statement

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

SCHEDULE A	SCHEDULE OF LOT ENTITLEMENTS
-------------------	-------------------------------------

Lot on Plan	Contribution	Interest
Lot 1 on BUP1331	1	1
Lot 2 on BUP1331	1	1
Lot 3 on BUP1331	1	1
Lot 4 on BUP1331	1	1
TOTALS	4	4

N.B. –See [45-4120].

SCHEDULE B	EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND
-------------------	--

Not applicable (or an indication that it is not applicable eg N/A).

SCHEDULE C	BY-LAWS
-------------------	----------------

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws applicable to this statement shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D	OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED
-------------------	--

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Property	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on BUP1331	Support, shelter and services	
Lot 2 on BUP1331	Support, shelter and services	
Lot 3 on BUP1331	Support, shelter and services	
Lot 4 on BUP1331	Support, shelter and services	

SCHEDULE E	DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY
-------------------	---

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use area(s) allocated to the lot(s) should be included in the format below. A sketch plan of the exclusive use area(s) in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Example 6 – New CMS for Existing Scheme where a Plan of Resubdivision has been Recorded – Standard Module (Executed by a Sole Registered Owner – Corporation)

QUEENSLAND TITLES REGISTRY
Body Corporate and Community Management Act 1997

FIRST/NEW COMMUNITY MANAGEMENT STATEMENT

CMS Version 3
Page 1 of 4

THIS STATEMENT MUST BE LODGED TOGETHER WITH A FORM 14 GENERAL REQUEST AND IN THE CASE OF A NEW STATEMENT MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only
CMS LABEL NUMBER

This statement incorporates and must include the following:

Schedule A - Schedule of lot entitlements
Schedule B - Explanation of development of scheme land
Schedule C - By-laws
Schedule D - Any other details
Schedule E - Allocation of exclusive use areas

1. Name of community titles scheme

FAWLTY TOWERS COMMUNITY TITLES
SCHEME 2345

2. Regulation module

STANDARD MODULE

3. Name of body corporate

BODY CORPORATE FOR FAWLTY TOWERS COMMUNITY TITLES SCHEME 2345

4. Scheme land

Lot on Plan Description
SEE ENLARGED PANEL

Title Reference

5. #Name and address of original owner

N/A

6. Reference to plan lodged with this statement

SP109001

first community management statement only

7. Local Government community management statement notation

..... signed
Not applicable pursuant to s 60(6) of the *Body Corporate and Community Management Act 1997*
..... name and designation
..... name of Local Government

8. Execution by original owner/Consent of body corporate

(seal of body corporate)

J Cleese, Chairperson/Secretary
JAMES CLEESE,
the nominee of XYZ Pty Ltd
the sole registered owner
for and on behalf of the body corporate for
Fawlty Towers Community Titles Scheme 2345

28/12/2007
Execution Date

***Execution**

*Original owner to execute for a first community management statement
*Body corporate to execute for a new community management statement

Privacy Statement

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EITHER Title Reference [19201331] OR FAWLTY TOWERS COMMUNITY TITLES SCHEME 2345

4. Scheme Land

Description of Lot	Title Reference
Common property of Fawltly Towers Community Titles Scheme 2345	19201331
Lot 1 on BUP1331	16482001
Lot 2 on BUP1331	16482002
Lot 3 on BUP1331	16482003
Lot 4 on BUP1331	16482004
Lot 6 on SP109001	51006010
Lot 7 on SP109001	51006011
Lot 8 on SP109001	51006012
Lot 9 on SP109001	51006013
Lot 10 on SP109001	51006014

SCHEDULE A SCHEDULE OF LOT ENTITLEMENTS

Lot on Plan	Contribution	Interest
Lot 1 on BUP1331	1	1
Lot 2 on BUP1331	1	1
Lot 3 on BUP1331	1	1
Lot 4 on BUP1331	1	1
Lot 6 on SP109001	1	1
Lot 7 on SP109001	1	1
Lot 8 on SP109001	1	1
Lot 9 on SP109001	1	1
Lot 10 on SP109001	1	1

TOTALS	9	9
---------------	---	---

N.B. – See [45-4120].

SCHEDULE B EXPLANATION OF THE DEVELOPMENT OF SCHEME LAND

Not applicable (or an indication that it is not applicable eg N/A).

SCHEDULE C BY-LAWS

(EITHER)

By-laws in Schedule 4 of the *Body Corporate and Community Management Act 1997* apply to this scheme.

(OR)

N.B. If Schedule 4 of the *Body Corporate and Community Management Act 1997* does not apply or is modified, either by addition or deletion, **the full text of the by-laws applicable to this statement shall be clearly set out.** If any exclusive use areas are included in the by-laws, a reference to their allocation in Schedule E should also be included.

SCHEDULE D OTHER DETAILS REQUIRED/PERMITTED TO BE INCLUDED

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

Insert a full explanation of any other details required or permitted that are to be included in the scheme.

N.B. – If the development approval date is on or after 4 March 2003, one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

1. a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
2. include the type of statutory easement in a matrix form if desired. An example matrix relevant to a building format plan is reproduced for reference.

Lots on Plan or Common Proprty	Statutory Easement	Service Location Diagrams
Common Property	Support, shelter and services	C and D
Lot 1 on BUP1331	Support, shelter and services	
Lot 2 on BUP1331	Support, shelter and services	
Lot 3 on BUP1331	Support, shelter and services	
Lot 4 on BUP1331	Support, shelter and services	
Lot 6 on SP109001	Support, shelter and services	
Lot 7 on SP109001	Support, shelter and services	
Lot 8 on SP109001	Support, shelter and services	
Lot 9 on SP109001	Support, shelter and services	
Lot 10 on SP109001	Support, shelter and services	

SCHEDULE E	DESCRIPTION OF LOTS ALLOCATED EXCLUSIVE USE AREAS OF COMMON PROPERTY
-------------------	---

(EITHER)

Not applicable (or an indication that it is not applicable eg N/A).

(OR)

The description of the relative lot(s) and a description of the exclusive use are(s) allocated to the lot(s) should be included in the format below. A sketch plan of the exclusive use area(s) in accordance with the Registrar of Titles Directions for the Preparation of Plans must also be attached.

Requirements to Complete a CMS

[45-4010]

The requirements for a CMS are set out in Chapter 1 Part 6 of the BCCMA. To enable a CMS to be recorded in the Land Registry, it must be:

- lodged with a Form 14 – General Request to record first/new CMS (see part 14 for completion).
- prepared in the format of a CMS with the required Schedules A to E attached.

General Comments

[45-4020]

Page numbering of the statement shall commence with CMS, Version 3 as page 1 of [total number of pages] and have all attached schedules identified by appropriate letters and pages numbered consecutively, securely bound, prepared and presented in the manner approved for Land Registry forms. Where practicable, more than one schedule may be contained on the same page. However, where it is desired that a sketch plan be an integral part of the CMS, it may be international A3 size instead of international A4 size, provided it is folded to A4 size.

(Note – The requirements for a first CMS vary to that for a new CMS in items 1 and 3 to 8 below.)

Item 1

[45-4030]

Insert the name of the community titles scheme.
(FIRST CMS) eg Seaview community titles scheme
(NEW CMS) eg Seaview community titles scheme 1234

Item 2

[45-4040]

Insert a reference to one of the following regulation modules that is relevant to the scheme (eg Standard Module, Accommodation Module, Commercial Module, Small Schemes Module or Specified Two-lot Schemes Module).

Item 3

[45-4050]

Insert full name of the body corporate:
(FIRST CMS) eg body corporate for Seaview community titles scheme
(NEW CMS) eg body corporate for Seaview community titles scheme 1234.

Item 4

[45-4060]

Insert the Lot on Plan and Title Reference, if known, to all the land contained in the scheme and if applicable for a **new CMS**, any lot added to the scheme.

Item 5**[45-4070]**

Insert the full name and address of the original owner of the scheme land (ie the name of the registered owner immediately prior to registration of the plan for the scheme land) in respect of the **first CMS** only. For a **new CMS** insert 'not applicable' or 'N/A'.

Item 6**[45-4080]**

Insert the number of the plan deposited with the **first CMS** or, if applicable, the number of the plan deposited with a **new CMS**. If there is no plan required for a **new CMS** insert 'not applicable'.

Item 7**[45-4090]**

A **first CMS** must be noted by the relevant local government and executed by an officer/delegate whose full name and designation are shown.

A **new CMS** must be noted by the relevant local government in the same way as the **first CMS** or marked 'not applicable pursuant to s 60(6) of the BCCMA'.

Item 8**[45-4100]**

Execute as required:

A **first CMS** must be dated and signed by the original registered owners of the scheme land. For further information see example 1.1 First CMS – Basic Scheme.

A **new CMS** must be dated and consented to by the body corporate and must be lodged in the Titles Registry within three (3) months of the date of consent. For further information see [45-2060] and example 1.2. New CMS – Basic Scheme.

Schedules**[45-4110]**

A community management statement incorporates and must include Schedules A, B, C, D and E which are explained below see ¶[45-4120] to ¶[45-4160]). All information relating to a schedule must appear in that schedule. The words 'See Enlarged Panel' or similar are not permitted. Schedules must appear in order in the document.

Schedule A – Schedule of Lot Entitlements**[45-4120]**

Lot on Plan	Contribution	Interest
TOTALS		

The contribution schedule lot entitlement and the interest schedule lot entitlement for each lot and the aggregate totals of the contributions and interests schedules shall be shown as whole

numbers only, in the above format. This format may be expanded adding additional lines and/or pages as required.

See ss 46 to 47 of the BCCMA which sets out the application of the contribution schedule and interest schedule entitlements.

First CMS

A First Community Management Statement lodged after 14 April 2011 must address, in Schedule A, the requirements of ss 66(1)(db) and (dc) of the BCCMA.

A statement identifying the contribution schedule deciding principle under section 46(7) of the BCCMA on which the contribution schedule lot entitlements have been decided must be inserted.

If the equality principle has been used to decide the contribution schedule lot entitlements, and the contribution schedule lot entitlements are not equal, an explanation as to why, in accordance with 66(1)(db)(ii) of the BCCMA, must be inserted.

If the relativity principle has been used to decide the contribution schedule lot entitlements, an explanation as to how the individual contribution schedule lot entitlements for the lots were decided in accordance with s 66(1)(db)(iii) of the BCCMA must be inserted.

A statement identifying the market value principle under s 46(8) of the BCCMA on which the interest schedule lot entitlements have been decided must be inserted.

If the interest schedule lot entitlements do not reflect the respective market values of the lots, an explanation as to why the interest schedule lot entitlements do not reflect the respective value of the lots in accordance with s 66(1)(dc)(ii) of the BCCMA must be included.

New CMS

A New CMS lodged after 14 April 2011 that changes the individual contribution schedule lot entitlements or interest schedule lot entitlements for a lot, or adjusts the overall aggregate totals of the contribution schedule or the interest schedule, must address in Schedule A, the requirements of ss 66(1)(db) and/or (dc) of the BCCMA outlined in the above paragraphs.

If another section of the BCCMA is being relied upon to decide the schedule of lot entitlements, a statement to reflect this must be inserted at Item 6 of the Form 14 and/or in Schedule A.

Schedule B – Explanation of the Development of Scheme Land

[45-4130]

This schedule should be completed in accordance with s 66(1)(f) and (g) of the BCCMA.

Each plan or other instrument lodged relating to the scheme land shall be in accordance with the provisions set out in this schedule.

Schedule C – By-Laws

[45-4140]

If the by-laws contained in Schedule 4 of the BCCMA 1997 apply, this should be stated in this schedule. If they do not apply, or are modified, the full text of the by-laws applicable should be clearly set out.

Schedule D – Any Other Required or Permitted Details (if applicable)**[45-4150]**

Contained in this schedule, for example, will be details that the relevant regulation module says must or may be included in the CMS. If there are no other required or permitted details insert ‘Not applicable’, ‘N/A’ or ‘Nil’.

If the development approval date is on or after 4 March 2003 one (1) or more services location diagrams (SLD) must be annexed by way of alpha identifier to this schedule and may be identified in either of the following methods:

- 1 a statement referencing the inclusion of the SLD identifying the lots to be affected, or proposed to be affected, by statutory easements and state the type of statutory easement; or
- 2 include the type of statutory easement in a matrix form if desired (see ¶[45-2230]).

Schedule E – Allocation of Exclusive Use Areas (If Applicable)**[45-4160]**

This schedule will be in addition to the by-laws under which exclusive use is allocated. It will identify the lots affected and include the relevant sketch plans required. Sketch plans identifying exclusive use of common property should be prepared in accordance with the Registrar of Titles Directions for the Preparation of Plans. The plans are to be page numbered and are to be referred to in this schedule and marked eg ‘sketch plan A’. If there are no exclusive use areas insert ‘Not applicable’, ‘N/A’ or ‘Nil’.

Sketches for New Exclusive Use Areas**[45-4170]**

Sketch plans of new exclusive use areas **must** comply with the requirements of the Registrar of Titles Directions for the Preparation of Plans.

¶[45-4180] deleted

Guidelines for Updating Sketches of Existing Exclusive Use Areas**[45-4190]**

Any sketch of **new** exclusive use areas prepared on or after 13 July 1997 must fully comply with the Registrar of Titles Directions for the Preparation of Plans.

However, sketch plans currently included with the by-laws for building units and group titles plans that were lodged before 13 July 1997, may be used as part of a new CMS at a lower standard than required by the Registrar of Titles directions for the preparation of plans provided the sketch meets the standard set out below. This relaxation of requirements applies only to schemes with exclusive use areas existing as at 13 July 1997.

While each case will be determined on the standard of the existing sketch, the following points describe the minimum requirements:

- 1 The sketch must be to scale and no greater in size than international A3. Multiple sheet sketches are acceptable (however, see point 8 below);
- 2 It is not necessary for area to be given in square metres;
- 3 Where an exclusive use area is fully defined by structural elements, it will be sufficient to note the sketch accordingly. A sketch may consist of a mixture of areas fully defined by structural elements and some not;

- 4 A structural element must be sufficient to clearly define the whole of the area. The following would be some examples of structural elements that would be acceptable –

- a fence;
- a wall, not necessarily full height;
- posts or columns at corners;
- corners of paths, or other such permanently fixed features.

Painted lines, coloured tiles or timber planks attached to floor or ceiling are **not** acceptable;

- 5 Where an exclusive use area is not fully defined by structural elements, it must be fully dimensioned and located in relation to the buildings or outer lot boundaries, but it will not be necessary for bearings to be shown, unless the area is irregular. An area is considered to be irregular where it is other than rectangular;
- 6 Where an existing sketch would be acceptable except that dimensions are missing, it shall be sufficient to add the distances to the sketch;
- 7 If an existing sketch showing existing exclusive use areas is not acceptable in that it does not comply with the above, it is possible to photocopy the appropriate sheets of the existing plan and locate the exclusive use areas in accordance with the requirements noted above;
- 8 When updating existing sketches, copies may be made from other than the registered plan, but it shall be the responsibility of the body corporate to ensure that the source copy agrees with the registered copy.

It is not necessary for the sketch to be at a regular scale where it has been photocopied from existing records. Where the provisions of this paragraph are utilised –

- the resulting photocopy must be clear and to a standard acceptable to the Registrar to enable imaging; and
 - the scale (graphic or written) shown on the sketch shall be ruled through;
- 9 Where all exclusive use areas on a sketch are defined by structural elements, or have no irregular boundaries, it is not necessary for the sketch to be prepared or updated by a licensed surveyor;
- 10 Where exclusive use areas are not defined by structural elements, and are irregular, requiring their boundaries to be defined by bearings as well as distances, it is necessary for any new plan to be prepared and certified by a licensed surveyor. In these cases, the following certificate shall be affixed to the plan –

‘I..., Licensed Surveyor, certify that the details shown on this sketch plan are correct.

Licensed Surveyor Date’.

Exclusive Use Areas – General

[45-4200]

If exclusive use is to be given over a part of common property that other owners could reasonably utilise in the normal course of activity, it is necessary for the area to be defined as required under the Registrar of Titles Directions for the Preparation of Plans. These cases would include car parking areas and the like.

Where an exclusive use area is to be given in a part of common property that other owners would not be able to reasonably utilise in the normal course of activity, the area may be defined by description. These cases would include, for example, signs painted on the wall of a building.

Where an exclusive use area is to be given in part of common property and it is a definitely defined entity, the entity may be defined by description. These cases would include, for example, swimming pools and tennis courts.

¶[45-6000] deleted

Case Law

[45-7000]

Nil.

Fees

[45-8000]

Fees payable to the land registry are subject to an annual review. See the current *Land Title Regulation* 2015 – Schedule 2.

Cross References and Further Reading

[45-9000]

Part 14 – General Request

Bugden, G, *Community Schemes Law and Practice*, CCH, 1997 (loose-leaf service)

Bugden, G, 'Development: General Issues' (August 1997) *CLE/QUT Body Corporate and Community Management Intensive*, Seminar Paper

Bugden, G, 'Introduction to the *Body Corporate and Community Management Act* 1997' (August 1997) *CLE/QUT Body Corporate and Community Management Intensive*, Seminar Paper

Christensen, S (et al), '*Body Corporate and Community Management Act* 1997 (Qld): Problems and Pitfalls in Practice' (November 1997) *CLE Property Law Intensive*, Seminar Paper

Christensen, S, 'Disclosure Statements: A Workshop – Questions and Answers' (August 1997) *CLE/QUT Body Corporate and Community Management Intensive*, Seminar Paper

Derrick, M, 'Sale of Lots in Community Titles Schemes' (July, 1997) 11/10 *Australian Property Law Bulletin*, pp 91-94

Gregory, S, '*Body Corporate and Community Management Act* 1997 Intensive: General Issues' (August, 1997) *CLE/QUT Body Corporate and Community Management Intensive*, Seminar Paper

Notes in text

[45-9050]

Note¹ – This part does not apply to water allocations.

Note² – This part does not apply to State land.

^{2, 3}Part 49 – Water Allocations

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^{2, 3}**Part 49 – Water Allocations**

This part provides general information relating to water allocations and the Water Allocation Register (WAR). It also provides registry requirements and practice for the preparation and processing of dealings lodged in respect of water allocations that do not appear in other parts of this manual.

General Law

[49-0000]

A water allocation is an entitlement created under the *Water Act 2000* which is established on commencement of a Resource Operations Plan (ROP) for an area. Water allocations are assets that are separate to land and may be owned and traded by non-landholders. All water allocations are registered in the Water Allocation Register (WAR). WAR records ownership information on water allocations in a similar way in which details of land ownership are recorded in the Freehold Land Registry. The *Water Act 2000* provides for a Registrar of Water Allocations who was given the responsibility of maintaining WAR.

Resource Operations Plan

[49-0010]

A resource operations plan (ROP) is the statutory instrument that contains details of the existing water entitlements to be converted to water allocations, and any new water allocations to be granted, upon commencement of the ROP. It also sets out the operational mechanisms that implement the broader management provisions previously defined by a Water Resource Plan for a catchment.

On the day a ROP commences, existing water entitlements to be converted under the ROP expire, and water allocations are granted to the holders of the expired water entitlements and recorded on the WAR. Any new allocations to be granted under the ROP are also recorded on the WAR at this time. Water allocation holders are notified of the registration.

Resource Operations Licence

[49-0020]

A resource operations licence (ROL) is a licence granted to operators of water supply storage infrastructure such as dams or weirs on commencement of a ROP.

If a water allocation is managed under a ROL (ie the water allocation is an entitlement to supplemented supply through water delivered from infrastructure), the ROL holder and the allocation holder must have a supply contract for the allocation. If on the day the water allocation is granted, the allocation holder and the ROL holder have not entered into a supply contract for the allocation, a standard supply contract (approved by the chief executive of the Department of Natural Resources and Mines) for the area applies.

Non-Resource Operations Licence

[49-0030]

A water allocation not managed under a resource operations licence is commonly referred to as an unsupplemented water allocation or a 'non-resource operations licence' water allocation, ie NRL.

NRL water allocations are taken from unsupplemented supply, ie natural flow that is not dependent on water infrastructure. Unsupplemented water is managed by the Department of Natural Resources and Mines.

Water Allocation Register

[49-0040]

Water allocations are registered in WAR. WAR records ownership and other information for water allocations in a similar way to which details of land ownership and dealings are recorded in the Freehold Land Register. The Registrar is only concerned with maintaining WAR by the registration of water allocations on the commencement of a resource operations plan and registration of dealings with water allocations when lodged.

In addition to those aspects which normally appear on a title for freehold land, WAR also records the following resource related elements of a water allocation:

- the location from which the water may be taken under the allocation;
- the purpose for which the water may be taken under the allocation;
- any conditions required by the chief executive to entered on the WAR;
- the nominal volume for the allocation;
- the priority group to which the allocation belongs – only for allocations managed under a resource operations licence (ROL), ie supplemented water allocations;
- the maximum rate for taking water – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation)
- the flow conditions under which the water may be taken – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation)
- the volumetric limit – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation)
- the water allocation group to which the allocation belongs – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation).

Resource related elements are determined and administered by staff of the Department of Natural Resources and Mines responsible for water management and use. The Registrar is only concerned with the recording of resource elements on the title for the water allocation.

Searches of WAR may be conducted in the same manner as searches for freehold land.

The forms and the requirements for the registration of many dealings in WAR are the same as those under the *Land Title Act 1994* (s 150 of the *Water Act 2000*). However, some dealings have further requirements. All dealings that can be registered under the *Land Title Act 1994*, with the exception of those mentioned in ss 150(2) and 151(1) of the *Water Act 2000*, may be registered in WAR. In addition, it is also possible to change the attributes of an allocation, subdivide an allocation and amalgamate two or more allocations into one allocation.

Water Allocations

[49-0050]

To enable a water allocation to be given a unique lot/plan identifier it was necessary to provide water allocations with a plan number. As it is not possible to physically survey a water allocation it was determined that with the implementation of each new water scheme all the allocations within that scheme would be allocated a common administrative plan number. The associated water allocations become ‘lots’ on that plan.

The plan prefix for an administrative plan is always ‘AP’. As an example, for the Fitzroy scheme the plan number is AP6829, for all allocations (or ‘lots’). Therefore, water allocation 40 in the Fitzroy Scheme would be described as Lot 40 on AP6829 (or ‘WA on Plan’ or ‘Water Allocation on Plan’). A water allocation does not have a county or parish as a part of the description.

Although a water allocation is described in the same manner as a lot of land, the plan is an administrative plan as mentioned earlier, and does not represent a defined physical location, or show any dimensions. Maps of the various scheme areas have been captured in ATS as the relevant administrative plan.

Each water allocation recorded in WAR will be allocated a title reference beginning with ‘46’, eg 46012345.

As with land, only an entity with legal capacity may hold a water allocation or a share in a water allocation.

A search of the title will show whether the water allocation is managed under a ROL (supplemented water supply) or is a NRL (un-supplemented water supply) and the resource related elements for the allocation.

Certificates

[49-0060]

A certificate (Water Allocation Dealing Certificate) by the Chief Executive of the Department of Natural Resources and Mines is required to be deposited with the following dealings lodged for registration in WAR:

- subdivision of a water allocation
- amalgamation of water allocations
- change (of resource attributes) of a water allocation
- transfer (of un-supplemented allocations)
- lease (of un-supplemented allocations).

The certificate is issued by the relevant office of Department of Natural Resources and Mines which administers the Resource Operations Plan in which the water allocation is located.

A certificate is valid until the date shown on the certificate or if the certificate does not show an expiry date for 40 business days, which ever occurs first. Dealings presented for lodgement must be accompanied by a valid certificate. If a certificate expires before it is deposited with a dealing lodged in WAR a new certificate must be obtained.

Legislation

[49-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of ss 150(1) and 151 of the *Water Act 2000*, subject to the exceptions provided in ss 150(2) and 151(1) of the *Water Act 2000*, the *Land Title Act 1994* applies to the registration of an interest or dealings for a water allocation on the water allocation register.

Under s 151(3) of the *Water Act 2000* an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act 1994* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act 1994*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act 2000*; and
- (b) as if a reference to the freehold land register were a reference to the water allocation register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

Practice

Dealings that may not be Registered

[49-2000]

Section 151 of the *Water Act 2000* sets out how the *Land Title Act 1994* applies to WAR. Section 151(1) prescribes which parts of the *Land Title Act 1994* do not apply to the *Water Act 2000*.

Consequently, the following dealing types are not capable of registration in WAR:

- Lease of part of an allocation
- Transfer of part of an allocation (other than a share)
- Transfer of Timeshares
- Transfer of Life Estates
- Easement
- Covenant
- Profit a prendre
- Application for Title by Adverse Possession

- Application for Title
- Building Management Statement
- Plan of Survey.

Dealings with an Interest in a Water Allocation

[49-2010]

Once a water allocation is created in the water allocation register, a person may lodge dealings over that water allocation and conduct searches in the same manner as for the land registry. A dealing must be registered in WAR for it to have effect. For the purpose of registering dealings, interests and encumbrances, the water legislation makes the concept of a 'lot' in the *Land Title Act 1994* the same as a 'water allocation' in the water allocation register. Land Registry Forms are applicable for transactions with water allocations and a somewhat similar fee structure to that applicable to freehold is prescribed in the *Water Regulation 2002*. It is also permissible to lodge a single registry form to deal with a water allocation and land tenures, eg the fee simple and a water allocation.

Subdivision of a Water Allocation

[49-2020]

Under s 128A of the *Water Act 2000* an allocation holder may subdivide an allocation into two or more smaller allocations. Before a subdivision may be registered it is necessary to obtain a Water Allocation Dealing Certificate.

A Form 14 – General Request is appropriate to record a subdivision of a water allocation. See part 14 – General Request, esp ¶[14-2950].

Amalgamation of Water Allocations

[49-2030]

Under s 128A of the *Water Act 2000* an allocation holder may amalgamate two or more allocations into one. Before an amalgamation may be registered it is necessary to obtain a Water Allocation Dealing Certificate.

A Form 14 – General Request is appropriate to record an amalgamation of a water allocation. See part 14 – General Request, esp ¶[14-2960].

Change of a Water Allocation

[49-2040]

Under s 129 of the *Water Act 2000* an allocation holder may change the resource related elements of an allocation, for example, the purpose. Before a change of a resource related element may be registered it is necessary to obtain a Water Allocation Dealing Certificate.

A Form 14 – General Request is appropriate to record a change a resource related element of an allocation. See part 14 – General Request, esp ¶[14-2970].

Water Allocation Notice

[49-2050]

Under s 101(1)(b) of the *Water Act 2000* existing interest holders in a water licence may give the Chief Executive a notice in the approved form stating the interest holder intends, upon the

commencement of the ROP, to take action to have the holder's interest recorded on the water allocation register. The notice referred to as Water Allocation Notice (WAN) is recorded on the water allocation register at the commencement of the ROP.

A Form 14 – General Request, prepared by departmental staff responsible for water management and use, is appropriate to record a water allocation notice. See part 52 – Administrative Advices, esp ¶[52-0060].

Notice of Consent to Encumber Water Allocation

[49-2060]

An existing interest holder who has given notice to the Chief Executive under s 101(1)(b) of the *Water Act 2000*, and has obtained the consent of the proposed water allocation holder to encumber the proposed water allocation with the interest mentioned in the notice may, prior to the commencement of the ROP also give the Chief Executive notice of the consent in the approved form (s 101(1)(c) of the *Water Act 2000*).

A notice under s 101(1)(c) of the *Water Act 2000* in Form ROP 03 – Notice of Consent to Encumber a Water Allocation is given by the Chief Executive to the Registrar for recording. The Registrar must record the notice for the water allocation within 60 business days from the commencement of the ROP. Section 150B(1)(b) of the *Water Act 2000* requires that the notice must be recorded with the priority the interest mentioned in the notice had in the land registry for the land to which the interest relates as at the day the allocation is recorded.

Once the notice is recorded on the water allocation title, it has the effect of encumbering the water allocation with the interest mentioned in the notice and under s 150B(2) it is taken to be a mortgage under the *Land Title Act 1994*. It is recorded on the water allocation title as a mortgage under s 101(1)(c) *Water Act 2000*.

A notice under s 101(1)(c) of the *Water Act 2000* may only be deposited:

- (a) with the consent of the mortgagor/holder of the water allocation;
- (b) before the relevant resource operations plan commences; and
- (c) if a notice under s 101(1)(b) of the *Water Act 2000* has previously been deposited.

¶[49-2070] deleted

Notice of Distribution Operations Licence

[49-2080]

Notice of Distribution Operations Licence

Some water allocations managed under a ROL also receive water via a distribution network (such as diversion works for off-stream channels). These networks are managed by a distribution operations licence (DOL) holder who authorises the distribution of water.

A water allocation managed under a DOL will have an administrative advice recorded on its title stating that the allocation is one to which a DOL applies.

A Form 14 – General Request is appropriate to record the notice of the existence of a licence. See part 52 – Administrative Advices, esp ¶[52-0240].

Notice of Removal of Distribution Operations Licence

A Form 14 – General Request, prepared by departmental staff responsible for water management and use, is appropriate to record the notice of removal of a notice of a distribution operations licence. See part 52 – Administrative Advices, esp ¶[52-0240].

Forfeiture under s 138 *Water Act* 2000

[49-2090]

Under s 138 of the *Water Act* 2000 the chief executive may give an allocation holder a show cause notice if the allocation holder is convicted of an offence against the Act.

If after considering any properly made submissions the chief executive is still satisfied that the allocation should be forfeited the Chief Executive may forfeit the allocation.

Section 138(4) and (5) sets out the requirements for forfeiture and if these requirements are met the chief executive must sell the allocation by public auction, public ballot or public tender.

A purchaser of an allocation in this instance takes the allocation free of all interests and any money received by the Chief Executive is applied in accordance with s 138(7) and (8) of the Act.

Case Law

[49-7000]

Nil.

Fees

[49-8000]

Fees payable to the registry are subject to an annual review. See the current *Water Regulation* 2002 – Schedule 16, item numbers 7 to 24.

Cross References and Further Reading

[49-9000]

Part 1 – Transfer

Part 2 – Mortgage

Part 11 – Caveat

Part 14 – General Request

Part 52 – Administrative Advices

Notes in text

[49-9050]

Note² – This part does not apply to State land.

Note³ – This part does not apply to freehold land.

Part 50 – Corporations and Companies

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Part 50 – Corporations and Companies

General Law

Purpose

[50-0000]

The purpose of this part is to provide guidance in respect of dealings by corporations and, more particularly, companies. This part is supplementary to and should be read in conjunction with the rest of the Manual.

This part sets out certain background information in relation to corporations, certain aspects of the law relating to corporations which are relevant to this Manual and matters of practice specific to corporations.

Nature

[50-0010]

A corporation is a creature of the law. It is a separate legal entity created by persons registering the new entity with the appropriate government authority under appropriate legislation. The process of creating the new entity is called ‘incorporation’.

A company is one example of a corporation or body corporate and is distinguished by the method and place of its incorporation.

A body corporate includes a company, whether incorporated by charter, statute or common law.

A company is to be distinguished from a ‘corporation sole’, which refers to a particular public office held by a natural person. By virtue of holding the particular office, the natural person is vested with ownership of certain property used in conjunction with that office and with the capacity to do certain things. On a change in the person holding the office, the new holder is automatically vested with such property and has the same capacities. An example of a corporation sole is the Public Trustee of Queensland.

Governing Legislation

[50-0020]

A company is registered and governed by the *Corporations Act 2001* (Cth) which commenced from 12 July 2001. This Act was made applicable to Queensland by a combination of the *Corporations (Commonwealth Powers) Act 2001*, *Corporations (Administrative Actions) Act 2001* and the *Corporations (Ancillary Provisions) Act 2001*. Prior to the commencement of the Corporations Act companies were registered and governed by the Corporations Law.

Corporate Constitution

[50-0030]

Prior to the *Company Law Review Act 1998* on 29 June 1998 a company had a corporate constitution, which usually consisted of two documents, its memorandum of association and its articles of association. The memorandum of association defines the nature of the company. The articles of association contain regulations for the internal government of the company. The articles of a company will usually be found in a separate document specific to the company, but they may be deemed to be certain provisions set out in an attachment to the *Corporations Law*.

Under the *Company Law Review Act* a company’s corporate constitution may be made up of replaceable rules, a constitution or a combination of both. The replaceable rules and/or constitution contain regulations for the internal government of the company.

In relation to certain matters, the provisions of the *Corporations Law* override any provisions to the contrary found in a company's constitution. The *Corporations Law* was repealed from 12 July 2001 by the Corporations Act, however, the provisions of that Act override any provisions found in the company's constitution that are contrary to the Act.

Classification

[50-0040]

Companies are classified on a number of different bases, including:

- (1) the nature of the liability of members; and
- (2) restrictions on changes of membership.

These classifications are not relevant for the purposes of this Manual.

Capacity

[50-0050]

A company has the legal capacity of a natural person plus certain powers that relate specifically to companies, including the power to issue shares and debentures and to grant a floating charge over its property. Accordingly, a company has the power to hold and deal with land under the *Land Title Act 1994* a State tenure under the *Land Act 1994* where authorised or a water allocation under the *Water Act 2000*.

A company's constitution may restrict or prohibit the exercise by the company of a power. However generally, an act in breach of such restriction or prohibition will not be invalid merely because of such breach so far as it relates to parties dealing with the company.

Thus in the ordinary course, any agreement entered into by a company cannot be set aside on the grounds that the company lacked the power to enter into it.

Name and ACN

[50-0060]

On registration, a company is given an Australian Company Number ('ACN'). The ACN may be adopted as the name of the company.

A company must set out its name and the words 'Australian Company Number' or 'ACN' followed by its ACN on every public document it signs or issues (s. 153 of the *Corporations Act 2001* (Cth)). A power of attorney given by or to a company should also include the name and ACN of the company.

Foreign companies registered under the Corporations Act must similarly display their Australian Registered Body Number ('ARBN') (see ¶[50-0140]).

From 29 May 2000 a company issued with an ACN or ARBN is permitted to use the company's Australian Business Number (ABN) on any document provided that the last nine digits of the ABN are the same as the company's ACN or ARBN.

Financial institutions not registered under the Corporations Act are not required to display any identifying number on documentation.

When describing a company, certain abbreviations of words in its name are acceptable:

- (1) 'Aust' for 'Australian';
- (2) 'A.C.N' for 'Australian Company Number';

- (3) 'Co.' or 'Coy' for 'Company';
- (4) 'Ltd.' for 'Limited';
- (5) 'N.L.' for 'No Liability';
- (6) 'No.' for 'Number';
- (7) 'Pty' for 'Proprietary'; and
- (8) '&' for 'and'.

Where these abbreviations are part of a company's name, it is also acceptable to use the corresponding words in place of such abbreviations. The omission of full stops from these abbreviations is also acceptable (s. 149 of the Corporations Act).

In certain circumstances, a limited company may be licensed to omit the word 'Limited' from its name. This is where it is formed for certain charitable or community purposes (s. 150 of the Corporations Act).

A change of name by a company does not create a new legal entity and does not affect the identity, property, rights or obligations of the company or its continuity as a body corporate or render defective any legal proceedings by or against the company (s. 161 of the Corporations Act).

Control

[50-0070]

The constitution of a corporation invariably delegates to the directors all the powers of management. Thus, the directors alone are specifically responsible for the management of a corporation, except in matters specifically reserved to the corporation in general meeting.

Directors of a corporation stand in a fiduciary position in relation to the company.

Directors must act collectively as a board. Certain basic rules in relation to directors' meetings exist at law, such as requirements for proper notice, quorum and a requirement to keep minutes. Further regulations are found in the company's articles.

In certain circumstances, the power of directors to manage a company are suspended or curtailed. These circumstances are set out below.

¶[50-0080] deleted

Liquidation

[50-0090]

Where a company is being wound up as a result of the insolvency of the company or by an order of the court, or where a provisional liquidator is acting, the powers of the directors to manage the affairs of the company and to deal with the assets of the company are effectively suspended. This generally does not affect the powers of a privately appointed receiver and manager of the property of the company.

On appointment, a liquidator or provisional liquidator is required to take into his/her custody or control all the property to which the company is entitled.

A liquidator may apply for a court order directing that some or all of the property be vested in the liquidator. Upon such order being made, the property vests in the liquidator in his/her office as an official liquidator, not personally.

Administration

[50-0100]

On appointment, an administrator assumes control of the business, property and affairs of a company, may sell any property of the company and can exercise any power that the company or any of its officers could exercise if the company were not under administration (s. 437A(1) of the *Corporations Act 2001* (Cth)).

The powers of other officers, including directors, a liquidator, a provisional liquidator and a receiver or receiver and manager are suspended during the course of the administration of a company, unless the administrator otherwise approves in writing (s. 437C of the *Corporations Act*).

A purported transaction or dealing affecting property of a company under administration is void unless it was entered into by the administrator on the company's behalf, the administrator consented to it in writing before it was entered into or it was entered into under an order of the court (s. 437D(2) of the *Corporations Act*).

An administrator of a company may be appointed:

- (a) by the company itself in writing if the board of directors has resolved that the company is or is likely to become insolvent and that an administrator should be appointed (s. 436A(1) of the *Corporations Act*);
- (b) by a liquidator in writing (s. 436B of the *Corporations Act*); and
- (c) in writing by a person entitled to enforce a charge of the whole or substantially the whole of the company's property if the charge is enforceable (s. 436C of the *Corporations Act*).

If a deed of company arrangement commences, the original administrator's powers effectively cease and the terms of the deed of company arrangement will determine the respective powers of the company and the administrator of the deed in terms of dealing with property. The company's powers to deal with its property will be unfettered except as provided by the deed (s. 444A of the *Corporations Act*).

Execution of Documents

[50-0110]

A company has the power to enter into contracts and execute deeds itself and through a validly appointed agent.

In entering into a contract itself, a company must necessarily act through a person. Where a contract is entered into on behalf of a company by those charged with the conduct of the company's affairs, the contract will be regarded at law as having been entered into by the company itself, rather than through an agent.

In entering into a contract a company may, but is not required to, use its common seal. If a company chooses to execute a document under seal, the manner in which the seal is to be affixed will be governed by the company's constitution.

The *Land Title Act 1994*, the *Land Act 1994* and the *Corporations Act 2001* (Cth) contain provisions which limit the necessity for a person to enquire into the validity of the use of a common seal by a company.

Land Title Act 1994 and Land Act 1994

[50-0120]

In relation to a corporation, an instrument is validly executed if it is:

- (a) executed in a way permitted by law; or
- (b) sealed in accordance with s. 46 of the *Property Law Act 1974* (s. 161(1) of the *Land Title Act* or s. 310(1) of the *Land Act*).

Section 46 of the *Property Law Act* provides that where a seal purporting to be the seal of a company has been affixed to a deed and attested to by persons who purport to be the secretary, clerk or other permanent officer and a director of the company, the deed shall be deemed to have been executed under the requirements of that section and to have taken effect accordingly.

Corporations Act 2001 (Cth)

[50-0130]

In the absence of knowledge to the contrary, a person is entitled to assume that a document has been validly executed by a corporation in circumstances specified in the *Corporations Act*.

Examples of valid assumptions would occur if the persons executing or attesting the affixing of a common seal:

- (a) appear from returns lodged with the Australian Securities and Investments Commission to hold the positions of director and/or secretary (s. 129(2) of the *Corporations Act*); or
- (b) if they are held out by the company as holding such positions (s. 129(3) of the *Corporations Act*).

Instruments or documents lodged for registration in the registry will be accepted as validly executed by a corporation if they are executed:

- (a) in keeping with s. 46 of the *Property Law Act 1974*;
- (b) with a common seal and signed by two persons, both of whom are authorised officers of the corporation and their designations appear adjacent to their signature;
- (c) with a common seal and signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation and that designation appears adjacent to the signature;
- (d) without a common seal and signed by two persons, both of whom are authorised officers of the corporation and their designations appear adjacent to their signature. The name and ACN or ARBN of the corporation must be shown in the execution;
- (e) without a common seal and signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation and that designation appears adjacent to the signature. The name and ACN or ARBN of the corporation must be shown in the execution;
- (f) an attorney if the power of attorney is registered in the registry;
- (g) by its solicitor for transfers only if the company is transferee and for some requests (s. 11(1) of the *Land Title Act 1994* or s. 288(1) of the *Land Act 1994*).

Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) [50-0135]

The *Corporations (Aboriginal and Torres Strait Islander) Act* commenced on 1 July 2007 and provides for the incorporation and regulation of Aboriginal and Torres Strait Islander corporations.

Once an application for registration as a corporation has been granted, a certificate of registration is issued by the Office of the Registrar of Indigenous Corporations. The certificate of registration must be deposited with any instrument or document that will record a corporation as a registered owner or holder of an interest. For information about options for the deposit of supporting documentation see part [60-1030].

The corporations Indigenous Corporation Number (ICN) must be inserted as part of the corporation's name on a lodged instrument or document.

An Aboriginal and Torres Strait Islander corporation with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- a) 2 directors of the corporation; or
- b) a director and a corporation secretary of the corporation; or
- c) if the corporation only has one director – the sole director.

The seal must be a clear legible imprint (includes self-adhesive seals) and must include the corporation's name and ICN. The designations of the relevant officers must be included.

An Aboriginal and Torres Strait Islander corporation may execute a document without using a common seal if the document is signed by:

- a) 2 directors of the corporation; or
- b) a director and a corporation secretary (if any); or
- c) if the corporation only has one director – the sole director.

The execution must include the corporation's name and ICN and the designations of the relevant officers must be included.

Foreign Company

[50-0140]

A company or other body incorporated outside Australia must not carry on business in Queensland unless it has been registered under the *Corporations Act 2001* (Cth). A foreign company is not deemed to carry on business in Queensland if it conducts an isolated transaction, creates evidence of a debt or creates a charge on property.

On registration, the foreign company is given an Australian Registered Body Number ('ARBN') (s. 601CE of the Corporations Act). There is no requirement for the ARBN to be included in the company seal.

The ARBN must appear after the name of the foreign company on every public document that the foreign company publishes, issues or signs (s. 601DE of the Corporations Act).

If a foreign company acquires an interest in land in Queensland without carrying on business and is therefore not registered and does not have an ARBN, evidence of Incorporation must be produced. Translation to English of any evidence deposited is required where applicable. If that evidence has been produced for the registration of a prior dealing, reference may be made to that dealing after the company name (eg 'evidence of incorporation deposited with Instrument No [number]').

In many instances, the execution by a foreign company under the law of the country in which it is incorporated does not conform to the requirements of s. 46(1) of the *Property Law Act 1974*. Section 127 of the Corporations Act defines the requirements for execution of documents by a

registered foreign company and s. 46(6) of the Property Law Act defines alternate acceptable modes of execution. If the mode of execution by a foreign company does not conform, then substantive evidence must be submitted in support of the mode of execution by the corporation.

For example, if the legislation of a State or country provides that the execution by the president of a corporation binds the corporation with no requirement for a seal or a sealing clause in its articles, then evidence to this effect would be required.

¶[50-0150] deleted

Disclaiming Property

[50-0160]

For information about disclaiming property see [14-2260].

Gift

[50-0170]

Because a company is deemed to have the rights, powers and privileges of a natural person, a company would not lack the power to make a gift. However, the board of directors may not have authority to make a gift.

As regards gifts to directors, it should be noted that directors of a company stand in a special position of trust (a 'fiduciary position') in relation to the company and, in general, any benefit given by the company to a director requires the approval of the company in general meeting. If a transfer to a director is in registrable form, it is accepted that the appropriate procedures have been adhered to and it will be registered.

Deregistered Company

[50-0180]

¹Company Deregistered Prior to 1 July 1962

When a company was dissolved under s. 300 of the *Companies Act 1931*, all property and rights whatsoever vested in the Crown. See ¶[50-2070] and part 14 – General Request, esp ¶[14-2300].

Company Deregistered under the Australian Securities and Investments Commission (ASIC)

When a corporation is deregistered under ss. 601AA, 601AB or 601AC of the *Corporations Act 2001* (Cth) and there remains outstanding property in the name of the corporation, such property vests in the ASIC (s. 601AD of the Corporations Act). See ¶[50-2070] and part 14 – General Request, esp ¶[14-2300].

²Legislation

[50-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and

- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Practice

Execution of Documents

[50-2000]

An instrument or document is validly executed by a corporation if it is executed in a way permitted by law or if it is sealed with the corporation's seal in accordance with s. 46 of the *Property Law Act 1974* (s. 161(1) of the *Land Title Act 1994* or s. 310(1) of the *Land Act 1994*).

Section 127 of the *Corporations Act 2001* (Cth) authorises a corporation to execute a document, including a deed, with or without affixing a common seal.

The Registrar assumes that the execution of a corporation is valid without requiring evidence in the following situations:

- 1 Execution under common seal:
 - (a) the seal must be a clear legible imprint (includes self-adhesive seals); and
 - (b) the seal must include the corporation's name and ACN; and
 - (c) be signed by two persons, both of whom are authorised officers of the corporation; or
 - (d) be signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation; and
 - (e) the signatory(s) must show their designation(s) typed or printed legibly adjacent to the/their signature(s).
- 2 Execution not under common seal:
 - (a) the name of the corporation and the ACN* must be included as part of the execution; and
 - (b) be signed by two persons, both of whom are authorised officers of the corporation; or
 - (c) be signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation; and
 - (d) the signatories must show their designation(s) typed or printed legibly adjacent to the/their signature(s).

*For the *National Mortgage Form* and *Priority Notice Form*, a company does not need to include its ACN/ARBN as part of its name in the relevant execution panel if the ACN/ARBN has already been included in the Mortgagor Panel, Mortgagee Panel or Applicant Panel.

An example of an execution by a corporation without a common seal and by a sole director who is also the sole secretary of the corporation could be:

A B PTY. LTD. ACN 987 123 654

A Signature

Sole director and secretary

An execution by a corporation (with or without a common seal) does not require a witness in accordance with Schedule 1 of the Land Title Act or s. 46 of the Land Regulation.

A corporation or an authorised officer of the corporation may appoint an attorney. An execution by an attorney for a corporation as transferor, mortgagor, lessor, etc must be witnessed (s. 46(3) of the Property Law Act). Generally all instruments to be registered in the registry must be witnessed by a person with a qualification stated in Schedule 1 of the Land Title Act or s. 46 of the Land Regulation (e.g. justice of the peace, barrister, solicitor etc). However in exceptional circumstances, when an attorney is executing on behalf of a corporation, the Registrar will consider a submission that seeks relaxation of this requirement (s. 161(3) of the Land Title Act or s. 310(3) of the Land Act).

Where specific provision is made in the constitution, s. 46(6) of the Property Law Act validates execution by an attorney without a witness. If a document is executed in this manner, a copy of the constitution, certified by the solicitor or an authorised officer of the corporation, must be produced to the Registrar with the document to be registered. However, a conveyance executed by a corporation as attorney (with or without a common seal) is not required to be witnessed (s. 161 of the Land Title Act or s. 310 of the Land Act).

Execution by an attorney for a corporation of an instrument or document in which the company is a transferee, mortgagee, lessee, grantee, chargee, etc need not be witnessed as there is no conveyance by the company involved. This does not apply to the execution of Releases of Mortgage, Surrenders of Lease, Surrenders of Easement, Releases of Charge, etc. In those instances the corporation is the party releasing or surrendering and a conveyance is involved.

Instruments or documents that transfer to or create an interest in favour of a corporation must be executed by the corporation or a solicitor authorised by the corporation (s. 11(1) of the Land Title Act or s. 288(1) of the Land Act). If signed by a solicitor, the full name of the solicitor must be shown.

Incorporated Associations under the *Associations Incorporation Act 1981* (Qld)

[50-2005]

Execution under seal

An instrument is validly executed by an incorporated association if it is executed in a way permitted by law or if it is sealed with the incorporated association's seal in accordance with s. 46 of the *Property Law Act 1974* (s. 161(1) of the *Land Title Act 1994* or s. 310(1) of the *Land Act 1994*).

For incorporated associations incorporated under the Associations Incorporation Act, the Registrar will accept an execution under seal for all Titles Registry forms. The incorporated association must affix the seal in accordance with its rules or in accordance with s. 46 of the Property Law Act.

The Registrar assumes that an execution by an incorporated association under seal is valid without requiring further evidence where the execution is carried out as follows:

1. a clear legible imprint of the common seal of the incorporated association which includes the registered name (with "incorporated" or "inc") is affixed; and
2. the document or instrument is:

- a. signed by two members of the management committee and their designations appear printed legibly with their signatures; OR
- b. signed by a member of the management committee and the secretary and their designations appear printed legibly with their signatures.

The execution does not need to be witnessed.

The registrar will also assume that an execution by an incorporated association under seal is valid if:

1. a clear legible imprint of the common seal of the incorporated association which includes the registered name (with “incorporated” or “inc”) is affixed; and
2. the document or instrument is signed by a member of the management committee and someone authorised by the management committee and suitable designations appear printed legibly with their signatures; and
3. suitable evidence is provided to show that the person is authorised by the management committee (e.g. a copy of the minutes of the management committee meeting certified by the association’s legal representative or secretary that details the resolution providing the person with the authority).

The execution does not need to be witnessed.

Where an incorporated association has adopted rules providing for a different procedure for affixing the common seal which is not detailed above – a copy of the adopted rules certified by the secretary or a legal representative of the association must be deposited to show that the particular method of affixing the common seal is authorised by the adopted rules.

Execution by the secretary of the Incorporated Association

The Registrar will accept an execution by the secretary of an incorporated association for Form 14 – General Requests which are only lodged to record the occurrence of another legal process such as:

- recording a vesting in an Incorporated Association (see ¶[14-2360]); or
- the change of the name of an Incorporated Association (see ¶[14-2030]).

The execution must include the name of the association (with “incorporated” or “inc”) and the designation “secretary”. The execution does not need to be witnessed.

Correction of Name

[50-2010]

Where a company is a registered owner or holder dealing with land or an interest, the name in the instrument or document should coincide with that under which it is registered. In a transfer by the company, minor discrepancies which raise no doubt as to identity can be corrected as a patent error (s. 155(3) of the *Land Title Act 1994* or s. 304(2) of the *Land Act 1994*).

These corrections may only be made if the error is:

- (a) obvious; and
- (b) will not prejudice the rights of any person.

Change of Name

[50-2020]

Where a company changes its name, the interest registered in the former name can be amended by a lodgement of a Form 14 – Request to Change Name. For the requirements for a request to change name see part 14 – General Request, esp ¶[14-2020] and ¶[14-2040].

Where a company, which has changed its name, is disposing of an interest that is registered on the title in the former name the instrument or document must recite the name in the following manner:

[Current name and ACN (or ABN)] formerly [name registered on the title and ACN (or ABN)].

Evidence of the change of name must also be deposited with the instrument or document. In cases where the company name has been changed more than once, evidence that verifies each change of name must be deposited. For further information for the requirements or the deposit of supporting information see part 60 – Miscellaneous, esp ¶[60-1030].

Instrument or Document by Receiver or Receiver and Manager

[50-2030]

An instrument or document for execution by a corporation where a receiver has been appointed should be prepared in the name of the corporation and not in the name of the receiver. The words ‘(Receiver appointed)’ must appear after the name of the corporation where it appears in the instrument or document. No reference to the receivership is made in the title.

Evidence of appointment of the receiver or receiver and manager must be deposited with any instrument or document executed by a receiver or receiver and manager by way of:

- a current copy of the notification of the appointment from the Australian Securities and Investments Commission (ASIC) or an approved ASIC information broker; or
- a copy of a court order making the appointment.

For more information about deposit of supporting documentation see [60-1030].

The receiver of a corporation may execute an instrument or document under the seal of the corporation (ss. 420(2)(k) and (n) of the *Corporations Act 2001* (Cth)).

Section 420(2)(q) of the Corporations Act authorises a receiver or receiver and manager to appoint an agent (attorney) to do business that he/she is unable to do or that is unreasonable to expect the receiver to do in person. Evidence of appointment of a receiver or receiver and manager must be deposited with the power of attorney. The director/s of the corporation or an attorney appointed by the corporation prior to the appointment of a receiver/manager may continue to execute instruments or documents on behalf of the corporation in relation to charged assets only with the consent of the receiver/manager. This consent may be given in a Form 18 – General Consent.

Under the Corporations Act, a liquidator or court may authorise a receiver of a corporation being wound up to carry on the corporation’s business. The approval of a liquidator may be given in a *Form 18 – General Consent*.

Unless this approval by the liquidator is granted, a receiver’s authority as agent of the corporation terminates. This does not, however, terminate the receiver’s power to control and deal with the property in relation to which the receiver was appointed.

A receiver's authority is limited to exercising the rights of a security holder and only as agent to deal with the property that is charged by the security holder. If necessary, the receiver may use the name of the corporation to exercise these rights.

Where there are two or more receivers appointed, unless otherwise specified in the document evidencing appointment, any one of them may execute an instrument or document on behalf of the corporation.

The execution of an instrument or document by a receiver should be substantially as shown below.

SEAL
(where applicable)

J N Jones

RECEIVER/RECEIVER AND MANAGER

John Neal Jones

FULL NAME (TO BE PRINTED)

Where the seal of the company is not affixed the company name and ACN must be printed adjacent to the execution.

Instrument or Document by Liquidator

[50-2040]

An instrument or document to be executed by the liquidator of a corporation in liquidation should be prepared in the name of the corporation and not in the name of the liquidator. The words '(in liquidation)' must appear after the name of the corporation where it appears in the instrument or document. No reference to the winding up is made in the title.

Evidence of appointment of the liquidator must be deposited with any instrument or document executed by a liquidator by way of:

- a current copy of the notification of the appointment issued by the Australian Securities and Investments Commission (ASIC); or
- a copy of a court order making the appointment.

For more information about the deposit of supporting documentation see [60-1030]. A general meeting of a corporation in liquidation may approve the retention by the directors of their powers with the consent of the liquidator. Evidence of this must be deposited with any instrument or document executed by a director.

A liquidator executes in the name of the corporation. Section 477(2)(k) of the *Corporations Act 2001* (Cth) authorises a liquidator to appoint an agent (attorney) to do business that he/she is unable to do or that is unreasonable to expect the liquidator to do in person. Evidence of appointment of the liquidator must be deposited with the power of attorney.

An attorney appointed by the corporation prior to the appointment of the liquidator may continue to execute instruments or documents on behalf of the corporation only with the consent of the liquidator. This consent may be given in a *Form 18 – General Consent*.

A liquidator appointed in another State may execute instruments or documents for registration in Queensland. Evidence of the liquidator's appointment must be deposited as above.

If more than one liquidator is appointed by the Court, the Court shall declare whether all or any one of the persons appointed is required to execute on behalf of the corporation (s. 473(8) of the Corporations Act).

Where several liquidators are appointed under a members' voluntary winding up any one of them may execute any instrument or document, unless evidence to the contrary is provided (s. 530 of the Corporations Act).

The seal of a corporation in liquidation may be affixed by the liquidator in execution of an instrument or document (s. 477(2)(d) of the Corporations Act).

The execution of an instrument or document by a liquidator should be substantially as shown below.

SEAL (where applicable)	<i>J N Jones</i> ----- LIQUIDATOR
	<i>John Neal Jones</i> ----- FULL NAME (TO BE PRINTED)

Where the seal of the company is not affixed the company name and ACN must be printed adjacent to the execution.

Instrument or Document by Administrator

[50-2050]

An instrument or document by a corporation where an administrator has been appointed must be prepared in the name of the corporation and not in the name of the administrator. The words '(Administrator appointed)' must appear after the name of the corporation where it appears in the instrument or document and where a deed of company arrangement is in effect, the words '(Subject to deed of company arrangement)' must appear. No reference to appointment of an administrator or the operation of a deed of company arrangement is made in the title.

Evidence of appointment of the administrator must be deposited with any instrument or document executed by an administrator by way of:

- a current copy of the notification of the appointment issued by the Australian Securities and Investments Commission (ASIC); or
- a copy of a court order making the appointment.

Where a deed of company arrangement has commenced, a copy of the deed must also be deposited.

For more information about deposit of supporting documentation see [60-1030].

Where there are two or more administrators appointed, unless otherwise specified in the document evidencing the appointment, any one of them may execute an instrument or document on behalf of the corporation (s. 451B(2) of the *Corporations Act 2001* (Cth)).

The execution of an instrument or document by the administrator should be substantially as shown below.

SEAL (where applicable)	<i>S N Blue</i> ----- ADMINISTRATOR Stephen Norbert Blue ----- FULL NAME (TO BE PRINTED)
----------------------------	---

Where the seal of the company is not affixed the company name and ACN must be printed adjacent to the execution.

Disclaiming Property

[50-2060]

For information about disclaiming property see [14-2260].

Deregistered Corporation

[50-2070]

¹Company Deregistered Prior to the *Companies Act 1961*

Pursuant to s. 300 of the Companies Act, when a company was dissolved, all property and rights whatsoever vested in the company immediately before its dissolution shall be ‘deemed to be *bona vacantia*, and shall accordingly belong to the Crown’.

When dealing with the property of a company that was deregistered prior to 1 July 1962, see part 14 – General Request, esp ¶[14-2300].

Company Deregistered under the Australian Securities and Investments Commission (ASIC)

When a corporation is deregistered, any assets, including real property, vest in the ASIC (s. 601AD(2) of the *Corporations Act 2001* (Cth)).

Section 601AE(2) provides that the ASIC may execute instruments or documents necessary to dispose of assets. An instrument or document that disposes of an asset of a deregistered corporation executed by the ASIC under the relevant legislation is registrable without first vesting the property in the ASIC.

If vesting of land in the ASIC is required, see part 14 – General Request, esp ¶[14-2300].

¶[50-2080] deleted

Financial Institution

[50-2090]

There is no requirement to display any ARBNs on registry forms executed by any of the following institutions:

- a society or association within the meaning of the *Cooperatives Act 1997*;
- an association within the meaning of the *Associations Incorporation Act 1981*;
- a society within the meaning of the *Financial Intermediaries Act 1996*.

¶[50-6000] deleted

Case Law

[50-7000]

Nil.

Fees

[50-8000]

No fees are payable under the Land Title Regulation, Land Regulation or Water Regulation relevant to this part.

Cross References and Further Reading

[50-9000]

Part 1 – Transfer

Part 14 – General Request

Lipton, P and Herzberg, A, *Understanding Company Law*, 4th edn, The Law Book Company Limited, 1992

Ford, HAJ, *Principles of Company Law*, 6th edn, Butterworths, 1992

Notes in text

[50-9050]

Note ¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 51 – Trusts

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Part 51 – Trusts

General Law

[51-0000]

A trust is a legally enforceable arrangement whereby a person (the trustee) holds the legal title in property (the trust property) for the benefit of another person (the beneficiary) or for the advancement of certain purposes. The key feature of any trust is the separation of the legal and beneficial ownership of the trust property. The trustee holds the legal title in the trust property, whilst the beneficiary has the beneficial ownership of the same trust property. In relation to the trust property, the trustee must act for the benefit of the beneficiary or for the specified purpose within the limits set by the rules governing the trust, which may be expressed or implied, and in any event are subject to, and in some cases supplemented by, the provisions of legislation affecting trusts, primarily the *Trusts Act 1973*.

Division 6 of Part 6 of the *Land Title Act 1994* and Chapter 6 Part 4 Division 9 of the *Land Act 1994* deal with, among other things, the registration or otherwise of trusts in the registry. Broadly, the provisions of the Act attempt to limit the circumstances in which a trustee may be registered, and regulate how the trustee may be registered on the register. Essentially, the Registrar is concerned to ensure that the register shows the legal ownership of an interest in a lot or tenure under the Land Act. The Registrar is less concerned to ensure that the beneficial interests are shown, although the Registrar may be concerned that future dealings by the trustee are authorised.

Types of Trusts

No Trust Deed

Bare Trust

[51-0010]

A bare trust will arise where there is a trustee and a beneficiary, but there is no trust instrument or document setting out the terms of the trust. To ascertain the powers of the trustee, one should look to the *Trusts Act 1973*.

Deceased Estate

[51-0020]

The death of a person creates a trust in which the personal representative (that is, the executor, or if there is no will or no executor able and willing to act, the administrator) is charged with the administration of the deceased estate. In addition to the powers conferred by the *Trusts Act 1973*, additional powers may be given to the trustee by the will.

Vesting Order

[51-0030]

The Supreme Court has power, by virtue of s. 82 of the *Trusts Act 1973*, to vest property in a trustee on trusts for specific purposes.

Resulting Trust

[51-0040]

This arises by operation of law where there is an incomplete disposition of the beneficial interest. For example, if property is settled on a trustee for the benefit of a life tenant and then for a remainderman, the legal estate will vest in the trustee with beneficial ownership in the life tenant and remainderman. But if the remainderman disclaims his entitlement, the trustee will hold the property on a resulting trust for the settlor expectant on the death of the life tenant.

Constructive Trust**[51-0050]**

This occurs where a trust is imposed upon a person who has control of property although there has been no actual trust intended by the parties (e.g. where a stranger has received trust property with knowledge that the trustee has acted improperly).

Established by Deed**Discretionary Trust****[51-0060]**

The term ‘discretionary trust’ is applied to many types of trusts which may have varying objects and powers. However, the common element is that the trustee has a discretion to distribute either the income or capital (*corpus*) or both within a defined class of beneficiaries.

Unit Trust**[51-0070]**

The beneficiaries of a unit trust (the unitholders) each hold a unit or units in the trust. The number and class of units held by a unitholder determines the extent of the entitlement of the unitholder to income and, on a winding up of the trust, to capital. As a simple example, assume a unit trust with ten unitholders each holding one unit. Each unitholder would be entitled to one-tenth of the income of the trust, and to one-tenth of the capital of the trust on winding up.

Property Trust**[51-0080]**

Often the term ‘property trust’ is used to refer to a specialised form of unit trust set up specifically for the acquisition of property. More generally, it may refer to any trust set up to acquire and hold property.

Superannuation Fund**[51-0090]**

Superannuation funds are trusts set up and regulated in accordance with Commonwealth legislation, primarily the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Income Tax Assessment Act 1936* (Cth). The trust deed for a superannuation fund prescribes the circumstances in which a benefit is payable to a beneficiary. Generally, the beneficiaries will be the members of the superannuation fund or the next of kin of a deceased member.

Trusts Generally**[51-0100]**

The only instruments or documents that may be registered to record trustees are:

- Form 5 or 5A – Transmissions by Death (as personal representatives);
- Form 1 – Transfer to Trustees;
- Form 14 – General Request.

The Form 14 may record a transmission by bankruptcy or a vesting that gives effect to an order made under the *Trusts Act 1973* (or another Act).

Generally, there are three parties to any trust instrument or document. They are the settlor, the trustee and the beneficiary.

The settlor is the person who creates the trust. The trustee is the person in whom the legal estate vests. The beneficiary (also called the *cestui que trust*) is the person for whose benefit the trustee holds the property. The beneficiary holds the beneficial interest in the property.

The Settlor**[51-0110]**

Most trust deeds contain a settlor. The settlor must be a competent person. He/she must be under no legal disability:

- (a) as to age (ie he/she must be over 18);
- (b) as to soundness of mind; or
- (c) which would prevent him/her from executing a legal document.

The Trustee**[51-0120]**

A trustee likewise must be competent to perform the duties of his/her office and therefore cannot be under legal disability:

- (a) as to age (ie he/she must be over 18);
- (b) soundness of mind; or
- (c) which would prevent him/her from executing a legal document.

Whilst a minor could conceivably be a trustee, he/she would lack the legal capacity to execute any document pursuant to the trust. Generally speaking, any person who is capable of taking and holding a legal estate, and who is not under any disability at law, may act as trustee.

Trustee Corporation**[51-0130]**

A trustee corporation, by virtue of the *Trustee Companies Act 1968*, can be a trustee of any kind (including an executor). Examples are the Trust Company Limited, Perpetual Trustees Queensland Limited, National Australia Trustees Ltd and ANZ Executors and Trustee Company Limited, all of whom are authorised under this Act.

The Public Trustee of Queensland is also a trustee corporation by virtue of the *Public Trustee Act 1978* and the definition of ‘trustee corporation’ in the *Trusts Act 1973*.

Any corporation capable of holding land can be a trustee by virtue of the Trusts Act, but cannot be an executor unless it is a trustee company.

Trustee of a Settlement**[51-0140]**

The trustee of a settlement (or the tenant for life thereunder, if such settlement was made under the repealed *Settled Land Act 1886*), is a trustee.

Trustee of a Deceased Trustee**[51-0150]**

A personal representative under a will, a grant of probate or letters of administration may assume the trusts of a deceased trustee, thereby becoming a trustee in the place of the deceased trustee.

The Settlor as Trustee**[51-0160]**

The settlor can appoint himself/herself as trustee (s. 110(1) of the *Land Title Act 1994* and s. 375 of the *Land Act 1994*), although for taxation purposes this is generally not the case. The person having power to appoint a new trustee may appoint himself/herself (s. 12(1) of the *Trusts Act 1973*).

Statutory Trustee**[51-0170]**

A statutory trustee is created by the *Trusts Act 1973* to cover the circumstances where a person carries out the functions of a trustee as permitted by s. 31(3) of the Trusts Act, without having actually been appointed by any instrument or document or any other Act to perform in that capacity. An example of this would be where land is devised to a deceased's widower/widow for his/her life, and then upon his/her death to his/her children, but without the actual appointment of a trustee. In this case, the widower/widow is a statutory trustee in accordance with the Trusts Act, s. 31(3) of which restricts the exercise of powers to those given by ss. 32(1)(d) or 45 unless otherwise sanctioned by the court.

Regulated Superannuation Funds**[51-0175]**

Section 67(A) of the *Superannuation Industry (Supervision Act) 1993* (Cth) provides for a trustee of a regulated superannuation fund (RSF) to borrow money to acquire an asset, including real property. The borrowed money must be used to acquire an asset the RSF trustee is permitted to acquire and hold directly.

The acquirable asset is held on trust so that the RSF trustee acquires a beneficial interest in the acquirable asset.

The appointment by a RSF trustee of another party to hold the legal title in trust can be made in the usual manner, that is, a deed of trust or declaration of trust is produced in support of the transfer.

The transfer is completed as set out in [1-2000] to [1-2090] and the words 'as trustee' must be inserted after the transferee's name in Item 5 [1-2390].

The RSF trustee has a right to acquire legal ownership of the acquirable asset by making one or more payments after acquiring the beneficial interest.

Custodian Trustee**[51-0180]**

Custodian trustees were the creation of s. 42 of the *Public Curator Act 1915* (since repealed), but have now been extended by s. 19 of the *Trusts Act 1973*, which allows any corporation to hold land in Queensland as a custodian trustee.

Section 19(2) of the Trusts Act provides that trust property will be vested in the custodian trustee as if such trustee were the sole trustee, but the management of the trust property, and the powers and discretions exercisable by the trustee under the trusts, are vested in managing trustees as fully effectual as if there were no custodian trustee.

A custodian trustee can be appointed either by a Form 1 – Transfer to Trustees by a settlor, by a Form 1– Recording of New Trustees by existing trustees, or by an order of the court. In any case, the custodian trustee must appear in the document and the names of the managing trustees in the Schedule of Trusts or in the body of the appointment.

Any document executed by a custodian trustee must contain the written direction of the managing trustees, or a majority of them (s. 19(2)(d) of the Trusts Act) and, if they have changed since the custodian trustee's appointment, a copy of the Appointment of New Managing Trustees must be lodged with the document as evidence.

Managing trustees have the power to appoint new managing trustees, but once appointed, a custodian trustee can only have his/her trusteeship terminated, or a new custodian trustee appointed in his/her place, by the court (s. 19(3) of the Trusts Act). This section is subject to the instrument or document creating the trust.

Local Government Trustee**[51-0190]**

Section 116 of the *Trusts Act 1973* provides that a local government may be appointed a trustee of real or personal property, either as sole trustee or as a trustee with others and may accept and hold trust property for any charitable or public purpose, or for any purpose of recreation or other leisure-time use or occupation. The local government may act in the administration of the trust property for the purpose of and according to the trust, notwithstanding that the purpose is not a function of local government, save where, in the case of an existing trust, a contrary intention appears from the instrument or document creating the trust.

Section 117 of the *Trusts Act* requires that any land transferred to a local government as a sole transferee, if transferred by way of a Form 1 – Transfer, should be accompanied by a declaration by the transferor/s, or failing them an appropriate employee of the transferee, that the land is not being transferred to the local authority as a sole trustee.

¶[51-0200] deleted

The Beneficiary**[51-0210]**

The beneficiary under a trust (also called the *cestui que trust*) is the person for whose benefit the trustee holds the legal estate. The beneficiary can be a minor, an adult, an organisation such as a sporting body or a corporation.

If the beneficiary is a minor, the date of birth should be shown in the Schedule of Trusts.

There can be several beneficiaries at once, either as joint tenants or as tenants in common, but if they are created by separate deeds of settlement, Items in the Form 1 – Transfer to Trustees must identify the trust instruments or documents by name or reference. A trustee may also be one of the beneficiaries, but not the **sole** beneficiary. If he/she is the sole beneficiary, there is no trust, because there is no separation of the legal and equitable interests. If the trustee becomes the sole beneficiary of a trust, then the legal and equitable interests merge, the trust no longer exists, and the beneficiary holds the property absolutely.

The beneficiary does not have an immediate right in relation to the property (except in the case referred to in the preceding paragraph) although he/she may have rights as against the trustee.

Trustee's Powers**[51-0220]**

The *Trusts Act 1973* gives wide powers to a trustee in dealing with trust property and whilst, on the face of it, there appears to be little restriction placed upon a trustee in this regard, there are nevertheless certain areas in which a trustee is not as unfettered as would appear on the surface.

The general powers of trustees in Part 4 of the *Trusts Act* are minimum and cannot be reduced or diminished by the trust deed (see s. 31 of the *Trusts Act*).

Pre *Trusts Act 1973***[51-0230]**

The Act came into operation on 1 July 1973. Despite the fact that the Act did not operate before this date:

- (a) where a trustee purports to sell land which was 'settled land' before the commencement of the *Trusts Act*, the sale must be consented to by the tenant for life (see *Re Robinson's Trusts* [1974] Qd R 243); and
- (b) where a sole trustee died before the commencement of the *Trusts Act*, a renunciation of the Public Trustee of Queensland in favour of the personal representative of the

deceased was required (s. 12 of the *Public Trustees and Executors Act 1897* (now repealed)).

Under the *Trusts Act 1973*

[51-0240]

The Trusts Act empowers a trustee to:

- sell the trust property or any part thereof (s. 32(1)(a));
- exchange the trust property for other property (s. 32(1)(b));
- lease the trust property (but not for a term exceeding that stated in s. 32(1)(e));
- give an option of renewal of a lease, but only if the aggregate terms of the original and renewed leases do not exceed the maximum term allowed (s. 32(3)(a));
- mortgage trust property, but only to raise money for the repair, upkeep, maintenance or renovation of same or for the improvement or development of the property (ss. 33(1)(a) and (b) and see the limitation in s. 33(1)(b));
- agree to any amendment of such a mortgage (s. 33(1)(i));
- take a first mortgage back on selling trust property for the balance of purchase money not exceeding two thirds of the purchase price (s. 36);
- ^{1,2}subdivide land (s. 33(1)(e));
- appropriate any part of the property towards satisfaction of any legacy payable (s. 33(1)(l));
- surrender onerous leases and, in certain circumstances, surrender onerous land to the Crown (s. 38); and
- ¹grant easements (s. 33(1)(h)).

The general powers given by ss. 32 and 33 are the minimum and apply even if lesser powers are expressed in the instrument or document creating the trust, having regard to the following exceptions:

- (a) If all the beneficiaries, not under a disability, direct the trustee in writing not to exercise a specified power, his/her authority to do so is revoked (s. 31(2) of the *Trusts Act 1973*).
- (b) Larger or additional powers can be conferred by a settlor (ss. 4(2) and (3) of the *Trusts Act 1973*).
- (c) A statutory trustee must obtain the consent of the court before exercising any of the powers given to a trustee under s. 32 of the *Trusts Act 1973*, except those conferred by s. 32(1)(d), which relate to the letting of trust property (s. 31(3) of the *Trusts Act 1973*).

Dealings that May Not Come Within the Scope of Trustees' Powers Under the *Trusts Act 1973*

[51-0245]

The Registrar of Titles takes a non-intrusive approach to trusts. It is considered it is the responsibility of the trustee and their legal representative to decide that a deed of trust authorises a dealing which may not come within the scope of the trustee's powers under the Trusts Act, and inform the Registrar of Titles of such authority.

Where a dealing relies on the trustee's powers in the deed of trust document, rather than authority under the Trusts Act, and the dealing is not accompanied by the consent of the beneficiaries or authorising court order, a letter on the trustee's lawyer's letterhead indicating the authority must be deposited with the dealing. The letter must state the clause number being relied upon, and clearly assert that the clause provides authority for the trustee to enter into the transaction.

Once a letter meeting the above requirements has been received and the Registrar is satisfied that the clause could provide authority, no further scrutiny of the deed of trust is undertaken on the part of the Registrar.

The following are some examples of transactions that would not be considered to come within the scope of the trustee's powers under the Trusts Act:

- a trustee transferring trust property to themselves in a personal capacity
- a trustee transferring trust property to a person in their personal capacity, where the consideration is a gift or a nominal amount (e.g. \$1)
- a trustee purchasing property held by themselves in a personal capacity
- a request pursuant to a deed of retirement, to remove one of two trustees who are registered proprietors of trust property
- a trustee transferring trust property to themselves as a trustee for another trust
- a trustee granting a lease of trust property for a period of more than 21 years
- a trustee granting a lease of trust property to themselves in a personal capacity
- a trustee being granted a lease by themselves in a personal capacity
- a trustee entering into a mortgage as either mortgagor or mortgagee with themselves in a personal capacity.

Purchase of Land

[51-0250]

Section 21 of the *Trusts Act 1973* authorises a trustee to invest trust funds in the purchase of land. The purchase would be by way of a Form 1 – Transfer to Trustees with the will, instrument or document of trust or a Schedule of Trusts.

Sale of Land

[51-0260]

Any transfer by a trustee under ss. 31 and 32 of the *Trusts Act 1973* does **not** need to include, in the operative clause, a statement that it is being made pursuant to these sections. It is accepted that the power is not restricted except as provided in the following paragraphs.

²The consent of a life tenant is required to a sale by a trustee, even where the land was 'settled land' before 1 July 1973.

Since the *Succession Act 1981*, which repealed the *Intestacy Act 1877*, any administrator can sell land without the consent of the beneficiaries. A personal representative under letters of administration is deemed to be a trustee by the *Succession Act 1981* and can exercise all the powers of a trustee under the *Trusts Act 1973*.

A trustee **cannot** sell trust land to themselves, except in the following circumstances:

- 1 where the trustee is so authorised by the instrument or document of trust; or
- 2 where the trustee is so authorised by the consent of the court, or
- 3 where there is legislative authority to do so; or
- 4 where all beneficiaries, being *sui juris*, provide the following:
 - a consent to the transfer on a Form 18 – General Consent; and
 - a declaration that sets out:
 - their age; and
 - that they are not under a legal disability; and
 - that they have received or declined independent legal advice.

The Court has the power to appoint a trustee for the purpose of selling property pursuant to s. 38 of the *Property Law Act 1974*.

Lease of Land

[51-0270]

Unless a greater term is authorised by the trust instrument or document, any lease granted by a trustee must not exceed 21 years (s. 32(1)(e)) of the *Trusts Act 1973*).

²Unless authorised by the trust instrument or document, any lease containing an option to renew must not have an aggregate duration that exceeds the maximum term mentioned above (s. 32(3)(a) of the *Trusts Act*). Similarly, any amendment that extends the term must not result in an aggregate that exceeds the maximum allowed.

Mortgage of Land

As Mortgagor

[51-0280]

See Part 2 – Mortgage (National Mortgage Form) esp ¶[2-0050].

As Mortgagee

[51-0290]

See Part 2 – Mortgage (National Mortgage Form) esp ¶[2-0100].

Appropriation

[51-0300]

An appropriation made under s. 33(1)(l) of the *Trusts Act 1973* must be accompanied by a statutory declaration from the trustee stating:

- an appropriation has occurred in the course of administering the estate; and
- the provisions of s. 33(1)(l) of the *Trusts Act 1973* have been complied with (i.e. all persons interested in the appropriation have been notified); and
- a search of court records reveals no application has been made to the court to vary the appropriation.

An appropriation which is the subject of the service of notices is not effectual until the expiry of one month after service or such extended time as is allowed by the court.

Death of Mortgagee Trustee**[51-0310]**

The correct procedure to be followed on the death of a mortgagee who holds as sole trustee as disclosed by the mortgage document is set out in ¶[51-2080].

Surrender of Onerous Lease or Land**[51-0320]**

Any surrender of an onerous lease or onerous land must include a statement that it is being done in accordance with s. 38 of the *Trusts Act 1973*.

Schedule of Trusts**[51-0330]**

It should be noted that the Schedule of Trusts is not an ‘instrument or document’. The registrable ‘instrument or document’ is the Form 1 – Transfer to Trustees.

In the case of land to be held under a Form 1 – Transfer to Trustees for any unincorporated body or club, if the Schedule of Trusts sets out the powers given to the trustee without reference to the rules of the club, there is no necessity to lodge a certified copy of such rules. However, if the Schedule of Trusts simply states that the trustee is to hold in accordance with the rules of the club, then a certified copy of the rules should be produced.

Public Trustee under s. 53A of *Public Curator Act 1915***[51-0340]**

Both s. 53A and s. 53B of the Public Curator Act have been repealed. However, if any are encountered in the register, the matters set out below will apply.

When the Public Trustee of Queensland is registered as ‘Trustee under s. 53A of the *Public Curator Act 1915*’, the Public Trustee is administering the estate in one of the following circumstances:

- (a) the land is devised to a person but the just debts, funeral and testamentary expenses could not be satisfied without recourse to the land; or
- (b) the land is devised to a minor, an alien or a person whose whereabouts are unknown or it is not known whether he/she is alive or dead; or
- (c) having devised the land, the testator then sold it and the purchase price is unpaid.

The Public Trustee may claim transmission as trustee under s. 53A on a certificate under s. 53B. He/she has power to sell, mortgage or lease the land to discharge any debts or liabilities charged upon the testator’s estate. He/she can also invoke any of the powers of a trustee under the *Trusts Act 1973*.

Trustee Company**[51-0350]**

By the *Trustee Companies Act 1968* those companies listed in schedule 8AA of the Corporations Regulations 2001 have been given some of the powers previously reserved solely to the Public Trustee of Queensland, in addition to the powers already exercised by them under their respective Acts.

Individuals may join with a trustee company to apply for a grant of representation or may authorise a trustee company to apply for letters of administration with the will annexed (s. 6 of the *Trustee Companies Act 1968*).

Similarly, in intestate estates, an individual entitled to a grant of representation may join with a trustee company to apply for representation, or may authorise the trustee company to apply for representation in its own name (s. 7 of the *Trustee Companies Act 1968*).

In any estate where the gross value does not exceed \$100,000 and no person has applied for administration in Queensland, the trustee company may file in the court an election to administer the estate. The trustee company is then deemed to be the executor of the will or administrator of the estate (s. 12 of the *Trustee Companies Act 1968*).

Where an administrator dies leaving part of the estate unadministered and the value does not exceed \$100,000, a trustee company may file an election to administer the property left unadministered, in lieu of applying for letters of administration *de bonis non*. It is then deemed the administrator of the estate left unadministered (s. 13 of the *Trustee Companies Act 1968*).

Section 20 of the *Trustee Companies Act 1968* permits any executor or administrator with the consent of the court to appoint a trustee company as executor or administrator in his/her place.

Legacies in favour of minors may be paid to a trustee company (s. 26 of the *Trustee Companies Act 1968*). Where land is devised to a person and the debts, liabilities, funeral or administration expenses of the testator cannot be satisfied without recourse to the land or where the land is devised to a minor, the trustee company administering the estate is entitled to have transmission entered up to it as ‘trustee’, and has power to mortgage the land, sell the land at public auction or for the best price obtainable thereafter, or lease the land (s. 30 of the *Trustee Companies Act 1968*). Whenever a trustee company is administering an estate, production of a certificate of appointment is all that is required as evidence of its authority (s. 39 of the *Trustee Companies Act 1968*).

A trustee company, by s. 28 of the *Trustee Companies Act 1968*, has power to sell trust land at public auction, by private contract if not sold after being offered at public auction or with the beneficiaries’ consents in writing. It can also purchase land, subdivide land for the purpose of sale, exchange trust property and make appropriations.

In general, the powers in the *Trustee Companies Act 1968* approximate those in the *Public Trustee Act 1978*, and the *Trusts Act 1973* fills in any gaps.

¶[51-0360] deleted

Associations Incorporation Act 1981

[51-0370]

The *Associations Incorporation Act 1981* permits the incorporation of certain associations, provided the requirements of the Act are satisfied. The Act defines an association as an association, society, or body that is formed or carried on for a lawful purpose. It excludes:

- an association with fewer than seven individual members;
- a corporation;
- a partnership within the meaning of the *Partnership Act 1891*;
- an industrial organisation within the meaning of the *Industrial Relations Act 1990*;
- a parents and citizens association formed under the *Education (General Provisions) Act 1989*;
- an association formed or carried on for the purpose of providing financial gain for its members;
- an association which is provided for in a special Act that:
 - incorporates:

- (a) the association's governing body; or
 - (b) the trustees holding property for the association; or
- provides that the association may sue or be sued, or hold property, in the name of the association or an officer of the association; or
- otherwise specially regulates the affairs of the association;
- an association, the main purpose of which is the holding of property:
 - in which the members have a disposable interest; or
 - that the members have a right to divide between all or some of them; or
 - for use by some or all of its members or among persons claiming through, or nominated by, some or all of its members; or
 - for distribution of that property, or of the income from the property, among some or all of its members or among persons claiming through, or nominated by, some or all of its members; and
- an association which has an object of raising a fund by subscription of its members to make loans to them.

Once an application for incorporation has been granted, a certificate of incorporation is issued by the Office of Fair Trading and the association thereupon becomes a body corporate having the name shown. The association is then able to hold property in its own name. This certificate of incorporation must be deposited with any instrument or document that will record the incorporated association as a registered owner or the holder of an interest. For information about options for the deposit of supporting documentation see [60-1030].

Where an incorporated association has transitioned to a company registered under the *Corporations Act 2001*, a Form 14 – General Request to Record Change of Name must be deposited. (See ¶[14-2035] for further information).

Legislation

[51-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and

- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Practice

Introduction

[51-2000]

Generally, a trust arises when, by virtue of a deed, will or other instrument or document, the legal owner (the trustee) is bound to hold the property for the benefit of a beneficiary (often for a stated purpose).

Legislation Covering Trusts

Primary

[51-2010]

- *Trusts Act 1973*
- *Land Title Act 1994*
- *Land Act 1994*
- *Public Trustee Act 1978*
- *Trustee Companies Act 1968*
- *Succession Act 1981*
- *Partnership Act 1891*

Secondary

[51-2020]

- *Local Government Act 1993*
- *Ambulance Service Act 1991*
- *Associations Incorporation Act 1981*
- *The United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942*
- *Returned & Services League of Australia (Queensland Branch) Act 1956*

Disclosure of Trust

Transfer

[51-2022]

It is not compulsory for a trust to be disclosed on the register. However, where a trust is to be disclosed and the transferee recorded on the register in the capacity of trustee, ‘as trustee’ must appear in Item 5 – Transferee of Form 1 – Transfer and the deed of trust (which could be a schedule of trusts) must be deposited or referred to as being deposited with another instrument or document.

Where a deed of trust is deposited and ‘as trustee’ does not appear in Item 5, or where ‘as trustee’ appears in item 5 but the deed of trust has not been deposited, the dealing will be requisitioned for clarification and amendment.

Where a registered owner is recorded on title in his/her own right but in reality holds the land as an undisclosed trustee, he/she may wish to disclose the trust. The lodged transfer should show in Item 4 words to the effect of ‘to declare the trust pursuant to s. 109 of the *Land Title Act 1994*’ or ‘to declare the trust pursuant to s. 374A of the *Land Act 1994*’. The transferee’s name should be shown ‘as trustee’ and the deed of trust (which could be a schedule of trusts) must be deposited or referred to (at Item 5) as being deposited with another instrument or document. For further information about options for depositing a trust document see [60-1030].

Where a trust has not previously been disclosed to the Titles Registry and a lodged transfer shows Item 4 – Consideration stating ‘pursuant to a deed of retirement and appointment’ or ‘pursuant to a deed of removal and appointment’ but the words ‘as trustee’ do not appear in item 5 and a deed of trust is not deposited—the transferee will be recorded without reference to the trust capacity.

Request to Vest in Trustee Under Order Made Under the *Trusts Act 1973* or Another Act

[51-2025]

Section 90 of the *Trusts Act 1973* states the effect of a vesting order and specifies in subsection (1A) that ‘such property shall vest in the persons named as trustees or otherwise as appears from the order’. Consequently, the court order is paramount when determining the capacity in which the property is to be held. The incoming registered owner must appear on title in the capacity specified in the order, e.g. ‘as trustee’ or ‘as statutory trustee for sale’.

If the request specifies the capacity of the incoming registered owner in the same terms as the court order then it is capable of registration, subject to the usual examination procedures.

Execution by an Attorney for an Undisclosed Trustee

[51-2027]

Where an attorney executes a Titles Registry instrument or document on behalf of a party who appears (from the face of the instrument or document or accompanying instrument or document) to be an undisclosed trustee, the power of attorney must be granted by the donor in their capacity as trustee. The dealing must be accompanied by a letter from the party (donor) or their solicitor stating to the effect:

‘the instrument or document is being executed by the attorney under the authority of the donor acting in the donor’s capacity as trustee of the undisclosed trust’.

Transfer to Trustees

[51-2030]

For the purpose of registering a trust in the registry, a trust must generally be created in writing. However, in some instances, e.g. bare trusts, deceased estates and trusts created by court order, the writing that creates the trust will be a Form 1 – Transfer to Trustees, an original will and a Supreme Court order, respectively.

There must be a plain intention to vest the trust property in the trustee. There must also be a beneficiary and it must be certain who the beneficiary is. This is generally apparent in the trust deed, the will or the schedule of trustees to the Form 1 – Transfer to Trustees.

Instrument or Document Required to Record a Transfer to Trustees

[51-2040]

Where a trust which relates to land is created by virtue of a deed or other instrument or document (other than a will), the documents to be lodged to vest the land in the name of the trustee are those set out in part 1 at ¶[1-2380] for transfers with a schedule of trusts and at ¶[1-2390] for transfers with the deed of trust being deposited. The trust deed is separate from the transfer instrument or document and does not form part of the Register.

Deposit of Trust Document

[51-2043]

The document(s) that specify the details or create the trust, including any variation, must be deposited with a Form 1 – Transfer that is recording an interest to be held by a trustee. For further information about options for depositing a trust document see [60-1030].

Some trust documents deposited with a Form 1 – Transfer require a duty notation.

The following table has been prepared in conjunction with the Office of State Revenue.

Titles registry requirements for duty endorsement on deposited trust documents

Description of trust document etc.	Titles registry requirements
Trust documents evidencing the creation of a trust or superannuation fund that commenced before 1 March 2002 (i.e. subject to the repealed <i>Stamp Act 1894</i>)	A lodged dealing will be registered only if trust document has a duty endorsement
Trust document (including a superannuation fund deed and a constitution of a responsible entity for a managed investment scheme registered with the Australian Securities & Investment Commission) evidencing the creation of a trust that commenced on or after 1 March 2002	*A lodged dealing will be registered whether or not trust document/deed/constitution has a duty endorsement
An associated document (e.g. deed of variation) varying the terms of a trust document (including a superannuation fund deed and a constitution of a responsible entity)	*A lodged dealing will be registered whether or not associated document has a duty endorsement. Note: Date of variation does not affect duty endorsement requirements
Deed of removal/retirement and appointment of trustee(s)	A lodged dealing will be registered only if deed has a duty endorsement

*Visit the Office of State Revenue website for further information that can help you determine whether the document requires an endorsement.

If the original trust document has been lost or destroyed and a photocopy of sufficient quality to allow imaging is available, it may be sufficient to satisfy the responsibilities of the Registrar. The photocopy should be submitted with a statutory declaration by the person who had care and custody of the trust document detailing the circumstances of the loss of the original and any stamped duplicates, the searches undertaken to locate them and states that there have been no amendments or variations for consideration.

Minor differences between the name of the trustee shown in the trust deed and the name of the trustee shown in the lodged instrument or document (e.g. spelling) will be accepted provided the instrument or document is accompanied by a statutory declaration identifying the trustee as being one and the same person. Larger differences (e.g. a changed surname or missing or additional middle names) will require a statutory declaration identifying the trustee as being one and the same person with evidence of the correct name (e.g. a copy of a birth certificate).

Vesting in Trustees

[51-2046]

A person may be registered as trustee of an interest in a lot by way of a Form 14 – Request to Vest that gives effect to an order made under the *Trusts Act 1973* or another Act.

Instrument or Document Required to Record Vesting in Trustees**[51-2049]**

A Request to Vest must be in a Form 14. The vesting order made under the *Trusts Act 1973* and all documents that state the detail of the trust upon which the interest is vested must be deposited. For further information about options for depositing supporting documentation see [60-1030].

^{1,3}A request to vest an interest in a person as trustee of a State tenure may only be registered if the person is eligible to hold the land in trust under the *Land Act 1994*.

See part 14, esp ¶[14-2335].

Recording of New Trustees**[51-2050]**

Section 12 of the *Trusts Act 1973* deals with the appointment of a new trustee in circumstances where a trustee (whether original, substituted, appointed by the court or otherwise):

- (a) is dead; or
- (b) remains out of the State for more than one year without having properly delegated the execution of the trust; or
- (c) seeks to be discharged from all or any of the trusts or powers reposed in or conferred on him/her; or
- (d) refuses to act therein; or
- (e) is unfit to act therein; or
- (f) is incapable of acting therein; or
- (g) is a minor; or
- (h) being a corporation, has ceased to carry on business, is under official management, is in liquidation or has been dissolved.

That is, in circumstances where a trust over the property concerned (whether registered or not) is already in existence.

Instrument or Document Required To Record New Trustee**[51-2060]**

When a new trustee is appointed because a trustee:

- is dead (whether or not the sole surviving trustee);
- remains out of the State;
- seeks to be discharged;
- is unfit or incapable of acting; or
- is a company that:
 - has ceased to carry on business;
 - is in liquidation;

- under official management; or
 - is dissolved, and
- the trust instrument or document nominates a person for the purpose of appointing a new trustee, the instrument or document applicable is a Form 1 – Transfer, together with the deposit of relevant evidence.

See part 1, esp ¶[1-2400] to ¶[1-2430].

In instances where two or more trustees retire and are replaced by a sole trustee (not a Trustee Corporation as defined in s. 5 of the *Trusts Act 1973*), then the authority for a sole trustee must be contained within the trust instrument (s. 12(2)(c) of the *Trusts Act*).

It is considered that it is the responsibility of the trustee and their legal representative to decide that a deed of trust authorises a sole trustee.

The instrument or document should therefore be accompanied by a letter on the trustee's lawyer's letterhead identifying the relevant clause number of the deed of trust which could provide the authority.

If it is only intended to record the removal of a trustee (without the replacement of that trustee by another trustee) in any of the above circumstances, the instrument or document applicable is:

- to record the death of the trustee (if not the last surviving trustee), a Form 4 – Request to Record Death, which may include the recording of the deaths of several trustees if applicable; or
- in all other instances which do not involve a sole trustee, a Form 14 – General Request.

In the circumstances listed above, the person nominated for the purpose of appointing new trustees by the instrument or document (if any) creating the trust, or if there is no such person or no such person able and willing to act, then the surviving or continuing trustee or trustees for the time being, or the personal representative of the last surviving or continuing trustee, may by writing appoint a person or persons (whether or not being the person or persons exercising the power) to be a trustee or trustees in the place of the trustee first mentioned (s. 12(1) of the *Trusts Act*).

If the death of the last surviving trustee was before 1 July 1973, s. 12 of the *Trustees and Executors Act 1897* applies, and the renunciation of the Public Trustee under that Act should be obtained.

Retirement of Trustee Without a New Appointment

[51-2070]

Section 14 of the *Trusts Act 1973* allows a trustee to retire without the necessity to replace himself/herself if there remains at least two individuals or a trustee corporation to act as trustee/s.

Unless the deed of trust specifically authorises a sole trustee (not a Trustee Corporation as defined in s. 5 of the *Trusts Act*) to remain or a single trustee was originally appointed, then at least two trustees must administer the trust. It is considered that it is the responsibility of the trustee and their legal representative to decide that a deed of trust authorises a sole trustee.

The instrument or document should therefore be accompanied by a letter on the trustee's lawyer's letterhead identifying the relevant clause number of the deed of trust which could provide the authority.

The instrument or document required is a Form 14 – General Request to record retirement of trustee, signed by the retiring trustee (or a declaration in writing that he/she is desirous of being discharged) and consented to by the remaining trustee/s or other applicable person, (i.e. a director of the corporate trustee).

Death of Sole Surviving Trustee

[51-2080]

Upon the death of a sole surviving trustee, whether or not the trust is recorded in the Register, the trust property automatically vests in the Public Trustee of Queensland (s. 16(2) of the *Trusts Act 1973*).

The personal representative of the last surviving trustee can request that he/she be recorded as trustee upon deposit of evidence that he/she has notified the Public Trustee in writing in accordance with s. 16(2)(b) of the *Trusts Act*. The land then vests in him/her as trustee upon the trusts recited (s. 15 of the *Trusts Act*).

The documentation required is a Form 1 – Transfer, together with supporting evidence (see part 1, esp ¶[1-2400] to ¶[1-2430]).

However, where the property has vested in the Public Trustee of Queensland under s. 16(2) of the *Trusts Act* and there is no one willing or able to appoint a new trustee, the Public Trustee may request to be recorded as trustee in the Titles Registry. In this instance a Form 1 – Transfer to vest is required to be registered. Evidence of death of the trustee must be deposited.

^{1, 2}The certificate of title, if it exists, is required to be deposited.

Lodgement fees are applicable and a duty notation is required.

Second Trustee Nominated to Take After Death of First

[51-2090]

A testator may appoint a trustee of his/her will, and specify that on the death of that trustee another person will assume the office of trustee. If the Form 5 or 5A – Transmission by Death to the first trustee is recorded in the Register and the first trustee dies, a Form 14 – General Request requesting registration of the second trustee should be lodged. Evidence of the death of the first trustee should be annexed to a declaration identifying the applicant with the second trustee named under the will deposited with the Form 5 or 5A – Transmission by Death.

There is no divesting from the Public Trustee required in this case as the deceased trustee was not the last sole surviving trustee.

Appointment by Person Not on Title

[51-2100]

If a trust document nominates a person for the purpose of appointing new trustees, and that person is not one of the registered trustees, the Form 1 – Transfer will be executed by the surviving trustees and evidence of the appointment by the person so nominated should be produced.

¶[51-2110] deleted

Dealing by Trustee

[51-2115]

Dual Capacity

A person who holds an interest in a lot in his/her own right and who is also a trustee of an interest in another lot cannot transfer or otherwise deal with both interests in one form. Dealings must be by way of a separate form for each estate.

However, one Form 1 – Transfer is acceptable where a person in their own right purchases a share in a lot and also purchases another share as trustee, in the same lot.

¶[51-2120] deleted

As Mortgagor

[51-2130]

See Part 2 – Mortgage (National Mortgage Form), esp ¶[2-0050].

As Mortgagee

[51-2140]

See Part 2 – Mortgage (National Mortgage Form), esp ¶[2-0100].

Trustee Registered Under a Transmission by Death

¹Where Death Occurred Before 1 January 1982

[51-2150]

Previously, where the death occurred before 1 January 1982 (the date of promulgation of the *Succession Act 1981*), trustees were registered under ‘old style transmissions’ with certain limitations after the designation ‘trustee’. For example, as ‘devisee in trust’, ‘devisee in trust with power of sale’, ‘trustee’, ‘trustee by implication’ or ‘trustee for the purpose of carrying out the terms of a contract of sale’.

In addition, the Public Curator (as he then was) was registered as ‘trustee under s. 53A of the *Public Curator Act 1915*’. Since the *Public Trustee Act 1978* repealed this section, no further cases of this kind will occur unless they were executed during the currency of the former Act and have not yet been lodged.

Occasionally a will may neglect to appoint an executor as trustee or, if there is an appointment as trustee, it may neglect to direct the legal estate to the trustee, and yet the will then proceeds to give powers and set out duties to be performed by a trustee. In such cases, the trustee would have been registered as ‘trustee by implication’. An entry on the Register of ‘trustee by implication’ must be examined in conjunction with the will.

In the case of an ‘old style transmission’, where the trustee is registered as ‘trustee for the purpose of carrying out the terms of a contract of sale’, the trustee can only execute a Form 1 – Transfer to the purchaser named in the contract. If the contract is rescinded, a new transmission in favour of the person entitled under the will should be lodged with evidence of the rescission of the contract of sale.

Where Death Occurred on or After 1 January 1982

[51-2160]

In deaths occurring on or after 1 January 1982, the ‘old style’ limitations on the designation ‘trustee’ are no longer used and the trustee is now recorded by the Form 5 or 5A – Transmission by Death as ‘personal representative’.

¶[51-2170] to [51-2190] deleted

¹Trust on Deed of Grant

[51-2200]

When a deed of grant issues to grantees as trustees, a declaration of trust is received with the deed of grant. This is given a Dealing number after the deed of grant issues and the trustee is recorded in the Register. No fees apply. Any changes in the composition of the named trustees should be by a Form 1 – Recording of New Trustees, accompanied by a copy of the Order in Council authorising the change.

When a deed of grant issues to trustees generally, and not individually, for public purposes and no other purpose whatsoever under s. 35 of the *Land Act 1994*, no declaration of trust is required to be lodged. An endorsement is entered in the Register, e.g. ‘held upon trust, [etc]’. The Minister’s written approval authorising an action must be deposited with the dealing for any dealings with the land.

Incorporation of Association

[51-2210]

The various circumstances leading to registration of an incorporated association in the registry and the necessary documentation in relation thereto are set out below.

Change of Name of Incorporated Association

[51-2220]

A Form 14 – Request to Change Name must be made by the secretary of the association and lodged with a certified copy of the certificate of registration of change of name.

Amalgamation of Two or More Incorporated Associations

[51-2230]

A Form 14 – Request to Vest in the name of the new association consequent upon amalgamation, signed by the secretary, must be made. A certified copy of the certificate of the amalgamated association is required. The Request is exempt from transfer duty, however lodgement fees are payable.

Incorporation of a Body Presently Holding Letters Patent under the *Religious Educational and Charitable Institutions Act 1861*

[51-2240]

A Form 14 – Request to Vest must be made by the secretary of the association. A certified copy of the certificate of incorporation is required as evidence. The Request is exempt from transfer duty, however lodgement fees are payable.

Cancellation and Vesting of Property

[51-2250]

Provision is also made for the cancellation of the incorporation of an association. On cancellation, the property of the association vests in the Public Trustee of Queensland on the trusts and for the purposes it was held prior to the vesting. The appropriate instrument or document would be a Form 14 – Request to Vest with a copy of the Order in Council vesting the property in the Public Trustee.

The Governor in Council may, by Order in Council, vary the trusts or purposes and/or vest the property of the association, or part thereof, in persons or other incorporated associations. A Form 14 – Request to Vest and a copy of the Order in Council is appropriate.

^{1, 2}**Note:** Forms under the *Associations Incorporation Act 1981* cannot be used to incorporate a trustee who holds a deed of grant in trust for a specific purpose. An Order in Council is required.

Property Held on Trust for Incorporated Association Prior to Incorporation

[51-2260]

The *Associations Incorporation Amendment Act 1995* was proclaimed to commence on 8 September 1995. Amongst the provisions proclaimed, the Act repealed Forms 7 and 8 (previously Forms 5A and 5B of the *Associations Incorporations Act 1981*). Those forms and a certified copy of the certificate of incorporation were previously required to record interests already held on trust for an association in the name of the association once it became incorporated.

To satisfy the requirements of the Registrar in maintaining the register as referred to in s. 24(4) of the Associations Incorporation Act, a Form 14 – General Request for recording is required to be lodged. An example of a completed request for a fictitious association is provided under the heading ‘Forms’.

The Request attracts normal lodgement fees and is exempt from transfer duty. Evidence of the incorporation must be deposited with the request. Acceptable evidence is either a certified copy of the certificate of incorporation issued by the Office of Fair Trading or the original certificate of incorporation and a photocopy (which will be compared with the original and noted by the Receiving Officer as being a true copy, the noted copy being retained and the original being returned to the lodger).

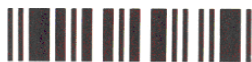
Forms

General Guide to Completion of Forms

[51-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



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1. Nature of request RECORDING UNDER THE ASSOCIATIONS INCORPORATION ACT 1981	Lodger (Name, address, E-mail & phone number) JOHN WATERHEAD 24 FLATHEAD STREET SURFHAVEN QLD 4999 (07) 3456 2354	Lodger Code
2. Lot on Plan Description LOT 999 ON RP901999	Title Reference 500887766	
3. Registered Proprietor/State Lessee WILIAM SNADMAN and NORMAN BEACHCOMBER AS TRUSTEES OF THE COASTAL GOLF CLUB UNDER NOMINATION OF TRUSTEES 610655433		
4. Interest FEE SIMPLE		
5. Applicant COASTAL GOLF CLUB INCORPORATED ADDRESS FOR SERVICE OF NOTICES TO APPLICANT: 22 REAL STREET, ASHGROVE QLD 4060		
6. Request I hereby request that: the Registrar of Titles record the interest of the above registered proprietor in the name of the applicant in accordance with s. 24 of the <i>Associations Incorporation Act 1981</i> and certify that the applicant is incorporated as evidenced by the certificate of incorporation deposited.		
7. Execution by applicant		

J D Surfboard

JOHN DAVID SURFBOARD
Secretary, Coastal Golf Club Incorporated

31/10/2007
Execution Date

.....
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Guide to Completion of Form 14

Item 1

[51-4010]

Insert the name of the Request, i.e. a recording under the *Associations Incorporation Act 1981*.

Item 2

[51-4020]

^{1, 2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for Crown plans). The area of the lot/s is not shown.

eg	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

^{2, 3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

eg	Lot on Plan Description	Title reference
	WA 27 on AP 7900	46012345

^{1, 3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for a crown plan).

eg	Lot on Plan Description	Title reference
	Lot 27 on CP LIV1234	40567123

Item 3

[51-4030]

The registered proprietor, holder of a water allocation or State tenure should be as shown on the current title or lease.

Item 4

[51-4040]

Insert the relevant interest, e.g. ‘fee simple’.

Item 5

[51-4050]

The applicant is the incorporated association.

Item 6

[51-4060]

The Request should be substantially as shown in the example.

Item 7

[51-4070]

Execution of the Form must be by the secretary of the association (s. 24 of the *Associations Incorporation Act 1981*).

The Request is exempt from transfer duty, but normal lodgement fees apply.

¶[51-6000] deleted

¶[51-7000] deleted

Fees

[51-8000]

Fees payable to the Titles Registry are subject to an annual review. See the Titles fee calculator available online or the current:

- ^{1,2}Land Title Regulation,
- ^{1,3}Land Regulation; and
- ^{2,3}Water Regulation.

Cross References and Further Reading

[51-9000]

Part 1 – Transfer, esp ¶[1-2380] to ¶[1-2430]

Part 4 – Request to Record Death

Part 5, 5A, 6 – Transmission Applications

Part 14 – General Request, esp ¶[14-2360] to ¶[14-2370] and ¶[14-2380]

Ford & Lee, *Principles of the Law of Trusts*, 3rd edn, Law Book Co. Ltd (loose-leaf service)

Lee, *Manual of Succession Law*, 3rd edn, Law Book Co. Ltd, 1991

Cooper (editor), *Trusts in Action*, Blackstone Press, 1995

Notes in text

[51-9050]

Note ¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 52 – Administrative Advices

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Part 52 – Administrative Advices

General Law

[52-0000]

A number of Acts provide for notices to be forwarded to the Registrar for deposit and entry in the registry. Authority to enter advices in the registry is contained in ss. 29 and 34 of the *Land Title Act 1994* and ss 280 and 281 of the *Land Act 1994*.

The purpose of these notices is to advise interested parties that a matter authorised under the relevant Act exists. These notices are entered as administrative advices on the relevant title for the lot that is the subject of the notice.

The entry of an administrative advice may prevent further dealings with the land being registered. This is determined by the legislation authorising the entry of the administrative advice.

Deposit and removal fees will apply unless there is a statutory exemption.

Administrative Advices Which May Prevent Registration of Dealings

Notice under Miscellaneous Legislation

[52-0005]

Entered on title – ADMIN NOTING.

In some instances the legislation under which a notice of this type was entered may prevent registration of a dealing. For general information about notices under miscellaneous legislation see [52-0280].

The following notice is one example that may prevent registration of a dealing.

Notice of Suspension of Attorney's Powers under the *Public Guardian Act 2014*

A Notice of Suspension is given to the Registrar where the Public Guardian, under the provisions of the Public Guardian Act, temporarily suspends the powers of an attorney for a person with impaired decision making capacity (the person) and appoints the Public Trustee as attorney for financial matters for the person during the period of suspension.

A *Form 14 – General Request* with a copy of the Notice of Suspension is required to be deposited. The Notice of Suspension also contains details of the appointment of the Public Trustee as attorney. The Notice of Suspension is recorded on the relevant title.

The notice will remain on the title until the person is no longer the holder of the interest.

²Notice of Action under the *Land Title Act 1994*

[52-0010]

Entered on title – NTCE OF ACTN.

The following procedures relate to administrative advices notified in respect of caveats lodged under Part 7 Division 2 of Land Title Act (the Act).

Section 126 of the Act makes provision for caveats to lapse. Exceptions to the lapsing provisions are set out in s 126(1) of the Act. For further information on these exceptions, see ¶[11-0170].

To prevent the lapsing of a caveat, a caveator must start a proceeding in a Court of competent jurisdiction to establish the interest claimed under the caveat. The caveator must also notify the Registrar, in the way the Registrar requires, within specified time limits that a proceeding has been started, and identify the proceeding. The notification is lodged as a notice of action. For further information on the specified time limits, see ¶[11-0190].

The notification must be by way of *Form 14 – General Request* which must clearly identify the caveat, the court action number of the proceeding, and all relevant titles. A copy (see [60-1030]) of the originating proceeding issued out of a court of competent jurisdiction and showing the court action number must be deposited with the Form 14. No deposit fee is payable. A copy of a court order that establishes an interest claimed under a caveat may be used in lieu of a copy of the originating proceeding even if the court order was made before the caveat was lodged. A copy of the originating proceeding or a copy of a court order deposited with a caveat is not considered sufficient to ‘notify the Registrar’ as provided for in s 126(4)(b) of the Act.

The entry of a notice of action as an administrative advice on a title does not automatically prevent a caveat from lapsing, as there are other factors which determine the effect of a notice of action, namely:

- (a) whether the notice was lodged within the prescribed time; and
- (b) whether the claim and grounds are reflected in the proceedings.

If either of the above factors is not met, the notice will not have any effect on the caveat. A requisition will be issued for the notice to be withdrawn from the registry within seven days. If a deficiency other than those mentioned above is found in the notice during examination, a requisition will be issued for rectification within twenty eight days. For further information see ¶[11-2010] and part 60 – Miscellaneous, esp ¶[60-0030].

Removal

If a dealing being registered has the effect of removing a caveat from the title, the Registrar will also remove any notice of action which is associated with that caveat.

²Caveatee’s Notice under ss. 126(2) and (3) of the *Land Title Act 1994*

[52-0020]

Entered on title – NOTICE.

The caveatee under a lodged caveat may serve a notice on the caveator to commence a proceeding in a court of competent jurisdiction, within 14 days of service of the notice, to establish the interest claimed in the caveat (s. 126(2) of the Land Title Act). For the purpose of the above provision, the notice is taken to be served on the caveator if it was served on the solicitors firm that lodged the caveat and the caveat was signed by a solicitor from that firm.

The Act defines a caveatee as a registered proprietor of the lot, or someone (other than the caveator) who has an interest in the lot.

Section 126(3) of the Act further requires a caveatee to notify the Registrar within 14 days of the service of such notice on the caveator. The notification to the Registrar must be made by way of a Form 14 – General Request. A deposit fee is not applicable. A copy of the notice which was sent to the caveator must be deposited with the notification to the Registrar.

The notification by the caveatee to the Registrar must provide:

- (a) sufficient information to link the land and the caveat to the notice; and

- (b) details of how the notice was served (by post, by hand, by fax, etc) on the caveator to determine lapsing provisions under the Act.

No deposit fee is payable.

If the caveator does not commence a proceeding within the 14 day period and notify the Registrar, the caveat will lapse (s. 126(5) of the Land Title Act).

Removal

When a dealing being registered has the effect of removing a caveat from title, the Registrar will also remove any caveatee's notice which is associated with the caveat.

¹Notice of Pecuniary Penalty Order under the *Criminal Proceeds Confiscation Act 2002*

[52-0030]

Entered on title – CONF PROFITS.

Section 197 of the Criminal Proceeds Confiscation Act authorises Queensland courts to levy pecuniary penalty orders against persons. Formerly, similar provisions were included in s 101 of the now repealed *Crimes (Confiscation) Act 1989* (the repealed Act). Pecuniary penalty orders have the effect of charging property with the payment of money. Upon production of evidence of a penalty order from the courts, the Registrar entered an administrative advice in the register.

Section 40 of the repealed Act included authority for Queensland courts to make orders restraining dealings with property. Upon production of evidence from the court, the Registrar entered an administrative advice in the register. This practice no longer applies. The current procedure is for such orders to be filed with a caveat (see part 11, esp ¶[11-0066]).

¹Notice of Restraining Order under the *Drugs Misuse Act 1986*

[52-0040]

Entered on title – RESTR ORDER.

Restraining orders under the Drugs Misuse Act authorised by courts were issued with a view to impede a person from dealing with a property. Upon production of such a court order, the Registrar entered an administrative advice in the land registry.

This practice no longer applies. The current procedure is for such orders to be filed with a caveat (see part 11, esp ¶[11-0066]).

Registrar of Titles Noting under the *Land Title Act 1994* or *Land Act 1994*

[52-0050]

Entered on title – RT NOTING.

Section 34 of the Land Title Act allows the Registrar to keep information that the Registrar considers necessary or desirable for the effective or efficient operation of the register. Similar provisions are also included in the Water Act, and in s. 281 of the Land Act. Such information may include information given to the Registrar by another entity.

At the discretion of the Registrar, a noting will be recorded against a title for matters that are considered pertinent to the register.

¹Notice of Offence under the *Foreign Ownership of Land Register Act 1988***[52-0055]**

Entered on title – RT NOTING.

Section 11 of the Foreign Ownership of Land Register Act (the Act) requires the Registrar to maintain a Foreign Ownership of Land Register. If a person is about to be or has been charged with an offence under the Act, a restraining order can be issued in respect of that person's interest in land (s. 38 of the Act). The order is then recorded by the Registrar in the relevant land register as a Registrar of Titles Noting under the Land Title Act or the Land Act.

No other instrument or document can be registered with respect to that interest without the consent of the Minister, or until the order has been revoked or discharged (s. 38(7) of the Act).

^{2, 3}Water Allocation Notice under the *Water Act 2000***[52-0060]**

Entered on title – 73B NOTICE.

Under the provisions of the Water Act (the Act) when the chief executive of the department administering the Act prepares a water entitlement notice (WEN), the chief executive must also publish a notice stating where copies of the draft WEN are available. The public notice makes provision for existing interest holders to notify the chief executive that they intend to take action to have their interest recorded on the water allocations register (s 73(1)(b) of the Act).

When a WEN commences, any notices which have been given to the chief executive under s 73(1)(b) of the Act are entered by the Registrar of Water Allocations against the affected water allocation titles. Such notices remain effective until the earlier of:

- sixty business days from the date that the water allocation is recorded on the water allocation register; or
- the recording on the register of the interest mentioned in the notice.

During its currency, a notice may impede registration of dealings (s 146A of the Act).

Removal

Notices under s 73(1)(b) of the Act will appear on searches of affected titles for a period of one hundred days with a status of 'current', unless they are withdrawn or otherwise accounted for. The period after the expiry of sixty business days is a grace period, which is allowed for administrative purposes.

Any notice which remains on the water allocation title as current after the expiry of one hundred days from its date of lodgement will be automatically removed from title. Such notices once removed will only appear in historical searches, with a 'not current' status.

Notice of Appointment of Administrator under the *Guardianship and Administration Act 2000***[52-0070]**

Entered on title – APPT ADMIN.

Tribunal Orders

Under the provisions of the Guardianship and Administration Act (the Act), the Queensland Civil and Administrative Tribunal may appoint an administrator for a matter involving an interest in land of a person with impaired decision making capacity. The administrator must notify the Registrar (s. 21 of the Act) and provide a copy of the Tribunal's order.

Subject to specific terms which may be included in the Tribunal's Order, a notice will affect transactions in the name of the person and signed during the period of the order. Documents executed during the currency of the advice will be scrutinised to ensure that they are signed by the administrator, or sanctioned by the Tribunal. The notice will remain recorded on the title until the interest is no longer held by the person.

Sections 27 and 32A of the Act provide mechanisms for notifying the Registrar of changes to the authority of appointed administrator/s.

Court Orders

Chapter 11 Part 3 of the Act also authorises Queensland's District Court and Supreme Court to appoint an administrator. The notification must be accompanied by a copy of the court issued order (see [60-1030] for information about depositing supporting documentation).

Removal

The Registrar will remove an advice under the Act from title when the interest affected is disposed of. Until such time as the interest is disposed of, any change, ending or revocation of appointment under the Act may be recorded on title if requested and the request is accompanied by a Tribunal/court order.

²Settlement Notice under the *Land Title Act 1994*

[52-0080]

Entered on title – SETTLMNT NTC.

See part 23 – Settlement Notice.

²Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice under the *Land Title Act 1994*

[52-0080A]

Entered on title – PRIORITY NTC.

XTD PRTY NTC

W/D PRTY NTC

See part 23A – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice.

¹Notice of Road Licence under the *Land Act 1994*

[52-0090]

Entered on title – ROAD LICENCE

Where a road licence has issued under the provisions of s 103(1)(a) of the Land Act and it is not the subject of a registered covenant, a notation is entered on the title for the road licence and the title of the adjoining land.

Transfer

To comply with the Land Act, the road licence and the adjoining land must remain in the same ownership. Therefore, where the ownership of the adjoining land is changing (for example by a transfer, record of death or a transmission application), the following applies:

- (a) the transfer or other form must also include the details of the road licence; or
- (b) the transfer or other form must be accompanied by the appropriate form to also change the ownership of the road licence, to be registered at the same time.

See [1-2095] for information about a transfer of a road licence.

Plan of Subdivision

Where a plan of subdivision of adjoining land is lodged and the relevant title is noted with a road licence administrative advice, the following will apply.

- the noting will not prevent registration of the plan.
- the noting will be brought forward to only the new title for every lot that adjoins/abuts the road licence.
- the road licence must be allocated on the back of the plan in a similar manner as other administrative advices.

Intended lodgers should address the issue of the road licence with State Land Asset Management prior to lodging the plan, otherwise any following transfer may experience lengthy delays when lodged.

Administrative Advices Which Do Not Prevent Registration of Dealing

¹Notice of Intention to Resume under the *Acquisition of Land Act 1967*

[52-0100]

Entered on title – NOTC INT RES.

A constructing authority, within the meaning of the Acquisition of Land Act (the Act), may resume freehold land, an interest in freehold land or native title rights and interests in State land, for the purposes set out in the Schedule to the Act. The Act defines a constructing authority as the State, a local government, or a person authorised by an Act to take land for any purpose.

When a constructing authority proposes to resume, it shall serve a notice of intention to resume (NIR) upon any and every person who, to the knowledge of the constructing authority:

- (a) will be entitled to claim compensation under the Act in respect of the taking of the land concerned; or
- (b) is a mortgagee of the land (s. 7(1) of the Act).

²If the subject of the notice is freehold land or an interest in freehold land, the constructing authority shall forward a copy of the notice to the Registrar for noting on the relevant title (s. 7(4) of the Act). The notice must specify the purpose for which the land to be taken is required, and state the description of the land.

³If the subject of the notice is native title rights and interests in State land, the relevant area of the department administering the Act will forward a copy of the notice to the Registrar for noting on the title. In these cases s. 280 of the *Land Act 1994* is relied on as it provides discretionary powers for the chief executive to record anything that the chief executive considers to be recorded to ensure the registers are usable records of State Land.

Notices of intention to resume are also authorised by provisions included in the *Transport Planning and Coordination Act 1994* and the *State Development and Public Works Organisation Act 1971*. Notices under these Acts may relate to non-freehold land.

A NIR from a constructing authority (usually the Department of Transport and Main Roads or a local government) may contain preliminary information identifying the area of land that is to be taken. Typically this is a design plan and the NIR will refer to the area shown on that plan but subject to final design and survey. The first “taking of land” notice which is published in the

government gazette will often also refer to the area taken as shown on the design plan. At a later date when the survey is completed, an amending “taking of land” notice is published in the government gazette. The second notice forms the basis of the resumption document lodged in the registry.

Details of the resumption, including the purpose are given in a taking of land/taking of easement notice made by the constructing authority and published in the government gazette. The notice determines the name of the constructing authority that is recorded on the title and the manner in which the taken land is to be held.

If the registered owner lodges a plan of subdivision following the deposit of an NIR the surveyor must allocate which lots are affected by the notice. The Registrar will record the NIR against the relevant titles created for those lots.

Removal

If a constructing authority amends or discontinues a resumption action, it is required to file with the land registry a notice of the amendment or discontinuance (s. 7(4A) of the Act).

The Registrar will also remove notices of intention to resume from the register when recording a resumption which fully satisfies the requirements of a constructing authority.

¹Notice under the *River Improvement Trust Act 1940*

[52-0110]

Entered on title – RIV IMP NOT.

Section 7 of the River Improvement Trust Act (the Act) authorises the creation of River Improvement Trusts as bodies corporate. The individual bodies corporate are identified and named in the regulations to the Act. Section 11 of the Act authorises a trust for a river improvement area to issue an improvement notice. The notice is in relation to river banks, and is served on the occupier and the owner of affected land.

Section 11A of the Act requires a trust to notify the Registrar that an improvement notice has been issued, or ceased to subsist or to operate.

¹Notice under the *Land Valuation Act 2010*

[52-0115]

Entered on title – DSI/OFFSET.

Under s. 258 of the Land Valuation Act the Valuer-General may notify the Registrar that a site improvement deduction applies to the land. If notified under this provision the Registrar will enter a noting against the relevant titles.

Under s. 282 of the Land Valuation Act the Valuer-General may notify the Registrar that an offsets allowance applies to the land. If notified under this provision the Registrar will enter a noting against the relevant titles.

A deposit fee is not applicable.

Removal

On notification by the Valuer-General, the Registrar must remove the notices under the Land Valuation Act from the register (ss. 259 and 283).

A deposit fee is not applicable.

¹Notice of Owner Builder Permit under the *Queensland Building and Construction Commission Act 1991***[52-0120]**

Entered on title – OWNER BUILDR.

Where the Queensland Building and Construction Commission (the Commission) has issued a permit to the owner of land to carry out building work, the Commission must notify the Registrar of the granting of such permit (s. 46(1) of the Act). If the Commission becomes aware that building work has been carried out by the land owner when a permit should have been, but was not obtained under s 44 of the Act, it must also notify the Registrar of the carrying out of the building work without a permit (s. 46(2) of the Act).

Removal

Notices under s. 46(1) or (2) of the Act will be removed by the Registrar on the expiry of seven years from the initial entry in the Register (s. 46(4) of the Act) when another dealing is being registered.

¹Notice of Carbon Farming Initiative Project under the *Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)***[52-0125]**

Entered on title – CFI NOTING.

The Carbon Credits (Carbon Farming Initiative) Act makes provision for the administrator of a Commonwealth scheme to deposit an administrative advice to record any of the following:

- a declaration of an eligible carbon offset project;
- a variation;
- a declaration that a project is subject to a carbon maintenance program.

A deposit fee is applicable.

Item 6 should include wording to identify the specific purpose of the administrative advice.

¹Notice of Contaminated Land under the *Environmental Protection Act 1994***[52-0130]**

Entered on title – CONTAM LAND.

The Environmental Protection Act (the Act) makes provision for the administering authority to maintain various registers. One such register is the contaminated land register.

Section 379 of the Act requires the administering authority to give written notice to the Registrar of particulars of land that has been recorded in the contaminated land register.

The administering authority must also notify the Registrar when a change is made to the particulars recorded about land recorded in the contaminated land register (s 386 of the Act).

Removal

When land is removed from the contaminated land register, the administering authority must notify the Registrar (s 386 of the Act).

¹Notice of Agreement under the *Nature Conservation Act 1992***[52-0140]**

Entered on title – NATURE REFUGE NOTING.

Under s 45 of the Nature Conservation Act (the Act), a land-holder and the minister administering the Act can enter into an agreement in relation to the land-holder's land.

If a conservation agreement is entered into in relation to specified private land (which is defined as land other than State land), then the chief executive of the administering authority must give the Registrar notice of the agreement (s. 134 of the Act).

A nature refuge noting will be recorded on a title in the Easements, Encumbrances and Interests schedule.

A conservation agreement that is recorded by the Registrar is binding on the landholder, the landholder's successors in title and other persons who have an interest in the title (s. 51 of the Act).

A deposit fee is not applicable.

Removal

When a conservation agreement is terminated, the chief executive must notify the Registrar (s 134(4) of the Act). The Registrar must remove the particulars of the land from the Registrar's records (s 134(5) of the Act).

¹Notice of an Enforcement Order under the *Nature Conservation Act 1992***[52-0145]**

Entered on title – NAT ENF ORD.

Under s 173J of the Nature Conservation Act (the Act), the chief executive, after receiving notification under s 173I(2) of the Act that an enforcement order has been made, must give the Registrar written notice that the order has been made (for recording in the register).

A deposit fee is not applicable.

Removal

Under s 173L of the Act, the Registrar must remove the notice if asked to do so by the chief executive.

¹Notice of Site Registered under the *Queensland Heritage Act 1992***[52-0150]**

Entered on title – HERITAGE SITE.

Under s. 174 of the Queensland Heritage Act (the Act) the chief executive notifies the Registrar if:

- a place is entered in the Queensland heritage register as a State heritage place or an archaeological place; or
- the chief executive, under section 80 of the Act, enters into a heritage agreement that attaches to land; or
- the chief executive, under section 80(3) of the Act, changes a heritage agreement to state that it attaches to the land the subject of the agreement.

While the heritage agreement has effect and is recorded on title, the agreement is binding on the registered owner (s. 174(7) of the Act).

¹Notice of Access Right under the *Sugar Industry Act 1999***[52-0160]**

Entered on title – ACCESS RIGHT or TRAM EASE.

Where a permit to pass or cane railway easement under s. 63 of the Sugar Industry Act is granted, the grantee must give the Registrar a signed notice in the form of a request to record an administrative advice within 28 days of the grant (ss. 70(2) and 71(2) of the Sugar Industry Act).

For a **permit to pass** the notice must:

- state the permit to pass has been granted; and
- identify the parties to the permit and the land affected; and
- be accompanied by a copy of the permit to pass.

For a **cane railway easement** the notice must:

- state the cane railway easement has been granted; and
- identify the parties to the easement and the land affected.

Alternatively, a cane railway easement may be notified to the Registrar by lodging for registration a properly completed *Form 9 – Easement*.

A notice of an access right granted under a repealed Act is shown on a search of a title as 'TRAM EASE'. A notice of an access right granted under the Sugar Industry Act is shown on the title as 'ACCESS RIGHT'.

¹Notice of Relinquishment or Cancellation of Sugar Access Right**[52-0165]****Relinquishment**

Where an access right is relinquished by the grantee, a request to remove the administrative advice may be lodged in the land registry. A copy of the relinquishment document must be deposited with the request (s. 70(2) or s. 71(2) of *Sugar Industry Act 1999*).

Cancellation by Agreement

Where a land-holder whose land is affected by an access right and the holder of the access right has cancelled the right by agreement under s. 72(1) of the Sugar Industry Act, a request to cancel the administrative advice may be lodged in the land registry. Evidence of the agreement must be deposited with the request.

Cancellation by Order of the Land Court

Where the Land Court makes an order to cancel a sugar access right under s. 72(2) of the Sugar Industry Act, a request to cancel the right may be lodged in the land registry. A copy of the order must be deposited with the request.

¹Notice under the *Wet Tropics World Heritage Protection and Management Act 1993* **[52-0170]**

Entered on title – WET TROPICS.

Under the provisions of the Wet Tropics World Heritage Protection and Management Act (the Act) the Wet Tropics Management Authority (the Authority) prepares management plans for the wet tropics area and notifies the Registrar that a management plan has been approved.

Under the Act, a management plan may be noted against private land. Private land is defined as freehold land, or land held under a lease or licence under any Act.

Removal

On notification by the Authority, the Registrar must remove the particulars of the land from the registrar's records on:

- (a) the repeal of a management plan over private land, or
- (b) the removal of private land from the operation of a management plan (s 66(4) of the Act).

¹Notices under the *Coastal Protection and Management Act 1995*

¹Compliance Notice

[52-0180]

Entered on title – COAST PROT.

Section 59 of the Coastal Protection and Management Act (the Act) authorises the chief executive of the administering authority to issue coastal protection notices in respect of land that is within declared coastal management districts. The notices direct persons associated with affected land to take specific steps to protect the land.

Section 60 of the Act further authorises the chief executive to issue tidal works notices in respect of land. The notifications are sent to persons deemed to be responsible for existing tidal works, and direct such persons to comply with requirements set out in the notice.

Written notification of the issue of either type of notice must be given to the Registrar for entry in the registry (s. 63(2) of the Act).

Removal

Once the requirements of either notice mentioned above have been complied with, the chief executive must give written notice for the removal of the earlier notice to the Registrar (s. 63(5) of the Act).

¹Compensation Notice

[52-0190]

Entered on title – COAST PROT.

Under Chapter 5 Part 1 of the Act, the owner of an interest in land may be entitled to monetary compensation if the existing use that could have been made of affected land is changed by a prohibition imposed by a coastal plan, or by the declaration of a coastal management district. When compensation has been paid, notification of the compensation is provided to the Registrar for recording on the relevant title (s. 158 of the Act).

¹Reconfiguration Notice

[52-0200]

Entered on title – RT NOTING.

The Act provides that the chief executive of the administering authority may notify the Registrar that a development application for a reconfiguration has been made for a lot in a coastal management district. If notified under the above provision the Registrar will enter a Registrar of Titles Noting (see ¶[52-0050]).

The Registrar will not register a plan of subdivision dealing with the reconfiguration of the lot until the chief executive has issued a development permit for the application (s. 188(6)(b) of the Act).

Removal

Where the Registrar has recorded a notice under s. 188(5) of the Act and the chief executive becomes aware that the information no longer applies or has been changed, the chief executive will notify the Registrar to update the register (s. 188(7) of the Act).

Notices under the *Vegetation Management Act 1999*

¹Vegetation Management Notice

[52-0210]

Entered on title – VEG NOTICE.

Under s 70B of the Vegetation Management Act (the Act) the chief executive of the department administering the Act must give the Registrar written notice where a property map of assessable vegetation (PMAV) is made and contains a category A area.

Removal

The chief executive must give written notice to the Registrar if a PMAV is replaced. The chief executive may also ask the Registrar to remove the particulars of the PMAV if the chief executive considers it is necessary or desirable to achieve the purposes of the Act or because the particulars are no longer relevant for the land the subject of the PMAV.

The Registrar must adjust or remove the particulars shown in the register as soon as is practicable.

¹Restoration Notice

[52-0215]

Entered on title – RESTORATION.

Section 54B of the Vegetation Management Act (the Act) allows the chief executive and authorised officers of the department administering the Act to issue restoration notices. A restoration notice is issued when an authorised officer reasonably believes that a person has committed a vegetation clearing offence and the matter is capable of being rectified.

If a restoration notice is issued, the chief executive must notify the Registrar that a restoration notice has been given (s. 55A(1) of the Act). The Registrar once notified must keep records showing the restoration notice has been given to a person.

A restoration notice under the Act attaches to land, and has effect in relation to each successor in title to the land (s. 55(1) of the Act).

Removal

When a restoration notice has been complied with, withdrawn or terminated, written notice must be given to the Registrar for it to be removed from the register (s. 55A(5) of the Act). Such notices should be from an authorised officer of the department administering the Act.

Notices under the *Water Act 2000*

¶[52-0220] and [52-0225] deleted

2.3 Notice of Private Water Supply Agreement**[52-0230]**

Entered on title – WATER ADVICE.

Where a holder of land (including a lessee or licensee) has taken on self management of water supplied to their land and entered into a written agreement under the provisions of Chapter 8 Part 4A of the Water Act (the Act) the holder who has entered into such an agreement must give the chief executive of the department administering the Act a copy of the agreement. The chief executive must give the Registrar notice of the agreement (s. 1001 of the Act).

An amendment made to a private water supply agreement may also be recorded. The Registrar is notified under s. 1003(4) of the Act.

Removal

If a private water supply agreement is cancelled, as soon as practicable after the cancellation, the parties to the agreement must give the chief executive notice of the cancellation. The chief executive must give the Registrar notice of the cancellation. The Registrar must remove the particulars of the agreement from the register (s. 1001 of the Act).

¶[52-0235] deleted

2.3 Notice of Closed Water Activity Agreement**[52-0236]**

Entered on title – WATER ADVICE.

Where all registered owners of the land in an authority area have entered into a closed water activity agreement under the provisions of s. 695A of the Water Act (the Act), the chief executive of the department administering the Act must give the Registrar notice of the agreement (s. 1001(1)(b) of the Act).

Under s. 1003(5) of the Act, the Registrar must record notice of an amended agreement if asked to do so by the chief executive.

Removal

Under s. 1001(3)(c) of the Act, the Registrar must remove the notice if asked to do so by the chief executive.

2.3 Notice of Distribution Operations Licence**[52-0240]**

Entered on title – WATER ADVICE.

Where a distribution operations licence (DOL) applies to a water allocation, s 153(2) of the Act makes provision for the chief executive of the administering department to give notice to the Registrar that the water allocation is one to which a DOL applies. Section 1007(7) of the Act requires the Registrar to enter notices given under s 153(2) against the titles to affected water allocations.

Removal

If a water allocation is one to which a DOL no longer applies, the chief executive must notify the Registrar (s 154(4) of the Act). The Registrar must remove the DOL notice from affected water allocations (s 1007(4) of the Act).

1.3 Remedial Action Notice under the *Land Act 1994***[52-0250]**

Entered on title – REM ACT NOT.

Section 214 of the Land Act (the Act) allows the minister administering the Act to give a State lessee or licensee a written notice to take remedial action in respect of their land.

The department will provide notification to the Registrar that a State lessee or licensee has been given notice to take remedial action. If a lessee or licensee does not carry out the remedial action required within the time stated in the notice, the tenure may be terminated.

No fee is payable for recording or removing a remedial action notice from the register.

^{1,3}Change of Capabilities Notice under the *Land Act 1994*

[52-0260]

Entered on title – CAPB NOTICE.

The minister administering the Land Act (the Act) may, under s 130A(1) of the Act, request the Registrar to note in the register against a lease that:

- independent assessment of the applicant's or transferee's financial and managerial capabilities has been made in relation to the lease; or
- the lease is a lease that will have a significant impact on the environment or the economic and social development of a locality, a region or the State; and involve a high level of investment, a substantial development period and lease conditions requiring extensive development.

Removal

Section 130A(9) allows the minister to remove a note made under the section if, having regard to the significant development to which the lease relates, the Minister considers its removal is appropriate.

¹Notice of Voluntary Environmental Agreement under the *State Development and Public Works Act 1971*

[52-0270]

Entered on title – VOL ENV AGR.

Where the Coordinator-General has entered into a voluntary environmental agreement in relation to land under s. 76S of the State Development and Public Works Act (the Act), the Coordinator-General must give the Registrar written notice of the agreement (s. 76U(1) of the Act). An agreement in relation to land may, under s. 76T of the Act, contain terms that are binding on registered owners of land and a registered owner's successors in title.

Removal

As soon as practical after an agreement ends, the Coordinator-General must give the Registrar written notice. The Registrar must remove the particulars of the agreement from the register (s. 76U(5) of the Act).

Notices under Miscellaneous Legislation

[52-0280]

Entered on title – ADMIN NOTING.

Where an Act requires an entity or agency to notify the Registrar to enter an advice on title but there is not sufficient need to create a separate administrative advice type, an 'Administrative Notice Miscellaneous' will be used. The following are examples:

¹Notice of Affected Area under *Planning (Urban Encroachment—Milton Brewery) Act 2009*

Under the provisions of s. 9 of the *Planning (Urban Encroachment—Milton Brewery) Act* (the Act) an applicant for a development approval for land within the designated affected area must give notice to the Registrar to record a notation on the title of the affected land.

If the development application is refused the applicant must request the Registrar to remove the notice.

No fee is payable for recording or removing a notice from the register under the provision of the Act.

Note: The Act was repealed on 17 February 2012 upon enactment of the *Sustainable Planning and Other Legislation Amendment Act 2012*. Chapter 8A of the *Sustainable Planning Act 2009* and section 292 of the *Planning Act 2016* preserves and transitions the rights and immunities that were created pursuant to the Act in respect of the Milton Brewery and as such any recorded administrative advices will continue to be valid on affected titles.

¹Notice of Compulsory Acquisition of Native Title Rights and Interests under the *Acquisition of Land Act 1967*

A request to record a notation on a title that native title rights and interests have been compulsorily acquired by a constructing authority (or a similar authority so authorised by an Act to compulsorily acquire land) may be lodged by the relevant area of the department administering the *Acquisition of Land Act*. A copy of the gazettal notice is required to be deposited with the request.

A deposit fee is not applicable.

Notice of Disclaimer of Onerous Property of a Bankrupt under the *Bankruptcy Act 1966* (Cth)

Where the Registrar is notified under the provisions of s. 133(3) of the *Bankruptcy Act* that a trustee of a bankrupt has disclaimed onerous freehold land or a lease or a licence under the *Land Act 1994*, a noting to this effect will be made on the relevant title.

A deposit fee is not applicable.

¹Notice of Licence Agreement under the *Transport Infrastructure Act 1994*

Where a licence is granted or there is a variation of a licence under the provisions of s. 303AB(1) of the *Transport Infrastructure Act*, the chief executive administering that Act must give the Registrar a written notice of the licence for recording on the title to the relevant land (s. 303AB(3) of the *Transport Infrastructure Act*).

A deposit fee is not applicable.

¹Notice of Pre-Acquisition Declaration under *Lands Acquisition Act 1989* (Cth)

A notification may be given to the Registrar to enter a noting that a pre-acquisition declaration has been made under the provisions of s. 38 of the *Lands Acquisition Act* (Cth). The request must be accompanied by a copy of the pre-acquisition declaration.

A deposit fee applies.

¹Notice of Dedication of Low Impact Future Act under *Native Title Act 1993* (Cth)

A notification may be given to the Registrar to enter a noting that land or water is dedicated as a low impact future act under the provisions of s. 24LA of the *Native Title Act*.

A deposit fee is not applicable.

¹Notice of Recreation Area Agreement under the *Recreation Areas Management Act 2006*

Under the provisions of s. 10 of the Recreation Areas Management Act (the Act), the chief executive after entering into a recreation area agreement must notify the Registrar to enter a noting against the relevant titles.

A deposit fee is not applicable.

Removal

On notification by the chief executive officer that the recreation area agreement is amended or cancelled, the Registrar must remove the notice from the register (s. 13(2) of the Act).

A deposit fee is not applicable.

¹Notice of Transfer under the *South East Queensland Water (Restructuring) Act 2007*

Where the Registrar has received notification under s 116A(8) of the South East Queensland Water (Restructuring) Act that s 116A applies to the land, a noting to this effect will be recorded on the relevant title. A deposit fee is applicable.

Removal

Under s 116(9) of the South East Queensland Water (Restructuring) Act, the Registrar must cancel the notice if asked to do so by the asset owner.

A deposit fee is applicable.

¹Notice of Native Title Determination under the *Native Title Act 1993 (Cth)***[52-0290]**

Entered on title – NT DETERM.

Where a native title determination has been made under the Native Title Act a request by the department administering the *Native Title (Queensland) Act 1993* is made to the Registrar to enter a noting against relevant titles.

¹Notice of Land Management Plan under the *Land Act 1994***[52-0295]**

Entered on title – LAND NOTICE.

Where approval of a land management plan for trust land has been given by the Minister, a notification may be given to the Registrar to enter a noting against relevant titles (s. 48 of the Land Act).

A deposit fee is not applicable.

[52-0300] deleted

¹Notice of an Affected Area under the *Planning Act 2016***[52-0305]**

Entered on title – AFF AREA NOT.

Under the provisions of the Planning Act (the Act), the owner of registered premises with an affected area must give notice, within 20 business days after the premises are registered under the Act, to the Registrar to record a noting against relevant titles.

Under the provisions of the Act, an applicant for a relevant development application within an affected area must give notice, within 20 business days after making the application, to the Registrar to record a noting against relevant titles.

A deposit fee is applicable.

Removal

On notification by the registered owner, that registration of the premises has ended, or on notification by the applicant that the relevant development application has been refused, lapsed or withdrawn, the Registrar must remove the notice from the register.

The Registrar may also remove a notice if satisfied on reasonable grounds that the registration of the premises has expired or been cancelled or that the relevant development application has been refused, lapsed or withdrawn.

A deposit fee is applicable.

¹Notice of an Environmental Offset Protection Area under the *Environmental Offsets Act 2014* [52-0310]

Entered on title – OFFSET AREA.

Under s 30 or 33 of the Environmental Offsets Act (the Act), the chief executive of the department administering the Act may declare that land is an environmental offset protection area.

Notice must be given to the Registrar that the declaration has been made and this information is recorded in the register (s. 31 or s. 34 of the Act).

A deposit fee is not applicable.

Removal

Under s. 34 of the Act, the Registrar must remove the notice if asked to do so by the chief executive.

¹Notice of a Conduct and Compensation Agreement under the *Mineral and Energy Resources (Common Provisions) Act 2014* [52-0315]

Entered on title – CON COM AGMT

Where a conduct and compensation agreement (CCA) is entered into under section 83 of the Mineral and Energy Resources (Common Provisions) Act (the MERC Act), the resource authority holder must give the Registrar a notice to record an administrative advice within 28 days of entering into the CCA (section 92(1) of the MERC Act).

There is no requirement for a copy of the agreement to be deposited. If the applicant is acting as an agent for the resource authority holder or the current resource authority holder differs from that named in the original agreement, reference to this must be stated on the Form 14 - General Request.

Where a solicitor signs the Form 14 on behalf of the applicant, they must print their name in full adjacent to their signature. Where the applicant signs the Form 14 the details of the signatory's authority to sign on behalf of the applicant must be provided (i.e. their name, position or designation and the name of the company). If an agent is acting on behalf of the applicant they must also include reference to their authority to sign on behalf of the applicant.

Deposit fees apply and are the responsibility of the resource authority holder as the applicant.

Removal

The administrative advice must be removed in the following circumstances.

Under section 92(4), (5) and (6) of the Mineral and Energy Resources (Common Provisions) Act, the resource authority holder must give a notice to the Registrar to remove the administrative advice from the title where:

- the agreement ends, or
- the land that is the subject of the CCA is subdivided, and the CCA no longer applies to a new lot or lots created as a result of the subdivision.

Alternatively, any party to a CCA may give a notice to the Registrar to remove the administrative advice from the title (see section 92(7) of the MERC Act). If requested to do so by a party to the agreement, and the Registrar is satisfied that the agreement has ended or is no longer relevant the Registrar must remove the administrative advice. The MERC Act defines a party to a CCA to include the personal representatives, successors and assigns of the parties that are bound by the agreement.

A statement setting out the circumstances of the removal must be included at Item 6 of the Form 14 – General Request. The dealing number that was allocated to the administrative advice must be stated in the request.

Deposit fees are applicable.

Notice of an Opt-Out Agreement under the *Mineral and Energy Resources (Common Provisions) Act 2014***[52-0320]**

Entered on title – OPT OUT AGMT

Where an opt-out agreement is entered into under section 45 of the Mineral and Energy Resources (Common Provisions) Act (MERC Act), the resource authority holder must give the Registrar a notice to record an administrative advice within 28 days of entering into the agreement (section 92(1) of the MERC Act).

There is no requirement for a copy of the agreement to be deposited. If the applicant is acting as an agent for the resource authority holder or the current resource authority holder differs from that named in the original agreement, reference to this must be stated on the Form 14 - General Request.

Where a solicitor signs the Form 14 on behalf of the applicant, they must print their name in full adjacent to their signature. Where the applicant signs the Form 14 the details of the signatory's authority to sign on behalf of the applicant must be provided (i.e. their name, position or designation and the name of the company). If an agent is acting on behalf of the applicant they must also include reference to their authority to sign on behalf of the applicant.

Deposit fees apply and are the responsibility of the resource authority holder as the applicant.

Removal

The administrative advice must be removed in the following circumstances.

Under sections 92(4), (5) and (6) of the Act the resource authority holder must give a notice to the Registrar to remove the administrative advice from the title where:

- the agreement ends, or

- the land that is the subject of the opt-out agreement is subdivided, and the agreement no longer applies to a new lot or lots created as a result of the subdivision.

Alternatively, any party to a CCA may give a notice to the Registrar to remove the administrative advice from the title (see section 92(7) of the MERCP Act). If requested to do so by a party to the agreement, and the Registrar is satisfied that the agreement has ended or is no longer relevant the Registrar must remove the administrative advice. The MERCP Act defines a party to a CCA to include the personal representatives, successors and assigns of the parties that are bound by the agreement.

A statement setting out the circumstances of the removal must be included at Item 6 of the Form 14 – General Request. The dealing number that was allocated to the administrative advice must be stated in the request.

Deposit fees are applicable.

Legislation

[52-1000]

^{2, 3}**Application of the *Land Title Act 1994* to the *Water Act 2000***

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealing for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Practice

Administrative Advice Types

[52-2000]

A list of the administrative advices which at present are recorded in the Automated Titles System is set out below. The list is referenced under the entry which appears on a printed title search:

- ^{2, 3}**73B NOTICE** (Water Allocation Notice under the *Water Act 2000*), see ¶[52-0060] – **WAN**
- ¹**ACCESS RIGHT** (Access Right under the Sugar Industry Acts), see ¶[52-0160] – **SAR**

- **ADMIN NOTING** (Notice under miscellaneous legislation), see ¶[52-0005] and [52-0280] – **ANM**
- **AFF AREA NOT** (Notice of an affected area under the *Planning Act 2016*), see ¶[52-0305] – **AAN**
- **APPT ADMIN** (Appointment of Administrator Notification under the *Guardianship and Administration Act 2000*), see ¶[52-0070] – **APA**
- ^{1, 3}**CAPB NOTICE** (Change of Capabilities Notice under the *Land Act 1994*), see ¶[52-0260] – **CCN**
- ¹**CFI NOTING** (Notice of Carbon Farming Initiative project under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)), see ¶[52-0125] – **CFI**
- ¹**COAST PROT** (Notice under the *Coastal Protection and Management Act 1995*), see ¶[52-0180 to 52-0200] – **CPN**
- ¹**CON COM AGMT** (Conduct and Compensation Agreement under the *Mineral and Energy Resources (Common Provisions) Act 2014*), see ¶[52-0315] – **CDC**
- ¹**CONF PROFITS** (Order under the *Criminal Proceeds Confiscation Act 2002/Pecuniary Penalty Order*), see ¶[52-0030] – **CPR**
- ¹**CONTAM LAND** (Notice of contaminated land under the *Environmental Protection Act 1994*), see ¶[52-0130] – **CLN**
- ¹**DSI/ OFFSET** (Notice under the *Land Valuation Act 2010*), see ¶[52-0115] – **LVA**
- ¹**HERITAGE SITE** (Site registered under the *Queensland Heritage Act 1992*), see ¶[52-0150] – **HRS**
- ^{1, 3}**LAND NOTICE** (Land Management Plan under the *Land Act 1994*), see ¶[52-0295] – **LMP**
- ¹**NATURE ENFORCEMENT ORDER** (Enforcement order under the *Nature Conservation Act 1992*), see ¶[52-0145] – **NEO**
- ¹**NATURE REFUGE NOTING** (Agreement under the *Nature Conservation Act 1992*), see ¶[52-0140]
- ¹**NOTC INT RES** (Notice of Intention to Resume under the *Acquisition of Land Act 1967*), see ¶[52-0100] – **NIR**
- ²**NOTICE** (Caveatee's Notice under the *Land Title Act 1994*), see ¶[52-0020] – **NOT**
- ²**NTCE OF ACTN** (Lodgement of Notice of Action under *Land Title Act 1994*), see ¶[52-0010] – **NOA**
- ¹**NT DETERM** (Notice of Native Title Determination under the *Native Title Act 1993* (Cth)), see ¶[52-0290] – **NTD**
- ¹**OFFSET AREA** (Notice under the *Environmental Offsets Act 2014*), see ¶[52-0310] – **EOA**
- ¹**OPT OUT AGMT** (Opt-Out Agreement under the *Mineral and Energy Resources (Common Provisions) Act 2014*), see ¶[52-0320] – **OPA**

- ¹**OWNER BUILDR** (Owner Builder Permit under the *Queensland Building and Construction Commission Act 1991*), see ¶[52-0120] – **OBN**
- ²**PRIORITY NTC** (Priority Notice under the *Land Title Act 1994*), see ¶[52-0080A] – **PNN**
- ^{1, 3}**REM ACT NOT** (Remedial Action Notice under the *Land Act 1994*), see ¶[52-0250] – **RAN**
- ¹**RESTORATION** (Restoration Notice under the *Vegetation Management Act 1999*), see ¶[52-0215] – **COM**
- ¹**RESTR ORDER** (Restraining Order under the *Drugs Misuse Act 1986*), see ¶[52-0040] – **RSO**
- ¹**RIV IMP NOT** (Notice under the *River Improvement Trust Act 1940*), see ¶[52-0110] – **RIT**
- ¹**ROAD LICENCE** (Notice of Road Licence under the *Land Act 1994*), see ¶[52-0090] – **RDL**
- **RT NOTING** (Registrar of Titles Noting under the *Land Title Act 1994*), see ¶[52-0050] and ¶[52-0055] – Registrar of Titles Noting under the *Land Title Act 1994* and Offence under the *Foreign Ownership of Land Register Act 1988* – **RTN**
- ²**SETTLMNT NTC** (Settlement Notice under the *Land Title Act 1994*), see ¶[52-0080] – **STN**
- ¹**TRAM EASE** (Access Right under the Sugar Industry Acts), see ¶[52-0160] – **STE**
- ¹**VEG NOTICE** (Vegetation Management Notice the *Vegetation Management Act 1999*), see ¶[52-0210] – **VMN**
- ¹**VOL ENV AGR** (Voluntary Environmental Agreement under the *State Development and Public Works Act 1971*), see ¶[52-0270] – **VEA**
- ²**W/D PRTY NTC** (Withdrawal of Priority Notice under the *Land Title Act 1994*), see ¶[52-0080A] – **PNW**
- **WATER ADVICE** (Water Act Advice under the *Water Act 2000*), see ¶ [52-0230]; [52-0236] and [52-0240] — **WAA**
- ¹**WET TROPICS** (Notice under the *Wet Tropics World Heritage Protection and Management Act 1993*), see ¶[52-0170] – **WTN**
- ²**XTD PRTY NTC** (Extension of Priority Notice under the *Land Title Act 1994*), see ¶[52-0080A] – **PNE**

Note – Enquiries relating to an administrative advice should be directed to the relevant authority or department administering the legislation or issuing the notice.

The registry will not provide any further detail other than that disclosed on the notice.

Recording an Administrative Advice

[52-2010]

Where a notice is to be given to the Registrar under the provisions of an Act a *Form 14 – General Request* must be lodged, unless another form is appropriate, for example a *Priority Notice Form*. The form must identify all lots the subject of the notice and details of the legislative authority. Where required, the request must be accompanied by any relevant supporting documentation. On lodgement, the notice is allocated a dealing number and entered against the relevant title/s.

Administrative advices for settlement notices, notices of action, caveatee's notices, and notices of appointment of an administrator under the *Guardianship and Administration Act 2000* may be entered by or on behalf of the person taking the action.

All other administrative advices must be entered by or on behalf of the relevant government department, agency or statutory authority or another entity authorised under the relevant legislation.

A duty notation is not required but a deposit fee applies unless there is a statutory exemption.

^{1, 2}The certificate of title, if issued, is not required to be deposited.

Removal of an Administrative Advice

[52-2020]

An administrative advice may only be removed by the lodgement of a *Form 14 – Request to remove administrative advice*, unless otherwise provided for by legislation. An authorised delegate of the authority that lodged the original administrative advice notice must execute the *Form 14*. Where necessary, supporting evidence must also be deposited.

The dealing number that was allocated to the administrative advice must be stated in the request.

A duty notation is not required but a deposit fee applies unless there is a statutory exemption.

^{1, 2}The certificate of title, if issued, is not required to be deposited.

Forms

General Guide to Completion of Forms

[52-4000]

For general requirements for completion of forms see part 59.

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Nature of request

ADMINISTRATIVE ADVICE

Lodger (Name, address, E-mail & phone number)

Queensland Building and Construction
Commission
22 Montague Road
West End Qld 4101
mail@qbcc.com.au
1300 272 272

**Lodger
Code**

2. Lot on Plan Description

LOT 3 ON RP24687

Title Reference

16072084

3. Registered Proprietor/State Lessee

WAYNE ROBERT DERN
LINDA ANN DERN

4. Interest

NOT APPLICABLE

5. Applicant

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

6. Request

I hereby request that: a notation be made pursuant to ss46(1) and 46(2) of the *Queensland Building and Construction Commission Act 1991*, an Owner Builder Permit has been issued in relation to the land described above

File reference v 2.5/20478675.doc.

7. Execution by applicant

B Mayberry

BRIAN WILLIAM MAYBERRY FOR GENERAL MANAGER
7/9/2007

Execution Date

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Guide to Completion of Form 14 - Request to record an administrative advice

Item 1

[52-4010]

Insert nature of request, i.e. 'administrative advice'.

Item 2

[52-4020]

Each lot the subject of the notice must be fully identified with a lot on plan description and a title reference.

^{1, 2}Freehold Description

The description of the relevant lot/s should always read 'Lot [no.] on [plan reference]'. Plan references must contain the appropriate prefix (e.g. 'SP' for a survey plan, 'RP' for a registered plan, 'BUP' for a building units plan, 'GTP' for a group titles plan or the relevant letters for Crown plans). The area of the lot/s is not shown.

e.g. Lot on Plan Description	Title reference
Lot 27 on RP 204939	11223078

^{2, 3}Water Allocation Description

A water allocation should be identified as 'Water Allocation', 'Allocation' or 'WA'. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

e.g. Lot on Plan Description	Title reference
WA 27 on AP 7900	46012345

^{1, 3}State Tenure Description

The description of the relevant State tenure should always read 'Lot [no.] on [plan reference]'. Plan references must contain the appropriate prefix (e.g. 'CP' for a crown plan).

e.g. Lot on Plan Description	Title reference
Lot 27 on CP LIV1234	40567123

Item 3

[52-4030]

Insert full name of registered proprietor/holder. However, where the name is considered not relevant to the notice, 'Not Applicable' may be inserted provided approval has been given by the Registrar prior to lodgement or a written submission stating the reasons, is deposited with the form.

Item 4

[52-4040]

Insert interest – fee simple, water allocation or State leasehold. Not Applicable may also be inserted.

Item 5

[52-4050]

Insert full name of applicant.

Item 6**[52-4060]**

Insert full details of the request including reference to the provisions of relevant authorising legislation.

Item 7**[52-4070]**

Complete and execute where indicated.

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Nature of request

REMOVAL OF ADMINISTRATIVE ADVICE

Lodger (Name, address, E-mail & phone number)

Queensland Building and Construction
Commission
22 Montague Road
West End Qld 4101
mail@qbcc.com.au
1300 272 272

**Lodger
Code**

2. Lot on Plan Description

LOT 3 ON RP24687

Title Reference

16072084

3. Registered Proprietor/State Lessee

WAYNE ROBERT DERN
LINDA ANN DERN

4. Interest

NOT APPLICABLE

5. Applicant

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

6. Request

I hereby request that: Pursuant to s 46 of the *Queensland Building and Construction Commission Act 1991* the administrative advice recorded on the above title under dealing number 960123456 be removed.

File reference v 2.5/20478675.doc.

7. Execution by applicant

B Mayberry

BRIAN WILLIAM MAYBERRY FOR GENERAL MANAGER
7/9/2007

Execution Date

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Guide to Completion of Form 14 - Request to remove an administrative advice

Item 1

[52-4100]

Insert nature of request, i.e. ‘removal of an administrative advice’.

Item 2

[52-4110]

Each lot the subject of the notice must be fully identified with a lot on plan description and a title reference.

^{1, 2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for Crown plans). The area of the lot/s is not shown.

e.g. Lot on Plan Description	Title reference
Lot 27 on RP 204939	11223078

^{2, 3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

e.g. Lot on Plan Description	Title reference
WA 27 on AP 7900	46012345

^{1, 3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for a crown plan).

e.g. Lot on Plan Description	Title reference
Lot 27 on CP LIV1234	40567123

Item 3

[52-4120]

Insert full name of registered proprietor/holder. However, where the name is considered not relevant to the notice, ‘Not Applicable’ may be inserted provided approval has been given by the Registrar prior to lodgement or a written submission stating the reasons, is deposited with the form.

Item 4

[52-4130]

Insert interest – fee simple, water allocation or State leasehold. Not Applicable may also be inserted.

Item 5

[52-4140]

Insert full name of applicant.

Item 6**[52-4150]**

Insert full details of the request including reference to the provisions of relevant authorising legislation and the dealing number of the administrative advice to be removed.

Item 7**[52-4160]**

Complete and execute where indicated.

Case Law

[52-7000]

Nil.

Fees

[52-8000]

Fees payable to the Titles Registry are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1, 2}Land Title Regulation
- ^{1, 3}Land Regulation
- ^{2, 3}Water Regulation.

Cross References and Further Reading

[52-9000]

Part 49 – Water Allocations

Notes in text

[52-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

Part 59 – Forms

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Part 59 – Forms

General Law

[59-0000]

Section 194 of the *Land Title Act 1994* and s. 444 of the *Land Act 1994* provide that the Chief Executive of the Department administering the Act may approve Forms required to be lodged in the Land Registry.

Section 7 of the Electronic Conveyancing National Law (Queensland) provides for forms to be lodged electronically under that Law, to be approved by the Registrar.

Section 10 of the Land Title Act s. 286 of the Land Act provide that a lodged form must be in the appropriate form and comply with the directions of the Registrar about how the form is completed and how information is to be included in or given with the form.

Electronic Conveyancing

[59-0010]

An electronic conveyancing document is a document that is lodged electronically under the Electronic Conveyancing National Law (Queensland).

A reference in the *Land Title Act 1994* to a document of a type that may be lodged or deposited under the Land Title Act includes reference to a document in the form of an electronic conveyancing document.

If the Land Title Act provides for a document to be signed or executed and the document is an electronic conveyancing document, the document must be digitally signed as provided for under the Electronic Conveyancing National Law (Queensland) and the Participation Rules (Queensland).

If a registry instrument, other than a plan of survey, is digitally signed in accordance with the Queensland Participation Rules for electronic conveyancing, the requirements of any other Queensland law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.

A document that is lodged as an electronic conveyancing document must be accompanied by a set of lodgement instructions identifying the nominated Responsible Subscriber and the order in which the documents are to be lodged. The lodgement instructions must be digitally signed by all subscribers to the transaction.

A document that is lodged as an electronic conveyancing document will have a label that is burnt into the image (similar to an Elodged document) and can be identified on the image of the document by the Office code “PX”.

National Mortgage Form

The National Mortgage Form was introduced on 29 May 2017 as part of a national initiative to standardise content and presentation of mortgages.

Legislation

[59-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1, 3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of Registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Practice

General Requirements for Land Registry Forms

[59-2000]

A form (other than a plan of survey) must meet the requirements of the Land Title Regulation 2015.

There must be margins free from printing and writing of not less than 10mm on all sides of the form.

Leave a space of not less than 35mm from the top edge of the form to accommodate any duty notation and dealing label.

The form must be clearly printed (in dense blue or black ink) on one side of the sheet only and be produced in a way that is permanent and allows reproduction to the satisfaction of the Registrar in a print size no smaller than 1.8mm (10 point). An electronic form that is produced by a firm must retain the Arial font (or a similar font acceptable to the Registrar) and other formatting embedded within fields of the original file obtained from the department's web site.

The whole of the Form, whether printed or processed, must appear on one side of one sheet only. Panels may be contracted or expanded to assist with this requirement, but **no panel may be removed** (ie, the item must be shown in full even if not used).

Forms must not be folded.

A Land Registry Form that has obviously been transmitted by facsimile and presented for lodgement may be accepted provided all the following criteria are met:

- all signatures are originally signed and dated on the form lodged; and
- the form is presented on plain white paper (ie, sensitised or coloured paper is not acceptable); and
- the completed form presented meets the quality standards of Land Registry Forms.

An Australian company name must in all circumstances be followed by its Australian Company Number or Australian Business Number, whether acquiring or disposing of an interest.

An acronym must not be used if it is not in common use as it may be unclear to a person conducting a search of the public register. For example, ATF is not acceptable in place of “as trustee for” or “as trustee”, however ACN may be used in place of Australian Company Number and JP may be used in place of Justice of the Peace.

Items

[59-2010]

All numbered Items are to be completed, or if not applicable, to be either ruled through diagonally or marked N/A. (No panel is to be removed.)

Only in circumstances where there is insufficient space to include the necessary information in any item in any form, a Form 20 – Enlarged Panel may be used. For further information see Part 20 – Schedule, Enlarged Panel, Additional Page, Declaration, or Standard Terms Document.

Optional Items marked * # to be deleted must be ruled through if they do not apply in a particular form. Initialling is not required for these deletions.

Fields within Items for parties acquiring interests should be used to record Given Name, Surname and Tenancy.

The full given name/s and surname/s of each individual must be shown.

Interests

[59-2020]

Shares in an Interest

An interest that is less than the whole (i.e. share) must be shown as a fraction and not expressed as a proportion or percentage, eg:

1/2 is acceptable, but 1:2 or 50% is not.

In cases where more than one share is involved, fractions must have a common denominator, eg:

6/12, 2/12, 1/12, 3/12.

Dealing with Different Interest Types

The Registrar will allow one form to be used for multiple interest types provided:

- the parties in the transaction are the same for each interest; and
- the interests are either all of a primary nature or all of a secondary nature. For example a single transfer from A to B of a freehold lot and a State lease is acceptable as both interests are considered primary. However, a transfer from A to B of a freehold lot and

transfer from A to B of a freehold lease (interest of a secondary nature) are not acceptable in a single form.

Where a single form is inadvertently prepared with primary and secondary interests, the form may be lodged only with prior approval of the Registrar.

Where a single form is used for multiple secondary interests separate lodgement fees will apply to each secondary interest as if each secondary interest was being dealt with in a separate form. Refer to the Titles Fee Calculator available online for more information.

Lodger

[59-2030]

The lodger details must contain the minimum information necessary for positive identification and contact by mail, electronic mail and telephone. However, in extenuating circumstances the Registrar may approve this panel to remain uncompleted, if requested in writing prior to lodgement and there is a substantive reason.

The lodger code (if applicable) should always be shown.

Amending Lodger details

Only the lodger of the instrument or document can request a change to the lodger details. The request must be made before the dealing is registered. Lodger details can be changed by sending the request using our online enquiry form or by email or letter.

Alterations and Minor Corrections to Land Registry Forms

[59-2040]

General

In this part the following applies:

Alteration means change to some detail which may alter the nature and effect of the instrument or document or is of a substantial nature—for example:

- adding or deleting a lot;
- adding or deleting a party;
- adding or deleting an interest;
- adding or deleting a middle name of a party;
- changing a title reference other than by one digit or a transposition of two digits;
- inserting or changing the tenancy or shares of parties.

Minor correction means a change to correct a minor error—for example, a correction of:

- a digit or a transposition of two digits in a title reference;
- a digit or a transposition of two digits in a plan number;
- the spelling of part of the name of an individual or corporation;
- a digit or a transposition of two digits in an Australian Company Number.

An *alteration* or a *minor correction* must be made in the following manner:

- a deletion must be ruled through and not erased or obliterated by painting over;
- any addition must be clearly printed in the correct item.

Land registry forms do not include the following:

- Form 21 – Survey Plan (Main Plan);
- Form 21A – Survey Plan (Additional Sheet)
- Form 21B – Survey Plan (Administration Sheet)
- Form 24 – Property Information (Transfer);
- Form 24A – Property Information (Transmission Application);
- Form 25 – Foreign Ownership Information;
- Form 38 – Survey Plan for a Cadastral Infrastructure File (Main Plan);
- Form 38A – Survey Plan for a Cadastral Infrastructure File (Additional Sheet)
- Form 38B – Survey Plan for a Cadastral Infrastructure File (Administration Sheet);
- Form CMS (Community Management Statement); or
- Power of Attorney instrument.

Section 5(4) of the Land Title Regulation 2015 requires each party and each witness to a land registry form to initial any alteration. However, as the Registrar has discretion under s. 10 of the *Land Title Act 1994* to waive a requirement relating to a form where it is considered reasonable to do so, the Registrar will not usually require a witness to initial a change to a form. The witness will be required to initial an alteration where it may impact on their responsibilities under s. 162 of the Land Title Act or s. 311 of the *Land Act 1994*. It is advisable to have the alteration initialled by the witness if there is doubt on whether or not the alteration impacts on the witness's responsibilities.

The Registrar may require further evidence to substantiate who has made an alteration or a minor correction to an instrument or document and the nature of their authority.

If there is doubt on whether a change is considered an alteration or a minor correction, it is advisable to have the changes made in accordance with the practice for an alteration.

Alterations or Minor Corrections Made Before Lodgement

The following applies whether the alteration or minor correction was made before or after execution.

Alterations Made Before Lodgement

An *alteration* made to a form before lodgement must be initialled by:

- each party to the form who executed the document—except where the change is of no consequence to a party, then that party's initial is not required, for example inserting or changing the tenancy of transferees would not require the transferor's initials.

Note: A solicitor who signed on behalf of a party is not a party to the form; or

- a person authorised to alter the instrument or document—provided that a statement about the alteration is deposited with the instrument or document when lodged (see below).

Minor Corrections Made Before Lodgement

A *minor correction* made before lodgement must be initialled by at least:

- one of the parties to the form who executed the document; or
- a solicitor for one of the parties; or
- another person authorised to make a minor correction to the instrument or document—in this case, a statement about the minor correction must be deposited with the instrument or document when lodged (see below).

Alterations or Minor Corrections Made After Lodgement

Alterations Made After Lodgement

The practice stated above for *alterations* made before lodgement, also applies to *alterations* made to an instrument or document after lodgement, that is, where a dealing is under requisition. However, additional requirements apply to:

- adding a party—the following are required:
 - the additional party must execute the instrument or document; and
 - the lodger must provide a letter requesting that the dealing be withdrawn and re-lodged under s. 159 of the *Land Title Act 1994* or s. 308 of the *Land Act 1994*.
- withdrawing a lot or an interest from the instrument or document before the dealing is registered—the lodger must also provide a letter requesting that the dealing be withdrawn only so far as relates to the lot/interest
- adding a lot or an interest to an instrument or document before the dealing is registered—the following are required:
 - the instrument or document must be re-executed by all parties—if the instrument or document is unable to be re-executed a written submission, supported by a statutory declaration stating the facts, must be deposited; and
 - any additional lodgement fee for extra lot/interest must be paid; and
 - the lodger must provide a letter requesting that the dealing be withdrawn and re-lodged under s. 159 of the *Land Title Act* or s. 308 of the *Land Act*.

Minor Corrections Made After Lodgement

The practice stated above for *minor corrections* made before lodgement, also applies to *minor corrections* made to an instrument or document after lodgement, that is, where a dealing is under requisition.

Statement by Authorised Person

A statement providing information about an *alteration* or a *minor correction* that is required to be deposited with an instrument or document may be made by:

- a solicitor for either party to the instrument or document; or
- at least one person who was authorised to make changes.

The statement must include:

- the title reference and the form number/name; and
- the name of the authorised person/s and the name of their firm, institution or settlement agency; and
- the details of the alteration and/or minor correction; and
- the name of the party represented where the statement is signed by a solicitor; and
- the signature of the person/s who made the statement.

A pro forma Form 20 – Schedule with relevant blank fields is shown below and is available on the department’s web site.

Title reference:

Form being altered or corrected:

Name of authorised person or solicitor:

Name of authorised person’s firm or employer (legal practice, commercial lender or settlement agency):
.....

Item/s being altered or corrected:

Details of alteration or correction:

Party represented (where signed by solicitor):

.....
Authorised person’s or Solicitor’s Signature

The statement may be on either letterhead or a Form 20 – Schedule, if the authorised person is a solicitor or an employee (whether authorised directly or by chain of authority) of a legal practice, a commercial lender or a settlement agency.

If the authorised person is not one of the above, the statement must be on a Form 20 – Schedule.

Annexures

[59-2050]

An annexure (for example a declaration, an enlarged panel or a schedule) must be prepared on a Form 20 and form part of the completed land registry form. Other documentation (for example an original will, certificate of death, Form 24 – Property Information (Transfer), Form 25 – Foreign Ownership) accompanying the Titles Registry form are only deposited with the form.

For further information see part 20 – Schedule, Enlarged Panel, Additional Page, Declaration, or Standard Terms Document.

Binding**[59-2060]**

The form and its supporting documents may be bound with one staple at the top left corner. An original will must not be stapled or otherwise attached to another document including by a paper clip.

^{1, 2}Certificate of Title**[59-2070]**

For further information see [10-2000], [17-0000] and [22-2010].

Current Forms**[59-4000]****Chronological List of Dates of Effect – Based on Date of Signing of the Particular Form/Version**

- 1 September 1986 – *Real Property Act* Panel Forms commenced
- 1 May 1992 – Form 100s commenced
- 24 April 1994 – *Land Title Act* forms commenced (*Real Property Act* repealed)
- 1 August 1994 – *Real Property Act* forms no longer acceptable
- 24 October 1994 – *Land Title Act* Version 2 forms commenced
- 1 December 1994 – Forms executed in Version 1 not acceptable
- 6 February 1995 – Form 23 Version 1 (Settlement Notice) commenced
- 30 October 1995 – Form 24 Version 1, Form 23 Version 2 and Version 3 of Forms 1, 4, 5, 6, 7, 13 and 18 commenced
- 1 January 1996 – Common Form 100, Version 1 of Form 23 and Version 2 of Forms 1, 4, 5, 6, 7, 13, 18 are no longer acceptable
- 12 July 1997 – Version 4 of Form 13, Version 2 of Form 21, Forms 21A, 26 to 34 and CMS commenced
- 13 September 1997 – Form 21 Version 1 no longer acceptable
- 1 December 1997 – Form 13 Version 3 no longer acceptable
- 18 February 2000 – Form 7 Version 4 commenced
- 1 July 2000 – Form 7 Version 3 no longer acceptable
- 1 September 2002 – Form 24 Version 2 commenced
- 1 September 2003 – Version 2 of Forms 20, 25, 29 to 34 and CMS, Version 3 of Forms 2, 3, 5A, 8 to 12, 14 to 17, 19, 23 and 24, Version 4 of Forms 1, 4, 5, 6 and 18, Version 5 of Forms 7 and 13 commence
- 1 December 2003 – Version 1 of Forms 20, 25, 29 to 34 and CMS, Version 2 of Forms 2, 3, 5A, 8 to 12, 14 to 17, 19, 23 and 24, Version 3 of Forms 1, 4, 5, 6 and 18, Version 4 of Forms 7 and 13 no longer acceptable
- 1 April 2006 – Version 4 of Form 5A, Version 5 of Forms 5 and 6 commence
- 1 July 2007 – Version 1 of Form 24A, Version 3 of Forms 25, 29 to 34 and CMS, Version 4 of Forms 2, 3, 8 to 12, 14 to 17, 19, 23 and 24, Version 5 of Forms 1, 4, 5A and 18, Version 6 of Forms 5 to 7 and 13 commence
- 1 October 2007 – Versions of forms prior to those that commenced 1 July 2007 no longer acceptable
- 10 October 2011 – Form 24 Version 5 and Form 24A Version 2 commenced
- 1 March 2012 – Version 4 of Form 24 and Version 1 of Form 24A no longer acceptable
- 14 December 2012 – Version 3 of Form 21 and Version 1 of Forms 36, 37, 38 and 38A commenced.
- 10 May 2013 – Version 6 of Form 5A, Version 7 of Form 6 and Version 5 of Form 23 commenced.
- 31 May 2013 – Version 1 of Forms 39 and 40 commenced.
- 27 September 2013 – Version 1 of Forms 41 and 42 commenced

- 11 December 2013 – Version 1 of Form 2 (Electronic) and Form 3 (Electronic) commenced.
- 21 March 2014 – Version 4 of Form 25 commenced
- 1 July 2014 – Version 6 of Form 24 commenced
- 25 May 2015 – Version 1 of Form 11 (Electronic), Form 14 (Electronic) and Form 23 (Electronic) commenced
- 1 December 2015 – Version 4 of Form 21, Version 1 of Form 21B, Version 2 of Form 38 and Version 1 of Form 38B commenced
- 1 December 2015 – County and Parish fields removed from Forms 1,2,3,4,5,5A,6,7,8,9,10,11,12,13,14,15,17,18,19,23,29,30,31,32,33,34,36,37,39,40,41,42 and Form CMS
- 21 March 2016 – Version 7 of Form 24 and Version 3 of Form 24A commenced
- 29 May 2017 – National Mortgage Form (NMF) commenced
- 17 July 2017 – Version 7 of Form 5A and Version 8 of Form 6 commenced
- 18 September 2017 – Version 8 of Form 24 commenced
- 16 October 2017 (1 January 2018) – Version 1 of Priority Notice Form approved (accepted for deposit from 1 January 2018)
- 16 October 2017 (1 January 2018) – Version 1 of Extension of Priority Notice Form approved (accepted for deposit from 1 January 2018)
- 16 October 2017 (1 January 2018) – Version 1 of Withdrawal of Priority Notice Form approved (accepted for deposit from 1 January 2018)
- 1 January 2018 – Form 23 Version 1 (Settlement Notice) no longer accepted for deposit irrespective of when signed (replaced with Priority Notice mechanism)
- 5 March 2018 – Form 2 – Mortgage (version 4) forms executed after this date no longer accepted (forms executed by at least one party prior to this date still accepted)

List of Forms

Form 1	Version 5	Transfer
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Form 3	Version 1	Release of Mortgage (Electronic)
Form 4	Version 5	Request to Record Death
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Form 5A	Version 7	Transmission Application by Personal Representative (No Grant in Queensland)
Form 6	Version 8	Transmission Application for Registration as Devisee/Legatee
Form 7	Version 6	Lease/Sub-Lease
Form 8	Version 4	Surrender of Lease
Form 9	Version 4	Easement
Form 10	Version 4	Surrender of Easement
Form 11	Version 4	Caveat
Form 11	Version 1	Caveat (Electronic)
Form 12	Version 4	Request to Register Writ/Warrant of Execution
Form 13	Version 6	Amendment
Form 14	Version 4	General Request
Form 14	Version 1	General Request (Electronic)
Form 15	Version 4	Request to Amalgamate
Form 16	Version 4	Request to Register Power of Attorney/Revocation of Power of Attorney
Form 17	Version 4	Request to Dispense with Production of Instrument
Form 18	Version 5	General Consent

Form 19	Version 4	Application for Title
Form 20	Version 2	Schedule/Enlarged Panel/Additional Page/Declaration
Form 21	Version 4	Survey Plan (Main Plan)
Form 21A	Version 1	Survey Plan (Additional Sheet)
Form 21B	Version 1	Survey Plan (Administration Sheet)
Form 22	Version 1	Certificate of Title
Form 24	Version 8	Property Information (Transfer)
Form 24A	Version 3	Property Information (Transmission Application)
Form 25	Version 4	Foreign Ownership Information
Form 29	Version 3	Profit a prendre
Form 30	Version 3	Mortgage Priority
Form 31	Version 3	Covenant
Form 32	Version 3	Building Management Statement
Form 33	Version 3	Release of Covenant/Profit a prendre
Form 34	Version 3	Extinguishment of Building Management Statement
Form 36	Version 1	Carbon Abatement Interest
Form 37	Version 1	Surrender of Carbon Abatement Interest
Form 38	Version 2	Survey Plan for a Cadastral Infrastructure File (Main Plan)
Form 38A	Version 1	Survey Plan for a Cadastral Infrastructure File (Additional Sheet)
Form 38B	Version 1	Survey Plan for a Cadastral Infrastructure File (Administration Sheet)
Form 39	Version 1	High-density Development Easement
Form 40	Version 1	Surrender of High-density Development Easement
Form 41	Version 1	Indigenous Cultural Interest
Form 42	Version 1	Surrender of Indigenous Cultural Interest
CMS	Version 3	Format for Community Management Statement
NMF	Version 1.5	National Mortgage Form
PNN	Version 1	Priority Notice Form
PNE	Version 1	Extension of Priority Notice Form
PNW	Version 1	Withdrawal of Priority Notice Form

Cross References and Further Reading

[59-9000]

Nil.

Notes in text

[59-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.

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Part 60 – Miscellaneous

Legislation

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1, 3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

Requisitions

General Law

[60-0000]

The Registrar may, by written notice (the ‘requisition’), require a person who has lodged an instrument or other document, or another person who reasonably appears to the Registrar to be relevantly associated with the instrument or other document, to re-execute, complete or correct the instrument or document, or to provide specific information (s. 156(1) of the *Land Title Act 1994* or s. 305(1) of the *Land Act 1994*).

A document that is lodged as an electronic conveyancing document, and is subsequently requisitioned, will be printed as a rendered version of the electronic registry instrument and forwarded to the lodger of the document to address the deficiencies identified in the requisition notice. Once the requisition is complied with, the rendered paper form must be returned to a Titles Registry lodgement office.

An electronic conveyancing document that is requisitioned and consequently printed as a rendered version of the electronic registry instrument, must meet the requirements, as applicable, of an instrument or document that is lodged in paper form (e.g. requirements relating to alterations and minor corrections) when the document is returned to a registry office. The document however does not require a fresh execution (i.e. wet signatures) by the parties to the instrument or document.

If the requisition is not complied with within the time specified in the requisition or as extended by the Registrar, the instrument or document may be rejected with a consequent loss of priority (ss. 157(1) and (2) of the Land Title Act or ss. 306(1) and (2) of the Land Act). It is at the Registrar's discretion whether the time to comply with the requisition will be extended (s. 156(4) of the Land Title Act or s. 305(4) of the Land Act).

A rejected instrument or document other than an electronic conveyancing document may be relodged after the requisition has been complied with (s. 157(6) of the Land Title Act or s. 306(6) of the Land Act).

An electronic conveyancing document that has been rejected cannot be relodged (s. 157(5) of the Land Title Act).

Practice

[60-0030]

All documentation is returned to the lodger of the instrument or document that has been requisitioned. When the instrument or document is to be returned to the registry all the documentation originally lodged and any additional documentation requisitioned for must be deposited.

The details of a requisition will only be disclosed by the Registrar to a person to whom the requisition was issued.

Usually, the time to comply with the requisition in the first instance will be eight weeks, however, the requisition period for caveats and priority notices will be four weeks. All requests for extension must be in writing and contain substantive reasons including:

- the details of actions being undertaken to comply with the requisition; and
- the reasons inhibiting the lodger or other parties from complying with the requisition within the prescribed time.

Where an instrument or document is to be rejected all instruments or documents dependent on registration of the rejected instrument or document will also be rejected.

If an instrument or document is rejected, the fees that have already been paid for lodging the instrument or document are forfeited. The lodgement fee payable on relodgement of an instrument or a document is set out in s. 6 of the Land Title Regulation 2015, s. 62 of the Land Regulation 2009, or s. 130 of the Water Regulation 2016.

If a caveat or writ or warrant of execution is requisitioned and the requisition is not complied with, a notice of intention to reject is generally given by the Registrar, allowing seven days for the lodger to respond to the rejection (see part 11 – Caveat, esp ¶[11-210] and part 12 – Writ or Warrant of Execution, esp ¶[12-211]).

Fee for a Requisition

[60-0040]

Every requisition that is issued attracts the prescribed fee unless there is a statutory exemption applicable to the lodger or the transaction. The legislative authority for the exemption may be required to be provided.

Fees payable to the Titles Registry are subject to an annual review. See the current:

- ^{1, 2}Land Title Regulation
- ^{2, 3}Water Regulation

- ^{1, 3}Land Regulation.

The Registrar's Powers of Correction

General Law

Error in Lodged Instrument or Document

[60-0050]

The Registrar may correct an obvious error in:

- a lodged plan of survey (s. 155(1) of the *Land Title Act 1994* or s. 304(1) of the *Land Act 1994*) by:
 - a) drawing a line through the error without making the original words illegible; and
 - b) writing in the correct information; and
 - c) dating and initialling the correction.

or

- a lodged instrument or document (s. 155(2) of the *Land Title Act* or s. 304(1) of the *Land Act*) by making the correction under the provisions of s. 155(2)(b) of the *Land Title Act* or s. 304(1)(b) of the *Land Act*. That is, the error is treated as if there was no error, an electronic notation is made in the register and the face of the instrument or document is left as it was lodged.

An obvious error may only be corrected if the Registrar is satisfied that the instrument or document is incorrect and the rights of a person will not be prejudiced (s. 155(3) of the *Land Title Act* or s. 304(2) of the *Land Act*). An instrument or document so corrected has effect as if the error had not been made (s. 155(4) of the *Land Title Act* or s. 304(3) of the *Land Act*).

Note: an error in an instrument will not be considered an obvious error if the face of the instrument or document may, in the future, lead to ambiguity, even though it may at the time of examination appear to be an obvious error within the meaning of the above provisions. For example, it would be unclear from the face of a registered mortgage which property the mortgage applies to where the mortgage shows an erroneous title reference (even if there is only one incorrect digit) and this was treated as an obvious error.

Error in the Register

[60-0060]

The Registrar may correct an error in the register or an instrument or document forming part of the register if satisfied that the Register is incorrect and the rights of a holder of an interest recorded in the register would not be prejudiced (ss. 15(1), (2) and (5) of the *Land Title Act 1994* or ss. 291(1) and (2) of the *Land Act 1994*).

²If the holder of an interest recorded in the register has acquired or dealt with the interest with actual or constructive knowledge that the register was incorrect, then the rights of that holder are not prejudiced (s. 15(8) of the *Land Title Act*).

^{2, 3}Section 151 of the *Water Act 2000* allows the Registrar to make any necessary corrections to the name of an existing water entitlement holder if it has been recorded incorrectly when a water allocation has been created.

The Registrar may correct an error in the Register, whether or not the correction will prejudice the rights of the holder of an interest recorded in the register, only if:

- the register to be corrected is the freehold land register or leasehold land register and the correction is to show, in relation to a lot, an easement the particulars of which have been omitted from or misdescribed in the register; or
- the Supreme Court has ordered the correction under s. 26 of the Land Title Act.

Upon making the correction, the Registrar must record the state of the Register before the correction and the time, date and circumstances of the correction (s. 15(6) of the Land Title Act or s. 291(3) of the Land Act). The Register so corrected has the same effect as if the error had not been made (s. 15(7) of the Land Title Act or s. 291(4) of the Land Act).

The Registrar only corrects errors that the registry has made. The Registrar does not use this section to correct errors made by the conveyancer.

Practice

[60-0090]

The examiner may register an instrument or document that contains an error, provided the error is obvious and there is no ambiguity. An internal dealing note is entered against the instrument or document to indicate the error did not impede registration of the instrument or document. If the intent is not clear, the lodger will be requisitioned to resolve the matter.

^{2,3}In the case of a water allocation where an administrative error has occurred that caused the name to be recorded incorrectly when a water allocation was created the Registrar will require information to show that the correction will not prejudice the rights of the holder of an interest in the water allocation. This information may be in the form of a consent from an interest holder, such as a mortgagee, and evidence that the Resource Operations Licence (ROL) holder has been consulted where the water allocation is managed under a ROL. The Registrar also requires a statutory declaration signed by the Director Water Allocations that includes:

- facts that caused the change to be requested;
- facts regarding consultation with registered interest holders, where appropriate; and
- facts regarding consultation with existing allocation holders, where appropriate.

If it is determined from evidence produced that an incorrect entry has been made in the register, the Registrar may prepare and lodge an internal dealing to effect a correction, provided the correction does not prejudice any party.

Standard Terms Document

General Law

[60-0095]

Many instruments or documents require the inclusion of covenants, e.g. leases, mortgages, and easements etc. which are generally incorporated in the instrument or document by a Form 20 – Schedule.

If a class of instrument or document has a standard set of covenants, a standard terms document may be lodged and registered.

Any subsequent instruments or documents may then refer to the dealing number of the standard terms document in lieu of including covenants, however, a schedule may be included in the instrument or document to insert additional terms if required.

Practice

[60-0097]

A standard terms document may be used to define the provisions that are treated as the terms that relate to an instrument or document.

A standard terms document must be lodged for registration with a Form 14 – General Request.

A standard terms document may be amended by lodging a further standard terms document, however, additional terms may be incorporated in an instrument or document by also including a schedule.

If there is a conflict between the provisions in the schedule to the instrument or document and the standard terms document, the instrument or document will prevail (s. 171(2) of the *Land Title Act 1994* and s. 320(2) of the *Land Act 1994*).

No lodgement fees or duty are payable.

For information on withdrawal or cancellation of a registered standard terms document, see ¶[60-0110].

Withdrawing an Instrument or Document

General Law

Withdrawing Lodged Instrument or Document Prior to Registration

[60-0100]

The Registrar may withdraw an instrument or document or permit an instrument or document to be withdrawn if satisfied that:

- a) the instrument or document will not give effect to intention expressed in it or a related instrument or document because of the order in which the instrument or document has been lodged in relation to other instruments or documents; or
- b) the instrument or document should not have been lodged (s. 159(1) of the *Land Title Act 1994* or s. 308(1) of the *Land Act 1994*).

An instrument or document so withdrawn, unless it is of a type that should not have been lodged, remains in the registry (s. 159(2) of the *Land Title Act* or s. 308(2) of the *Land Act*). The Registrar may relodge an instrument or document that has been withdrawn by the Registrar and may, on the written application of the lodger, relodge an instrument or document that the Registrar has permitted to be withdrawn (ss. 159(3) and (4) of the *Land Title Act* or ss. 308(3) and (4) of the *Land Act*).

Except in the case of plans of subdivision, an instrument or document that is withdrawn from registration loses its priority and is taken to have been lodged on the date and at the time endorsed on it by the Registrar at the time of its relodgement (ss. 159(5) and (6) of the *Land Title Act* or s. 308(5) of the *Land Act*).

Withdrawing or Cancelling Registered Standard Terms Document

[60-0110]

On application of the lodger, the Registrar may withdraw a registered standard terms document as defined in s. 168 of the *Land Title Act 1994* (s. 172(1) of the *Land Title Act*) or s. 317 of the *Land Act 1994* (s. 321(1) of the *Land Act*).

After giving one month's notice in the Gazette, the Registrar may cancel a registered standard terms document lodged by the Registrar (s. 172(2) of the Land Title Act or s. 321(1) of the Land Act).

The Registrar must keep, and if asked produce for inspection, a copy of a standard terms document cancelled or withdrawn pursuant to s. 172 of the Land Title Act (s. 172(3) of the Land Title Act) or s. 321 of the Land Act (s. 321(3) of the Land Act). Withdrawal or cancellation of a standard terms document does not affect an instrument that is already registered or one that is executed within seven days after its withdrawal or cancellation (s. 172(4) of the Land Title Act or s. 321(4) of the Land Act).

Practice

Withdrawing Lodged Instrument or Document Prior to Registration

[60-0150]

A request under s. 159 of the *Land Title Act 1994* or s. 308 of the *Land Act 1994* by a lodger to withdraw an unregistered instrument or document is made in writing and not by another document.

The lodgement fees paid on a lodged instrument or document that has not been registered and is withdrawn, are forfeited, other than any additional fee paid under Item 3 of Schedule 2 of the Land Title Regulation 2015 for a transfer of fee simple. An administrative fee will be deducted from any fees refunded.

For the requirements for withdrawing an unregistered Caveat see part 11 – Caveat, esp ¶[11-2070] or for withdrawing an unregistered Warrant of Execution see part 12 – Request to Register Writ or Warrant of Execution, esp ¶[12-2100].

The requirements for removing a lot/interest from a lodged instrument or document are in [59-2040].

Imaging Instruments or Documents

Practice

[60-0160]

An electronic image is held permanently of each instrument or document (and associated documentation) lodged in the registry since July 1998.

Section 166 of the *Land Title Act 1994* or s. 315 of the *Land Act 1994* authorises the Registrar to destroy an original instrument or document, in accordance with the State Archivist's standards. However, original wills are not destroyed.

Retrieval of registered instruments or documents not already imaged requires either a microfilm copy or the original to be imaged. This is normally processed within one working day.

²The Registrar's Power of Inquiry

General Law

[60-0170]

The Registrar has the power to hold an inquiry to decide whether the Register should be corrected, to consider whether a person has:

- (a) fraudulently or wrongfully obtained, kept or procured an instrument affecting land in the Register; or

- (b) procured a particular in the Register or an endorsement on an instrument affecting land (s. 19 of the *Land Title Act 1994*).

The Registrar also has power to hold an inquiry in circumstances prescribed by regulation under s. 19(e) of the Land Title Act. No such circumstances, nor procedural rules for such inquiries as contemplated by s. 21(2) of the Land Title Act, have been prescribed.

When conducting such inquiries, the Registrar:

- must observe natural justice;
- must act as quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues;
- is not bound by the rules of evidence;

may inform himself/herself in any way he/she considers appropriate;

- may decide the procedures to be followed at the inquiry;
- may act in the absence of a person who has been given reasonable notice;
- may receive evidence on oath or affirmation or by statutory declaration;
- may adjourn the inquiry;
- may disregard a defect, error or insufficiency in a document;
- may permit or refuse to permit a person to be represented at the inquiry; and
- may administer an oath or affirmation to a person appearing as a witness before the inquiry (ss. 20, 21 and 22 of the Land Title Act).

A person may be required, by written notice given by the Registrar, to attend an inquiry as a witness to give evidence or to produce specific documents or things (ss. 23(1) and (2) of the Land Title Act). Witnesses required to appear before an inquiry are entitled to witness fees (s. 23(3) of the Land Title Act).

Witnesses may commit an offence by:

- not attending without reasonable excuse;
- not continuing to attend without reasonable excuse;
- failing to take an oath or make an affirmation as required by the Registrar;
- failing, without reasonable excuse, to answer a question asked by the Registrar; and
- failing, without reasonable excuse, to produce a document or thing (ss. 24(1) and (2) of the Land Title Act).

In any of the above circumstances, the Registrar may apply to the Supreme Court for an order to compel the person to comply with the notice or requirement and the Supreme Court may make any order to assist the Registrar as the Supreme Court considers appropriate (s. 25 of the Land Title Act). A person may fail to answer a question or produce a document or thing if doing so would tend to incriminate that person (s. 24(3) of the Land Title Act).

Declarations

Practice

[60-0260]

When a statutory declaration is required with a form under the *Land Title Act 1994*, *Land Act 1994* or *Water Act 2000*, it may be made on a Form 20 – Declaration.

The Registrar will accept a statutory declaration taken by the following—

- (a) a person authorised by the *Oaths Act 1867* (Qld) to take a declaration, even if taken outside Queensland, provided the declaration is in the form provided for by that Act, for example:
- a justice of the peace, a commissioner for declarations or a notary public under the law of the State, the Commonwealth or another State; or
 - a lawyer; or
 - a conveyancer, or
 - another person authorised to administer an oath under the law of Queensland; or
 - *another person authorised to administer an oath under the law of the Commonwealth or another State, for example:
 - an Australian Consular Officer or authorised employee under the *Australian Consular Officers' Notarial Powers and Evidence Act 1946* (Qld).
- *To clarify, persons who are not authorised by law of the Commonwealth or another State to administer an oath (for example, take a sworn affidavit) must not take a statutory declaration on a form under the *Oaths Act 1867*.
- (b) a person authorised to take a declaration by an Act of another State, the Commonwealth or another country provided the declaration complies with the relevant law, for example:
- one of the various classes of persons authorised under the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) and the declaration is taken on the relevant form under that legislation;
 - one of the various classes of persons authorised under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) and the declaration is taken on the relevant form under that legislation;
 - one of the various classes of persons authorised under the *Statutory Declarations Act 1959* (Cth) and the declaration is taken on the relevant form under that legislation.
- (c) a notary public.
- (d) another person if the lodger substantiates the authority of the person to take declarations in another jurisdiction by providing a reference to the authorising legislation and the declaration is taken on the relevant form under that legislation.

The above also applies to the declarations contained in Forms 5A and 6 – Transmission Applications.

Where there is insufficient space on the declaration for all declarants to execute on the same page as the declaration, separate declarations must be completed and executed.

Where a declaration is made on the wrong form a statutory declaration in the proper form may be required. For example a Victorian police officer incorrectly takes a declaration on the form under the *Oaths Act 1867* (Qld) rather than the form under the *Evidence (Miscellaneous Provisions) Act 1958* (Vic).

It is not appropriate to amend a statutory declaration after execution by the declarant. If further matters are required to be declared, a supplementary statutory declaration should be made.

Where a statutory declaration is made by an attorney for a person who is a party to an instrument or a document, the statement of facts relevant to the person may only be made in the third person. The declaration must also state the attorney is an attorney for the party and be signed by the attorney in the manner set out in [60-0900] under subheading Execution by Attorney. The power of attorney must be registered before the instrument or document to which the declaration relates may be registered.

¶[60-0280] to ¶[60-0350] deleted

Witnesses to Executions

General Law

[60-0360]

²An instrument under the *Land Title Act 1994* is validly executed by an individual if it is executed in a way permitted by law and the execution is witnessed by a person mentioned in Schedule 1 of the Land Title Act (s. 161(2) of the Land Title Act).

^{1,3}A document under the *Land Act 1994* is also validly executed by an individual if it is executed in a way permitted by law and the execution is witnessed by a person prescribed under the regulations (s. 310(2) of the Land Act). Section 46 of the Land Regulation 2009 provides that documents may be witnessed by similar persons as mentioned in Schedule 1 of the Land Title Act.

The provisions of s. 162 of the Land Title Act or s. 311 of the Land Act require witnesses to executions or signatures to:

- take reasonable steps to ensure that the individual is the person entitled to sign the instrument or document;
- have the individual execute the instrument or sign the document in their presence; and
- not be a party to the instrument or document.

‘Instrument’ and ‘document’ are defined in Schedule 2 of the Land Title Act and Schedule 6 of the Land Act respectively and include all Titles Registry forms and powers of attorney which are lodged for registration.

The persons who can witness the execution of an instrument or document are listed in Schedule 1 of the Land Title Act or s. 46 of the Land Regulation 2009. Definitions in the Land Title Act, the *Justices of the Peace and Commissioners for Declarations Act 1991*, the *Acts Interpretation Act 1954* and other Acts apply to some of the terms in this list. For example:

- ‘lawyer’ means an Australian lawyer, that is a person who is admitted to the legal profession under the *Legal Profession Act 2007* or a corresponding law;

- ‘justice of the peace’ or ‘commissioner for declarations’ means a person holding the relevant office under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Where an instrument or document is executed outside Australia a person prescribed by regulation is also authorised to witness an execution, for example:

- Part 9 of the Defence Regulation 2016 (Cth) provides that a *competent officer* (as defined in reg 52 of the Regulation) may attest the execution of a document by a member of the Defence Force (or a person who accompanies a part of the Defence Force) while on service outside Australia. See ¶[60-0390]; or
- the *Australian Consular Officers’ Notarial Powers and Evidence Act 1946* (Qld) and *Consular Fees Act 1955* (Cth) authorises witnessing of an instrument or document by an Australian Consular Officer, an Australian Diplomatic Officer, or an authorised employee of the Commonwealth.

The Registrar may also approve ‘another person’ in a State or Territory of Australia, or in any place outside Australia to witness the execution of an instrument or document.

The Registrar will only approve another person in a State or Territory of Australia to witness the execution of an instrument or document in exceptional circumstances. Categories of persons who have been approved to witness executions are:

- a Justice of the Peace or Commissioner for Declarations under the law of an Australian State or Territory other than Queensland;
- a licensed settlement agent authorised under the *Settlement Agents Act 1981* (WA);
- a Registrar or Deputy Registrar of the Supreme, District or Magistrates Courts of Western Australia;
- a Commissioner for Oaths appointed in the Northern Territory (provided the Registrar’s requirements are met). See ¶[60-0390].

The requirements for making a submission to the Registrar to approve ‘another person’ to witness the execution of an instrument or document outside Australia are outlined in ¶[60-0390].

Section 161(3) of the Land Title Act or s. 310(3) of the Land Act also gives the Registrar discretion in exceptional circumstances to register an instrument or document even though the execution is not witnessed or was witnessed by a person other than mentioned in Schedule 1 of the Land Title Act or in s. 46 of the Land Regulation 2009.

If the Land Title Act or the Land Act provides for an instrument or document to be signed or executed and the instrument or document is an electronic conveyancing document (a registry instrument), the registry instrument must be digitally signed as provided for under Part 2 of the Electronic Conveyancing National Law (Queensland).

If a registry instrument, other than a plan of survey, is digitally signed in accordance with the Queensland Participation Rules for e-conveyancing, the requirements of any other Queensland law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied (s. 9(3)(b) of the Electronic Conveyancing National Law (Queensland)).

Practice

[60-0390]

Additional Witnessing Requirement for Form 1, *National Mortgage Form* and Form 3

Form 1 – Transfer, *National Mortgage Form* and Form 3 – Release of Mortgage require the completion of a separate witnessing provision for each signature which is required to be witnessed, even if the signatures are made in front of the same witness.

Multiple Executions

On instruments or documents that do not require separate witnessing provisions and where multiple executions are needed due to signatories signing before different witnesses, separate witnessing provisions must be completed by each witness. In cases where there is insufficient room on the instrument or document, a Form 20 – Enlarged Panel may be used subject to the following:

- It is permissible for the execution Item (e.g. Item 6 on a Form 1 – Transfer) to appear partially on the face of the instrument or document and partially on a Form 20 – Enlarged Panel. However, the full execution for each party (signature, date and completed witnessing provision) must appear on the same page of the instrument or document.
- It is not permissible for all of the executions to appear on a Form 20 – Enlarged Panel where there is space on the face of the instrument or document for one of the executions.
- The Item number and heading (e.g. ‘Item 6 Execution’) must be included on the Form 20 – Enlarged Panel and otherwise comply with requirements for completing a Form 20. See ¶[20-2020].

Witnessing Within Australia

The Registrar requires the full name and qualification of a witness to be shown legibly adjacent to their signature.

²Section 161(3A) of the *Land Title Act 1994* provides that for an instrument that transfers or creates an interest in a lot, the execution by the legal practitioner acting for the transferee or the person in whose favour the interest is created need not be witnessed. Where a legal practitioner executes an instrument in this capacity, his/her full name and qualification must be shown. See ¶[60-0900].

Executions signed personally or by an attorney for an individual are required to be witnessed.

The requirement that a witness must not be a party to the instrument or document is not infringed by an employee of a bank or other entity, who is a qualified witness by virtue of Schedule 1 of the *Land Title Act* or s. 46 of the *Land Regulation 2009* witnessing the execution of an instrument or document that their employer is a party to. For example, a bank officer who is a justice of the peace is not a party to a mortgage to the bank.

Notwithstanding a person may be authorised to take a declaration, they are not authorised to witness the signing of an instrument or a document unless included in a category listed in Schedule 1 of the *Land Title Act* or s. 46 of the *Land Regulation 2009*. For example, the following are considered not to be authorised if they do not also hold an office or qualification mentioned in Schedule 1 of the *Land Title Act*, s. 46 of the *Land Regulation 2009* or are not persons approved by the Registrar:

- an *ex officio* commissioner for declarations under the *Oaths Act 2001* (Tas); or

- a person who is an authorised witness under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA); or
- a person authorised under the *Statutory Declarations Act 1959* (Cth); or
- a legal executive or a paralegal; or
- a Commissioner for taking affidavits in the Supreme Court of South Australia under the *Oaths Act 1936* (SA).

Justice of the Peace and Commissioner for Declarations

When witnessing the execution of instruments or documents, justices of the peace must clearly write, type, print or stamp the words ‘Justice of the Peace’ or the abbreviation ‘JP’ after or under their signature.

Similarly, commissioners for declarations must place the words ‘Commissioner for Declaration’, ‘Com Dec’ or even ‘CDec’ adjacent to their signatures. Each commissioner for declarations is allocated a number on registration.

Where a justice of the peace or commissioner for declarations has been given a registration number, this number should be included as part of their qualification when witnessing instruments or documents.

A justice of the peace appointed prior to 1 November 1991 who has not applied to be appointed as a commissioner for declarations by 30 June 2000 ceases to hold that office and instead holds the office of a justice of the peace (commissioner for declarations) (s. 42(1) of the *Justices of the Peace and Commissioners for Declarations Act 1991*). Section 42(1) does not apply to a lawyer who remains a justice of the peace for life. When witnessing the execution of instruments or documents a justice of the peace (commissioner for declarations) may repeat their full title or use the abbreviation ‘JP (C.Dec)’.

Notary Public within Australia

An Australian Notary Public who witnesses the execution of instruments or documents within Australia must print their full name, qualification and jurisdiction (i.e. Australian State or Territory) on the instrument or document.

Commissioner for Oaths appointed in the Northern Territory

When witnessing the execution of instruments or documents, a Commissioner for Oaths appointed in the Northern Territory must clearly write, type or stamp their full name, qualification as a Commissioner for Oaths (NT) and contact address or telephone number below their signature.

Details of the identification documents sighted by the Commissioner for Oaths must be provided to the registry:

- on the face of the instrument or document by the Commissioner for Oaths, in a clear space near the witnessing officer’s signature. This information must be legible and not obliterated by any other information; or
- by a separate statement by the Commissioner for Oaths (similar to the information provided by a witness to an instrument or document executed outside Australia in the Identity/Witnessing Certification below); or

- by a letter from a solicitor who has been advised by the Commissioner for Oaths as to the relevant information.

Copies of identification documents sighted must not be deposited in the Titles Registry when the relevant instrument or document is lodged. Any identification document numbers referred to in the statement should be obliterated by black marking pen prior to lodgement of the instrument or document.

Witnessing Outside Australia

The Registrar requires that an instrument or document executed by an individual outside Australia is witnessed by:

- an Australian Consular Officer or authorised employee of the Commonwealth; or
- a competent officer as defined under the Defence Regulation 2016 (Cth); or
- a notary public; or
- an Australian Legal Practitioner; or
- an Australian Lawyer; or
- a New Zealand Lawyer (i.e. a solicitor, barrister or barrister and solicitor); or
- another person approved by the Registrar;

and that other relevant requirements set out below are met.

Process for witnessing outside Australia

The following is a process which, if used, will result in the execution of an instrument or document outside Australia having been witnessed in accordance with the Registrar's requirements under this Part and with relevant provisions of the *Land Title Act 1994* and *Land Act 1994*.

This process applies notwithstanding any other legislation such as the *Evidence (Attestation of Documents) Act 1937*.

- 1 A client or mortgagor located overseas contacts an Australian Legal Practitioner or mortgagee concerning a conveyancing transaction relating to Queensland land.
- 2 The Australian Legal Practitioner or mortgagee takes initial instructions from the client or mortgagor and conducts preliminary enquiries – full name and contact details for the client or mortgagor, land description, transaction details (sale, purchase, mortgage etc).
- 3 The Australian Legal Practitioner or mortgagee reviews with the client or mortgagor what identification documents they have available to them and determines the highest document category in the Verification of Identity Standard they can satisfy. See ¶[60-2000].
- 4 The Australian Legal Practitioner or mortgagee advises the client or mortgagor that they will need to have their identity verified and signature witnessed by:
 - an Australian Consular Officer or authorised employee at an Australian Embassy, High Commission or Consulate (Australian Consular Office);

- a competent officer as defined under the Defence Regulation 2016 (Cth);
- a notary public;
- an Australian Legal Practitioner;
- an Australian Lawyer;
- a New Zealand Lawyer.

Where the intended witness is an Australian Consular Officer or authorised employee at an Australian Consular Office the Australian Legal Practitioner or mortgagee advises the client or mortgagor to find out where the nearest Australian Consular Office is located, to make preliminary contact with the Australian Consular Office to make an appointment (where necessary) and to notify the Australian Legal Practitioner or mortgagee of the Australian Consular Office location.

- 5 The Australian Legal Practitioner or mortgagee takes reasonable steps to determine the client or mortgagor's right to deal as a particular party to the conveyancing transaction.
- 6 The Australian Legal Practitioner or mortgagee prepares the instrument or document and:
 - where the intended witness is an Australian Consular Officer or authorised employee at an Australian Consular Office, an approved Australian Embassy/High Commission/Consulate Identity/Witnessing Certification (Certification) in the form below; or
 - where the intended witness is a notary public, competent officer, Australian Lawyer or New Zealand Lawyer, an Identity/Witnessing Certification (Certification) in the form below.

The Australian Legal Practitioner or mortgagee then sends the instrument or document and Certification to the client or mortgagor with written instructions advising of the process and what original and current identification documents are to be produced to the intended witness in accordance with the Verification of Identity Standard in paragraph [60-2000] (passport, driver's licence etc).

- 7 The client or mortgagor attends a face to face interview with the witness with the prepared instrument or document and the Certification, original identification documents and the Australian Legal Practitioner or mortgagee's written instructions.
- 8 The witness satisfies themselves that the photos on the identification documents produced by the client or mortgagor are a reasonable likeness of the client or mortgagor. If this is not possible, the witness service should be terminated.
- 9 When reasonable likeness is confirmed, the witness:
 - prepares endorsed copies of all original identification documents produced by the client or mortgagor;
 - asks the client or mortgagor to sign the instrument or document and witnesses the client or mortgagor's signature on the instrument or document. (Further witness specific requirements are outlined below); and

- completes, signs, dates and endorses the Certification for the client or mortgagor.
- 10 The witness hands to the client or mortgagor the:
- original identification documents;
 - signed instrument or document;
 - signed, dated and endorsed copies of the original identification documents produced; and
 - signed, dated and endorsed Certification.
- 11 The client or mortgagor delivers the signed instrument or document, endorsed copies of the original identification documents produced and the Certification to the Australian Legal Practitioner or mortgagee. (The means of delivery are to be arranged between the client or mortgagor and the Australian Legal Practitioner or mortgagee).
- 12 The Australian Legal Practitioner or mortgagee lodges the following with the land registry:
- original executed instrument or document;
 - the Certification (the original not a copy).
- 13 The Australian Legal Practitioner retains the endorsed copies of the original identification documents. The identification documents must not be lodged and any identification document numbers referred to in the Certification should be obliterated by black marking pen prior to lodgement of the instrument or document.

If a witness refuses to comply with the process or complete the Certification then, in the first instance, steps should be taken to locate an alternative witness. An Australian Legal Practitioner or mortgagee may wish to contact an intended witness in advance to confirm that they are willing to comply with the process and complete the Certification.

The process has been developed in conjunction with the Department of Foreign Affairs and Trade and failure to adhere to the process may result in an Australian Consular Officer or authorised employee at an Australian Embassy, High Commission or Consulate refusing to witness an instrument or document.

The process is substantially the same as the process outlined in the Australian Registrars National Electronic Conveyancing Council (ARNECC) Model Participation Rules Guidance Note 2: Verification of Identity. ARNECC Model Participation Rules Guidance Note 4: Right to Deal provides guidance regarding what might constitute taking reasonable steps to determine the client or mortgagor's right to deal as a particular party to the conveyancing transaction. The ARNECC Model Participation Rules Guidance Notes are available on the ARNECC website (<http://www.arnecc.gov.au/>). Some of the terminology in the process and the Certifications may not apply to instruments or documents lodged in paper, for example the reference to 'Client Authorisation'.

Certifications

Refer to paragraph 6 of the above process.

The Australian Embassy/High Commission/Consulate Identity/Witnessing Certification is not required to be on a Form 20 – Schedule.

Australian Embassy/High Commission/Consulate Identity/Witnessing Certification

I, _____

[full name of authorised employee /consular or diplomatic officer]

of _____

[Australian Embassy/High Commission/Consulate]

being an authorised employee/consular or diplomatic officer within the meaning of *Section 3 of the Consular Fees Act 1955* hereby certify that:

- (a) the identification/witnessing relates to

[full name of the person being identified] ('the person being identified'); and
- (b) the verification of identity/witnessing was carried out on _____ [date]; and
- (c) the original current identification documents as listed below were produced to me and copies of these documents signed, dated and endorsed by me as true copies were provided to the person being identified; and
- (d) the verification of identity/witnessing was conducted in accordance with the Department of Foreign Affairs and Trade policy for verification of identity, witnessing signatures on documents and making of endorsed copies and in response to the written instructions provided by the person being identified's Australian Legal Practitioner, Law Practice, Licensed Conveyancer or mortgagee; and
- (e) the person being identified was physically present for the verification of identity and the witnessing of the document(s) listed at paragraph (g); and
- (f) I am not a party to the transaction; and
- (g) I witnessed the person being identified execute the following document(s)

(e.g. Client Authorisation, transfer of land, mortgage of land etc.); and
- (h) this signed, dated and endorsed certification; the signed, dated and endorsed copy identity documents (listed below); and the witnessed document(s) listed in paragraph (g); were returned to the person being identified.

.....

Signature of authorised employee/consular or diplomatic officer

Post Stamp

List of identification documents produced (see (c) above):

Description of identity documents produced and endorsed

Refer to paragraph 6 of the above process. The Identity / Witnessing Certification should be on a Form 20 – Schedule.

QUEENSLAND TITLES REGISTRY

IDENTITY/WITNESSING CERTIFICATION**FORM 20** Version 2

Land Title Act 1994, Land Act 1994 and Water Act 2000

Page of [Total]

Title Reference [Title Reference]

For instruments or documents executed and witnessed outside Australia

I, _____

[Full name of notary public, competent officer, Australian Lawyer or New Zealand Lawyer]

of _____

[provide full postal address (other than competent officer)]

Telephone number: _____

Email address: _____

being a _____

[Qualification or description of public office or commission, date of expiry of the commission (if applicable) or rank for competent officer]

hereby certify that:

- (a) the identification/witnessing relates to _____
[full name of the person being identified] ('the person being identified'); and
- (b) the verification of identity/witnessing was carried out on _____ [date]; and
- (c) the original current identification documents as listed below were produced to me and copies of these documents signed, dated and endorsed by me as true copies were provided to the person being identified; and
- (d) the person being identified was physically present for the verification of identity and the witnessing of the document(s) listed at paragraph (f); and
- (e) I am not a party to the transaction; and

- (f) I witnessed the person being identified execute the following document(s)

(eg, Client Authorisation, transfer of land, mortgage of land etc.); and

- (g) this signed, dated and endorsed certification; the signed, dated and endorsed copy identity documents (listed below); and the witnessed document(s) listed in paragraph (f); were returned to the person being identified.

.....

Signature of notary public, competent officer, Australian Lawyer or Stamp (if
New Zealand Lawyer applicable)

List of identification documents produced (see (c) above):

Description of identity documents produced and endorsed

Australian Consular Officer or authorised employee of the Commonwealth

An Australian Consular Officer or authorised employee of the Commonwealth will clearly print their full name and legibly affix the official seal of their mission or post adjacent to their signature.

Honorary consuls are not authorised to undertake notarial functions including witnessing the execution of an instrument or the signing of a document.

Competent Officer as defined under the Defence Regulation 2016 (Cth)

Where a competent officer has witnessed the signature of an individual the following is required in addition to the Identity/ Witnessing Certification:

- the witnessing officer must print their full name and rank adjacent to their signature; and
- supporting documentation must be deposited to verify the execution was made while the member of the Defence Force executing the instrument or document was serving overseas, for example a letter from an Australian Legal Practitioner. There is no need to state the country in which the member of the Defence Force was serving.

Australian or New Zealand Lawyer outside Australia

An Australian or New Zealand Lawyer who witnesses the execution of instruments or documents outside Australia must print their full name and qualification (i.e Australian Lawyer,

Australian Legal Practitioner, Australian Solicitor, Australian Barrister, New Zealand Solicitor or New Zealand Barrister).

An overseas lawyer who is not an Australian or New Zealand Lawyer is not able to witness the execution of an instrument or document outside Australia unless:

- they have an additional qualification which permits them to witness the execution of an instrument or document outside Australia e.g. they are also a notary public. If this is the case they must show that qualification adjacent to their signature and on the Identity / Witnessing Certification; or
- the Registrar of Titles has approved the overseas lawyer as ‘another person’ before lodgement of the instrument or document in accordance with the process below.

Notary Public

Where an instrument or document is signed outside of Australia, in the presence of a notary public, the following are required in addition to the Identity/ Witnessing Certification:

- the full name, qualification or description of public office or commission, date of expiry of the commission (if applicable) and official stamp/seal (if one is required to be used) of the notary public must be shown clearly:
 - on the face of the instrument or document; or
 - in the manner required of a notary public when undertaking a witnessing function (Note: if the notary public signs a separate document, rather than the face of the instrument or document, the details of the instrument or document must be clearly referenced on the separate document - for example, type of instrument or document, property and party details);
- a translation of any non-English part of the execution or Identity/ Witnessing Certification. Note that an informal translation is acceptable.

Another Person Approved by the Registrar

In special circumstances (for example, due to the remote overseas location of the party signing the instrument or document), the Australian lawyer or financier for the person signing overseas may seek approval from the Registrar for ‘another person’ (other than an Australian Consular Officer; a competent officer; a notary public or an Australian Legal Practitioner) to witness the execution of the instrument or document outside Australia (for example, an overseas lawyer) before it is lodged.

The Registrar will only consider a submission seeking approval where it is supported by the following:

- a letter from the Australian lawyer or financier for the person which details the special circumstances why it is unreasonable to expect the person to sign the instrument or document in the presence of a witness listed in Schedule 1 of the *Land Title Act 1994* or s. 46 of the *Land Regulation 2009*; and
- either a statement by an Australian lawyer or financier on their letterhead, or a statutory declaration by the person responsible within the law firm or financial institution, explaining how he or she knows that they are dealing with the person entitled to execute the instrument or document, for example:
 - the person is a long standing client or customer;

- the Australian lawyer or financier had prior written instructions from the person in relation to the sale/mortgage etc;
- the Australian lawyer or financier has contacted the person on an email address or telephone number that the person provided prior to leaving the country; and
- an Identity/Witnessing Certification in the form above

Note: It is expected that such applications are made before lodgement of the instrument or document to allow the Registrar reasonable time to consider each submission.

Where the Registrar approves ‘another person’ to witness the execution of the instrument or document the letter or email of approval must be deposited with the instrument or document at lodgement. The letter or email of approval will be imaged with the instrument or document and will form part of the publicly searchable registers under s. 35 of the Land Title Act.

Witnessing not in accordance with the Registrar’s Requirements

Where an instrument or document has been witnessed outside Australia by a person who is a qualified witness by virtue of Schedule 1 of the *Land Title Act 1994* or s. 46 of the Land Regulation 2009 but, due to legal or other restrictions, the witness has not complied with the Registrar’s requirements, a submission should be made to the Registrar in writing fully outlining the reasons it is not possible for the witness to comply with the Registrar’s requirements, if possible before the instrument or document is lodged.

The submission should include reference to any relevant legislative provisions and attach supporting documentation where appropriate. For example, legislation in a jurisdiction may require that the witness provide information or endorse documents in a prescribed format.

¶[60-0710] deleted

Compensation

1, ²General Law

[60-0720]

In certain circumstances a person is entitled to be indemnified by the State if that person is deprived of an interest in a lot or suffers loss. The circumstances are set out in ss. 188, 188A and 189A of the *Land Title Act 1994*.

Circumstances in which there is no entitlement to compensation are set out in ss. 188AA and 189 of the Land Title Act.

Pursuant to s. 190 of the Land Title Act, the State has a right of subrogation against any other person in relation to the deprivation or loss. However, if the State receives an amount greater than that paid to the claimant, the difference must be paid to the claimant less the State’s costs.

Public Notice – Advertising

General Law

[60-0760]

The Registrar, under s. 18 of the *Land Title Act 1994*, by written notice, may require an applicant to give public notice before doing any of the following things:

- ²register a transmission application
- ^{1, 2}dispense with production of a Certificate of Title or Deed of Grant

- ^{1, 2}register a person as an adverse possessor.

^{1, 3}The Chief Executive, under s. 294(1) and (2) of the *Land Act 1994*, by written notice, may require an applicant to give public notice before registering a transmission application. The Chief Executive has delegated all responsibility relating to administration under Chapter 6 of the Land Act to the Registrar.

There is no stipulation in the above Acts as to the manner or vehicle for publication. If the Registrar determines that public notice is warranted, the content, time and place of advertisements will be specified in the notice given (s. 18(4) of the Land Title Act or s. 294(3) of the Land Act).

The applicant must satisfy the Registrar that the Registrar's requirements as to public notice have been met (s. 18(5) of the Land Title Act). A person claiming an interest in a lot may lodge a caveat pursuant to s. 122(1)(a) of the Land Title Act or s. 294(4) of the Land Act.

In addition to the Registrar requiring public notice to be given in the above circumstances, the court may order that a person advertise in a specified form, content or way where an application is made that a named person be registered as a proprietor of a lot (s. 114 of the Land Title Act).

Practice

[60-0830]

Registry staff will prepare a written notice to the lodger requiring the applicant to give public notice usually within one calendar month of the date of the notice. The registry notice specifies what must be included in the public notice and how and when the public notice is to be published. All advertising is done by and at the expense of the applicant.

To satisfy the Registrar that the public notice has been given, the applicant must provide a tear sheet of the newspaper. A tear sheet must, as well as displaying the advertisement, show the name of the newspaper and the date of publication. No affidavit or statutory declaration confirming that the notice was advertised is required. Where the newspaper provides a tear sheet by e-mail to the lodger, that email may be attached to an email by the lodger and forwarded to the registry. The dealing number and the position of the notice on the tear sheet (eg column 2 notice 6) should be included in the e-mail.

¶[60-0840] to ¶[60-0890] deleted

Statutory Exemption from Lodgement Fees

[60-0892]

An instrument or document may only be exempted from the payment of lodgement or deposit fees where the exemption is authorised by an Act or Regulation. It must be noted that just because a legislative provision for an exemption exists the exemption may not extend to all instruments or documents in a transaction.

For the purpose of this practice, lodgement fees include all fees payable when an instrument or document is lodged or deposited. Where an instrument or document is exempt from payment of a lodgement fee it is also exempt from payment of a requisition fee.

Due to the extent of legislation, an exemption will only be considered if reference to the authorising provision is provided:

- A by a letter; or
- B on the face of the submitted document where the form permits – for example in item 6 of Form 14 – General Request.

Some examples where a letter is required are:

- a plan of survey signed by the registered owner, subdividing a lot as part of a transaction to transfer to the State of Queensland, by agreement, part of a former lot, and not accompanied by a transfer to the State
- a document under the *Criminal Proceeds Confiscation Act 2002* to give effect to a Queensland or an interstate forfeiture or restraining order
- a transfer to an entity with the privileges and immunity of the State

Reference to instruments or documents lodged previously without payment of a fee is not a basis for considering an exemption.

The above requirement may be waived in cases where the Registrar is reasonably satisfied that a document is part of a common transaction and the face of the document provides information sufficient to readily identify that a legislative exemption exists.

Examples:

- a transfer pursuant to an order made under the provisions of the *Family Law Act 1975* (Cth) provided this is clearly stated in item 4.
- a transfer where the transferee is ‘The State of Queensland’

However, to facilitate timely lodgement processing and registration of instruments or documents that may come within the above scope, a letter may still be provided.

Examples where there is an Exemption from Lodgement Fees

Example A

Under s. 6(7) (a) or (b) of the Land Title Regulation 2015 or s. 62(5) (a) or (b) of the Land Regulation 2009 a fee is not payable for the lodgement and registration of:

- an acquisition by the State of any interest in land; or
- the release or surrender by the State of an interest in land, other than a fee simple interest.

Under Schedule 2, Item 6 of the Land Title Regulation 2015 or Schedule 11, Item 16 of the Land Regulation 2009 a fee is not payable for:

- the deposit or removal of an administrative advice by the State.

An acquisition by the State mentioned in s. 6(7) of the Land Title Regulation 2015 or s. 62(5) of the Land Regulation 2009 includes:

- a resumption or an absolute surrender of land; and
- the taking by agreement or a resumption of an easement.

The above provisions extend to an entity that has the privileges and immunity of the State (for example, the Coordinator-General) and also includes instruments or documents that are considered an integral part of the transaction, for example:

- a notice of intention to resume or a plan of subdivision for an acquisition action;

- a plan of survey for a lease of part of the land.

However, the above provisions do not provide an exemption from fees payable on a plan of survey or another instrument or document for any purpose lodged by the State where the State is already the registered proprietor.

Section 6(7) of the Land Title Regulation 2015 and s. 62(5) of the Land Regulation 2015 do not apply to similar instruments or documents involving a local government.

Example B

Under the provisions of s. 90(1) of the *Family Law Act 1975* (Cth) instruments or documents executed for the purpose of, or in accordance with an order made under Part VIII are not subject to any duty or charge under any law of a State or Territory. Similar provisions exist also in Part VIIIA and Part VIIIAB.

These provisions give complete exemption from all fees for any instrument or document to give effect to an order or a financial agreement made under the abovementioned parts of the *Family Law Act 1975* (Cth). For example, if the order or agreement also states 'the property is to be refinanced' the exemption would extend to a release of the existing mortgage and to a new mortgage.

Example C

Under the provisions of s. 154(a) of the *State Penalties Enforcement Act 1999* no fee is payable by the State Penalties Enforcement Registry for lodging any order or instrument or document under that Act or any instrument or document lodged to transfer property to the State under the Act.

Example D

The provisions of s. 114 of the Commonwealth Constitution prohibit a State, without the consent of the Parliament of the Commonwealth, from imposing any tax on property of any kind belonging to the Commonwealth.

The above provision exempts the Commonwealth from the payment of only the additional fee specified in Schedule 2 item 3 of the Land Title Regulation 2015. All other lodgement fees for a transfer or another instrument or document, and requisition fees, must be paid.

Overpayment of Fees

[60-0895]

When a person lodges instruments or documents in the registry they are expected to pay the correct regulated fee at the time of lodgement. Where a previously prepared cheque is presented for an amount which is not the same as the assessed fee, the Registrar may refuse to accept the instrument/s or document/s for lodgement.

However, where due to extenuating circumstances, a lodger wishes to complete the lodgement by presenting a previously prepared cheque that exceeds the assessed fee and the Registrar agrees to accept the incorrect amount; an administrative charge will be deducted from the overpaid amount. The lodger must complete and sign a form acknowledging payment of the administrative charge. A refund of the remaining amount overpaid will only be given, if requested in writing by the lodger.

Where a paid fee is subsequently found to be in excess of the sum of the regulated fees (overcharge by the department), the refund of the full amount in excess of the regulated fees will be made on request by the lodger.

Where an Electronic Lodger pays an amount for lodgement of a document that exceeds the regulated fees, a refund will only be given if requested in writing. An administrative fee may be deducted from the overpaid amount.

Execution of Instruments or Documents

[60-0900]

General

Section 11(1) of the *Land Title Act 1994* requires that an instrument to transfer or create an interest in a lot must be executed by:

- the transferor or the person creating the interest; and
- the transferee or the person in whose favour the interest is to be created or a solicitor authorised by the transferee or the person.

The execution date must be included when the transferor, transferee, person or solicitor executes the document.

Execution Where Different Capacities in Same Instrument or Document

Where a party has entered into a transaction in two different capacities, as a trustee and in their own right, and it is acceptable to use one instrument or document (see further [51-2115] and [59-2020]), the form may be executed separately in each capacity. Alternatively, a single execution is acceptable provided a statement appears in the appropriate item of the form that the party was executing in both capacities.

Execution by Corporation

See part 50, esp ¶[50-2000] and ¶[50-2030] to ¶[50-2050]).

Execution with Marksman Clause

A person who is illiterate, blind, infirm or too ill to sign may affix a mark, instead of a signature. The witness to the signature then writes the words '[name in full], his or her mark', around the mark, and places their signature at the witness signature position on the form.

A Form 20 – Declaration is required to include the following statements by the witness:

- (a) that the witness is the attesting witness to the mark of the person executing the instrument or document in respect of the property being transferred (the property must be fully described);
- (b) that the witness certifies that the mark was made in their presence; and
- (c) that prior to the mark being made, the witness read the instrument or document to that person, who appeared to understand the nature and effect of the instrument or document.

Execution by Attorney

The signature of an attorney who signs an instrument or document for an individual must be witnessed. Acceptable witnesses to executions, whether inside or outside Australia, are listed in Schedule 1 to the *Land Title Act 1994* or s. 46 of the Land Regulation 2009.

The signature of an individual as attorney for a corporation who executes a transfer, mortgage, lease, etc as transferor, mortgagor, lessor etc must be witnessed in the same manner as for individuals above. However, an execution by an attorney for a corporation as transferee, mortgagee, etc in a transfer, mortgage, lease, etc need not be witnessed as no conveyance is involved (s. 46 of the *Property Law Act 1974*). The signature of an individual as attorney for a corporation who executes a release of mortgage or a surrender of lease or easement as mortgagee, lessee or grantee must be witnessed.

A conveyance executed by a corporation as an attorney (with or without a common seal) is not required to be witnessed in accordance with Schedule 1 of the Land Title Act or s. 46 of the Land Regulation 2009 (see also part 50 – Corporations and Companies, esp ¶[50-2000]).

Where an instrument or document (other than the *National Mortgage Form, Priority Notice Form, Extension of Priority Notice Form and Withdrawal of Priority Notice Form*) is executed by a person as attorney for another person, or for a corporation, the execution clause must read:

‘John Smith [or John Smith & Co Pty Ltd ACN 001 002 003] by his [its] duly constituted attorney William Smith [name in full] under power of attorney No X999999Y’.

Where an instrument or document (other than the *National Mortgage Form, Priority Notice Form, Extension of Priority Notice Form and Withdrawal of Priority Notice Form*) is executed by a corporation as attorney for another person, or for a corporation, the execution clause must read:

‘John Smith [or John Smith & Co Pty Ltd ACN 001 002 003] by his [its] duly constituted attorney William Smith & Co Pty Ltd ACN 004 005 006 under power of attorney No X999999Y’.

Refer to Part 2A, Part 23A and the relevant guide to completion for information about completing the relevant execution panel of the *National Mortgage Form, Priority Notice Form, Extension of Priority Notice Form and Withdrawal of Priority Notice Form* for an execution by an attorney.

The execution by the corporation must comply with the requirements outlined in part [50-2000].

The Registrar does not require proof that the attorney has not received notice of the death of the principal or revocation of the power of attorney.

Where a lodged instrument or document is signed under a power of attorney that is restricted to deal with certain property, but the property is identified by other than lot on plan description, a statutory declaration is required to identify the property in the instrument or document as the property referred to in the power of attorney. Similarly, a declaration is required to be deposited with an instrument or document signed under a power of attorney limited to property identified by lot on plan description, but the property has been subdivided.

Where two or more persons have jointly appointed a common attorney under a power of attorney or have a common attorney under separate powers of attorney, one execution of the instrument by the attorney suffices. That is, ‘A and B by their attorney C’. However, reference to the relevant power(s) of attorney must be shown.

Where there are two or more attorneys for a single principal under a power of attorney, only one witnessing provision need be completed for attorneys signing at the same time before a witness.

Where an attorney is executing on behalf of a custodian, appointed by a responsible entity incorporated under the *Corporations Act 2001* (Cth), a statutory declaration by the attorney is required stating the interest being dealt with is held in the capacity of custodian. The declaration

must also identify the trust/scheme referred to in the registered power of attorney. Alternatively, a letter from the solicitor acting on behalf of the custodian may be deposited, stating the interest being dealt with is held in the capacity of custodian and identifying the trust or scheme referred to in the registered power of attorney.

Execution by a legal practitioner

If a legal practitioner, where permitted by the *Land Title Act 1994* or indicated by an instrument or document, executes on behalf of a party to an instrument or document, the legal practitioner's signature need not be witnessed. The legal practitioner's full name must be printed underneath the signature along with the words, solicitor, barrister or Australian legal practitioner as appropriate. Legal practitioner is defined in Schedule 1 of the *Land Title Act*.

Execution by a Receiver Appointed by a Mortgagee for an Individual

Where an instrument or document is executed by a receiver appointed by a mortgagee of the property of a mortgagor who is an individual, the following applies:

- evidence of the appointment must be deposited with the instrument or document or a reference to the instrument or document where the evidence was deposited must be provided;
- the relevant clause(s) in the mortgage (and the deed of appointment if this is where the receiver's power authorising the transaction is stated) must be identified in the form or by letter;
- the name and appointment capacity (e.g. 'Receiver') must be printed adjacent to their signature; and
- a qualified person mentioned in Schedule 1 of the *Land Title Act 1994* must witness the signature.

Execution by an Administrator under the *Guardianship and Administration Act 2000*

Where an instrument or document is executed by an administrator appointed under the *Guardianship and Administration Act 2000* the execution must be made in the following manner (s. 45(2) of the *Guardianship and Administration Act*):

- executed with the administrator's own signature;
- show that the administrator is executing the form as administrator for the registered owner or holder of an interest for example, John Brian Smith as administrator for Benjamin Keith Jones; and
- a qualified person mentioned in Schedule 1 of the *Land Title Act 1994* must witness the signature.

Execution for a Minor

See part 1 – Transfer, ¶[1-2060]

Execution by Public Trustee

[60-0910]

The Public Trustee of Queensland is authorised by the *Public Trustee Act 1978* and various other Acts to execute instruments or documents for individuals in certain circumstances, such as incapacitation or imprisonment.

All instruments or documents must be executed in a way showing the appointment or authority under which the public trustee acts (s. 12 of the Public Trustee Regulation 2012). For example, where the Public Trustee executes an instrument or document for an incapacitated person, a statement to the following effect should be added:

‘Signed in the name of and on behalf of the said [name] by [name and position], Public Trust Office, the Public Trustee being authorised to manage the estate of the said [name] pursuant to Part 6 of the *Public Trustee Act 1978*’.

Seal of the public trustee

The seal of the Public Trustee may be used in the execution of an instrument or document. However this is not essential and an instrument or document not under seal is still effective at law (s. 11C of the *Public Trustee Act 1978* and s. 227 of the *Property Law Act 1974*).

Execution by delegates of the Public Trustee

Where such authorisation exists, the execution may be by a delegate of the Public Trustee. The delegate should add after the delegate’s signature a statement to the following effect ‘Signed as delegate for the Public Trustee under section 11A of the *Public Trustee Act 1978*’.

Execution for prisoners

The Public Trustee is the manager of estates of prisoners who are undergoing sentences of imprisonment for over three years and is therefore the proper person to execute instruments or documents dealing with the prisoner’s property, unless the Public Trustee has discontinued management (s. 92 of the *Public Trustee Act 1978*) or has given consent for the prisoner to execute the instrument or document dealing with the property themselves (s. 95 of the Public Trustee Act).

Witnessing requirements

The usual witnessing requirements apply to the execution.

Execution by Local Government

General Law

[60-0920]

Section 236(1) of the *Local Government Act 2009* provides that the following persons may sign a document on behalf of a local government:

- (a) the head of the local government (defined in s. 236 (2) of the Local Government Act);
- (b) a delegate of the local government (powers of delegation are provided by s. 257 of the Local Government Act);
- (c) a councillor or local government employee who is authorised by the head of the local government, in writing, to sign documents.

Practice**[60-0970]**

A document executed by a local government before 1 July 2010 must be signed by either:

- the mayor;
- an authorised councillor;
- the chief executive officer; or
- an authorised employee of the council (i.e. delegate or authorised officer).

A document executed by a local government on or after 1 July 2010 must be signed by either:

- the mayor;
- the chief executive or interim administrator;
- a delegate;
- an authorised councillor; or
- an authorised local government officer.

The name of the local government and designation of the signatory (for example, Mayor, Delegate or Authorised Officer) must be shown adjacent to the signature. The authorising provision of the Act is not required to be stated and the Registrar makes no inquiry as to whether the delegation has been made or a person is so authorised by a local government. There is no requirement for the names of the signatories to be shown.

The execution must be witnessed by a person with a qualification mentioned in Schedule 1 of the *Land Title Act 1994* or s. 46 of the *Land Regulation 2009* where an instrument or document has a witnessing provision. The signing of an approval to a plan of subdivision does not require witnessing.

Style of Local Government Name**[60-0980]**

Under the provisions of s. 5(2) of the Local Government (Operations) Regulation 2010 a local government may be called either—

- (a) ‘Council of the... (*insert /City/Town/Shire/Region*) of... (*insert name of local government area*)’; or
- (b) ‘... (*insert name of local government area*)... (*insert /City/Town/Shire/Regional*) Council’.

Also, an Aboriginal Shire Council may be called ‘(*insert name of local government area*) Aboriginal Shire Council’ (s. 5(3) of the Local Government (Operations) Regulation 2010).

The Registrar is not concerned with which of the style names is used. However the name stated in the relevant item of a document that creates an interest in the local government, will be recorded in the register. Where there is ambiguity in style names when recording a local government in the register, for example where a new lot is being created from two lots in different style names, clarification will be required e.g. by way of letter from an authorised officer of the council or the lodger of the document.

¶[60-0990] deleted

Local Government Reform**[60-1000]**

The following requirements apply to local governments affected by local government reform in March 2008 brought about by amendments to the *Local Government Act 1993*.

Where an interest is recorded in a previous council's name and it is not being dealt with, the new council does not need to take any action with regard to that interest.

However, action will be required in instances where an interest is being dealt with and the council will subsequently retain the interest. In such cases, the new council must first vest the interest in the new council by registering a Form 14 – General Request. Item 6 of the form must state ‘... the interest in item 4 be vested in [name of new/adjusted council] pursuant to the *Local Government Act 1993*’. The form is exempt from lodgement fees. A duty notation is not required under special dispensation by the Office of State Revenue.

Where an interest in land is held in the name of a previous council and the new council is disposing of the interest, the new name does not need to first be recorded in the Titles Registry. However, the instrument or document lodged to record the disposing of the interest must contain in the appropriate item on the prescribed form, a statement showing both the new name and the previous council name; and be executed by the new council.

For example, a lot held in the name of the Caboolture Shire Council that is being transferred to another party, the instrument or document 1 – Transfer must state at item 3 – Transferor –

‘Moreton Bay Regional Council (formerly Caboolture Shire Council) pursuant to the *Local Government Act 1993*’

¶[60-1010] deleted

Translation of Instrument or Document in Foreign Language

[60-1020]

Translations of supporting documentation or parts of instruments or documents (including any details relating to witnessing) from another language to English will be considered on the merits of the competency of the person who made the translation.

Translations of supporting documentation must be of the complete document and not merely an extract of some relevant details.

Translators considered acceptable include, for example:

- a person who holds an accreditation or a qualification (for example by the National Accreditation Authority for Translators and Interpreters Ltd (NAATI)) to make translations; or
- a person of ethnic origin who was educated in their country of origin, migrated to Australia and continued to study in the English language may well be competent to translate from their native language to English.

The following is required to be provided with the original document and translation.

A for an accredited/qualified translator:

- a statement explaining or evidence of (stamp) their accreditation/qualification; and

- a statement that clearly identifies the document being translated and that the entire document was translated. For example, ‘I have translated the entire document appearing as attachment ‘A’ into the English language, which translation appears as attachment ‘B’.
- B for a non-accredited or non-qualified person, a statutory declaration that includes statements about the following:
- the basis of his/her competency; and
 - the circumstances under which his/her competency was acquired; and
 - the identity of the document being translated. For example, ‘I have translated the entire document appearing as attachment ‘A’ into the English language, which translation appears as attachment ‘B’.

For information about depositing supporting documentation see [60-1030].

Deposit of Supporting Documentation

[60-1030]

In many instances it is necessary for documentary evidence to be deposited to support an instrument or document. Each instrument or document submitted for lodgement must be complete regarding its supporting documentation. The following are some examples of evidence that may be required:

- (a) a death certificate issued by the Registry of Births, Deaths and Marriages with a Form 4 – Request to Record of Death or with a Form 5A or Form 6 – Transmission Application;
- (b) a birth certificate or marriage certificate issued by the Registry of Births, Deaths and Marriages with a Form 14 – General Request to Change Name;
- (c) a grant of representation issued by the Supreme Court of Queensland with a Form 5 or 6 – Transmission Application;
- (d) a search from the Australian Securities and Investments Commission;
- (e) a trust deed and other trust documentation with a Form 1 – Transfer to Trustees;
- (f) a sealed order made by a court with a Form 1 – Transfer or with a Form 14 – General Request;
- (g) the court proceeding sealed by the court with a Form 14 – General Request notifying the Registrar of a commencement of a court action (for example an Originating Application or Claim and Statement of Claim);
- (h) a writ of execution/enforcement warrant with a Form 12 – Request to Register Writ/Warrant of Execution;
- (i) a contract of sale or an agreement with a Form 1 – Transfer.

For information about lodging a certified copy of a power of attorney see [16-0195].

Where a contract of sale or an agreement is required to be deposited only to support the calculation of the lodgement fee for a Form 1 – Transfer, a photocopy without certification will also be acceptable.

Where a will of a deceased is required (for example with a Form 5A or Form 6 – Transmission Application) the original will must be deposited. An original will is retained in the Titles Registry.

Options for Deposit

The options below are available to lodgers when depositing documentation, which is **not** an original will, a power of attorney, or a revocation of a power of attorney.

***Office copy** means the actual certificate or document issued from the issuing agency and certified or otherwise authenticated by the agency where this is the agency's practice. Office copy includes an order or court proceeding of the Federal Circuit Court of Australia or Family Court of Australia which has been stamped or sealed electronically and downloaded from the Commonwealth Courts portal.

A **good quality photocopy** produced from the original, must meet the following criteria:

- it must be of sufficient quality to allow for subsequent reproduction or imaging;
- it must be on one side of A4 paper only; and
- it must not have black marks, including along the top, bottom or sides, as a result of photocopying or facsimile processes.

Options for a Lodger other than an eLodger

1. a good quality photocopy of the original office copy* (or other original documentation) submitted with the original documentation for comparison with the photocopy by a Titles Registry officer. The original documentation will be returned immediately to the lodger; or
2. a good quality photocopy of the original office copy* (or other original documentation) that has been properly certified as a true copy of the original; or
3. the appropriate item of a form may provide a reference to a prior lodged instrument/s or document/s (other than an instrument or document rejected under s. 157 of the *Land Title Act 1994* or s. 306 of the *Land Act 1994* or an instrument or document withdrawn before registration under s. 159(2) of the *Land Title Act* or s. 308(2) of the *Land Act*) with which the documentation was deposited (the reference may be provided in a supplementary letter instead of in the form); or
4. the original office copy* (or other original documentation) may be deposited. However, this option is not available for a document creating or amending a trust (eg deed of trust).
Note: The original evidence deposited **will not be returned**.

The certification of a copy of an electronically stamped or sealed order or court proceeding should include words to the effect that:

- it is a true and correct copy of an electronic order or court proceeding made by the applicable court on the applicable date; and
- the electronic order or court proceeding was downloaded from the relevant portal.

Options for a Lodger that is an eLodger

An eLodger may deposit supporting documentation by:

- scanning one of the copies listed below; and

- entering an appropriate message (dealing note) against the relevant instrument or document, for example 'ORIGINAL TRUST DEED SIGHTED P/COPY DEPOSITED' or 'CERTIFIED COPY OF ORIGINAL TRUST DEED DEPOSITED'.
1. a good quality photocopy that an employee of the eLodging firm has compared with the original office copy* (or other original documentation); or
 2. a good quality photocopy of an original office copy* (or other original documentation) where the photocopy is properly certified as a true copy of the original; or
 3. the original office copy* (or other original documentation).

Alternatively the form may, in the appropriate item, provide a reference to a prior lodged instrument/s or document/s (other than an instrument or document rejected under s. 157 of the *Land Title Act 1994* or a an instrument or document withdrawn before registration under s. 159(2) of the *Land Title Act*) with which the documentation was deposited (the reference may be provided in a supplementary letter instead of in the form).

Certification by Qualified Witness

For a copy mentioned in item (2) above to be properly certified, a qualified witness mentioned in Schedule 1 of the *Land Title Act 1994* or s. 46 of the *Land Regulation 2009*, who is not a party to the lodged document, must sign a certification clause to the effect that the document is an identical copy of the original, which has been sighted by them. The clause must contain information necessary to clearly identify the signatory; for example, a Justice of the Peace (Qualified) must legibly print their full name or registration number while a solicitor must legibly print their full name. The completed clause must be on the face of the copy and comply with regulatory requirements that provide for forms to be able to be reproduced by photocopy.

The following certifications are provided as a guide for documents other than a copy made under s. 45 of the *Powers of Attorney Act 1998*, of an Enduring Power of Attorney.

Endorsement on a copy of single-page document is as follows:

This is to certify that this is a true copy of the original, which I have sighted.

Date

Signed

Full name (or registration number, if applicable)

Title/Qualification

Endorsement on a copy of a multi-page document is as follows:

If the original document has more than one page the witness must either (a) certify each page or (b) sign or initial each page, number the page as 1 of 40, 2 of 40 and so on (if the pages are not already numbered) and make the following certification on the last page:

This is to certify that this [number of pages]-page document (each page of which I have numbered and signed) is a true copy of the original [number of pages]-page document that I have sighted.

Date

Signed

Full name (or registration number, if applicable)

Title/Qualification

Sensitive or Confidential Information in supporting documentation

A party to an instrument or document or their solicitor may request that the Registrar suppress in the public register, certain sensitive or confidential information deposited to support an instrument or document. Only sensitive or confidential information not directly relevant to examination or other processing of the instrument or document may be approved for suppression.

The Registrar's discretion to suppress sensitive and confidential information is generally exercised to suppress personal information. Requests made to suppress information on grounds of commercial sensitivity will not generally be approved.

Some examples of the type of sensitive and confidential information which the Registrar may suppress are:

- a person's medical or health information;
- details of minor children contained in agreements or orders made under the *Family Law Act 1975* (Cth);
- a person's bank account details.

Some examples of information that will not be suppressed are:

- names of registered owners or holders of an interest and other information required for the register because of the operation of s. 28 and s. 35(1)(a) of the *Land Title Act 1994* or s. 278 and s. 284(1)(a) of the *Land Act 1994*;
- address of a person or party in an instrument under the Land Title Act or document under the Land Act as a requirement of the form or law e.g. an applicant in a Form 14 or request to record death or a caveator in a caveat;
- the amount paid or details of other consideration as required under s. 61(1)(c) of the Land Title Act;
- any part of a will or a grant of representation.

A request to suppress sensitive or confidential information must be made in writing to the Registrar before the instrument or document is lodged and must contain substantive reasons for the suppression.

If supporting documentation must be deposited to satisfy a requisition, a request to suppress sensitive and confidential information must be made in writing to the Registrar before the supporting documentation is deposited. In both cases, the requesting party must allow a reasonable timeframe before lodgement for the request to be considered and responded to. To clarify, a request will not be considered if it is made immediately before lodgement.

The following must be provided with the request:

- a copy of the completed instrument or document;
- a complete copy of the supporting documentation; and
- a copy of the supporting documentation that otherwise complies with requirements for deposit, with the relevant information removed.

The request must be addressed to the Registrar and together with supporting documents must:

- be sent by email to Titlesinfo@dnrm.qld.gov.au; or
- be sent by post to GPO Box 1401, Brisbane QLD 4001; or
- be deposited by hand on Level 11 at 53 Albert Street Brisbane QLD 4000. The request must be contained in a sealed envelope and clearly marked as a request to the Registrar and not for lodgement.

The information may be removed by either:

- removing pages; or
- overlaying text with white paper before photocopying; or
- obliteration by black marking pen, if the information is in only one or two lines.

Where approval is given, the letter or email of approval must be deposited with the instrument or document at time of lodgement. If approved while the instrument or document is under requisition, the letter or email of approval must be deposited with the instrument or document when returned from requisition.

All supporting documentation deposited with a lodged dealing, including the letter or email of approval, will be imaged and form part of the publicly searchable registers.

Dealing with or Disposing of an Interest Held by the State

[60-1040]

1, 2 **Disposing of freehold land**

Where government controlled land or interest in land is being disposed of, the following will be acceptable:

- the form shows, in the relevant item, The State of Queensland in the same style name recorded on title; or
- the form shows, in the relevant item, ‘The State of Queensland (represented by [current name of department] formerly [previous name of department])’. Because of a Machinery of Government change, a former department name shown on title is not current; or
- the form shows, in the relevant item, ‘The State of Queensland (represented by [current name of department] and the title shows the style name as ‘The State of Queensland’ without the name of the representing department.

However, it is not acceptable where the title shows ‘The State of Queensland (represented by [name of department])’ and the form shows another style or departmental name but without the words ‘formerly [previous name of department]’. This may indicate there has been a transfer of administrative responsibility without being recorded on title. The style name shown on title must first be changed by lodging and registering a Form 14 – General request to change the administrative details (department representing the State). (See ¶[14-2420]).

1, 2 **Dealing with freehold land**

Where government controlled land or interest in land is being dealt with (e.g. plan of subdivision, lease or easement) and the interest is remaining in the control of the government, the style name of The State of Queensland shown on title must be the same as that shown in a

lodged an instrument. In these instances, a Form 14 – General request to change the administrative details shown on title (department representing the State or Act) must be lodged prior to registration of the lodged instrument/s. (See ¶[14-2420]).

1, 3 **Unallocated State land**

Where USL is recorded in the style name of:

- ‘The State of Queensland’; or
- ‘The State of Queensland (represented by [name of department])’;

the style name may be changed to:

- ‘The State of Queensland (represented by [name of new or different department])’; or
- ‘The State of Queensland (represented by [name of department] – [name of Act])’

by lodging and registering a Form 14 – General request to change the administrative details shown on title. (See ¶[14-2420]).

Verification of Identity Standard

[60-2000]

This part relates only to Verification of Identity. For Witnessing see ¶[60-0360] and Executions see ¶[60-0900].

See part 1 – Transfer ¶[1-2495] and part 2 –Mortgage ¶[2-2005].

This Verification of Identity Standard is substantially the same as the verification of identity standard in schedule 8 of the current Queensland Participation Rules for electronic conveyancing determined under section 23 of the Electronic Conveyancing National Law (Queensland). The current Queensland Participation Rules are available on the Electronic lodgement and conveyancing page at:

<http://goo.gl/BXrxcB>

1 Application

1.1 This Verification of Identity Standard provides practices which may be used for:

- (a) the verification of identity of mortgagors under the following provisions of the Land Titles Legislation:
 - (i) Section 11A of the *Land Title Act 1994*;
 - (ii) Section 11B of the *Land Title Act 1994*;
 - (iii) Section 288A of the *Land Act 1994*;
 - (iv) Section 288B of the *Land Act 1994*.
- (b) Witnessing instruments or documents outside Australia under paragraph ¶[60-0390] of the Land Title Practice Manual.

2 Definitions

In this Verification of Identity Standard capitalised terms have the meanings set out below:

ADI or authorised deposit-taking institution has the meaning given to it in the *Banking Act 1959* (Cth).

Adult means an individual who is 18 or more.

Australian Legal Practitioner has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

Australian Passport means a passport issued by the Australian Commonwealth government.

Bank Manager means a Person appointed to be in charge of the head office or any branch office of an ADI carrying on business in Australia under the *Banking Act 1959* (Cth).

Category means the categories of identification Documents set out in the table in Verification of Identity Standard paragraph 4, as amended from time to time.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

Community Leader means, in relation to an Aboriginal or Torres Strait Islander community:

- (a) a Person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community, an elected member of the council; or
- (c) a member, or a member of staff, of a Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (d) a member of the board, or a member of staff, of Indigenous Business Australia established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (e) a member of the board, or a member of staff, of an Indigenous Land Corporation established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (f) a member, or a member of staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

Conveyancing Transaction means a transaction that involves one or more parties and the purpose of which is:

- (a) to create, transfer, dispose of, mortgage, charge, lease or deal with in any other way an estate or interest in land, or
- (b) to get something registered, noted or recorded in a register kept under the Land Titles Legislation, or
- (c) to get the registration, note or record of something in the titles register changed, withdrawn or removed.

Court Officer means a judge, master, magistrate, registrar, clerk or the chief executive officer of any court in Australia.

Doctor means a Person who is registered under any Commonwealth, State or Territory law as a practitioner in the medical profession.

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 5.

Identity Declarant means a Person providing an Identifier Declaration.

Identity Verifier means the Person conducting the verification of identity in accordance with this Verification of Identity Standard.

Individual means a natural person.

Land Council Officeholder means a chairperson or deputy chairperson of an Australian land council or land and sea council established under any Commonwealth, State or Territory law.

Local Government Officeholder means a chief executive officer or deputy chief executive officer of a local government organisation.

Land Titles Legislation means any of the following—

- (a) the *Body Corporate and Community Management Act 1997*;
- (b) the *Building Units and Group Titles Act 1980*;
- (c) the *Integrated Resort Development Act 1987*;
- (d) the *Land Act 1994*;
- (e) the *Land Title Act 1994*;
- (f) the *Mixed Use Development Act 1993*;
- (g) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*;
- (h) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*;
- (i) the *Sanctuary Cove Resort Act 1985*;
- (j) the *South Bank Corporation Act 1989*;
- (k) the *Water Act 2000*;
- (l) any other Act prescribed under a regulation for this definition;
- (m) a regulation made under an Act mentioned in any of paragraphs (a) to (k) or prescribed under paragraph (l);
- (n) any other law of this jurisdiction that authorises or requires something to be deposited, registered, noted or recorded in a titles register.

Nurse means a Person registered under any Commonwealth, State or Territory law as a practitioner in the nursing and midwifery profession.

Person includes an individual or a body politic or corporate.

Person Being Identified means any of the Persons required to be identified under a provision of the Land Titles Legislation or the Land Title Practice Manual kept under section 9A of the *Land Title Act 1994*.

Photo Card is a card issued by the Commonwealth or any State or Territory showing a photograph of the holder and enabling the holder to evidence their age and/or their identity.

Police Officer means an officer of any Commonwealth, State or Territory police service.

Public Servant means an employee or officer of the Commonwealth, a State or a Territory.

Record includes information stored or recorded by means of a computer.

Relative means a Person's spouse or domestic partner or a child, grandchild, sibling, parent or grandparent of the Person or of the Person's spouse or domestic partner.

State means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Statutory Declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

Territory means the Australian Capital Territory or the Northern Territory of Australia.

Verification of Identity Standard means this verification of identity standard, as amended from time to time.

3 Face-to-face regime

- 3.1 The verification of identity must be conducted during a face-to-face in-person interview between the Identity Verifier and the Person Being Identified.

- 3.2 Where Documents containing photographs are produced by the Person Being Identified, the Identity Verifier must be satisfied that the Person Being Identified is a reasonable likeness (for example the shape of his or her mouth, nose, eyes and the position of his or her cheek bones) to the Person depicted in those photographs.

4 Categories of identification Documents and evidence retention

- 4.1 At the face-to-face in-person interview described in paragraph 3.1, the Identity Verifier must ensure that the Person Being Identified produces original Documents in one of the Categories in the following table, starting with Category 1.
- 4.2 The Identity Verifier must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.
- 4.3 The Identity Verifier must:
- sight the originals of all Documents from Categories 1, 2, 3, 4, 5 or 6 produced by the Person Being Identified; and
 - retain copies of all Documents produced by the Person Being Identified and any Identity Declarant.
- 4.4 The Documents produced must be current, except for an expired Australian Passport which has not been cancelled and was current within the preceding 2 years.

Category	Minimum Document Requirements
	For Persons who are Australian citizens or residents:
1	Australian Passport or foreign passport <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate if necessary
2	Australian Passport or foreign passport <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
3	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	(a) Australian Passport or foreign passport plus another form of government issued photographic identity Document plus change of name or marriage certificate if necessary (b) Australian Passport or foreign passport plus full birth certificate plus another form of government issued identity Document plus change of name or marriage certificate if necessary
5	(a) Identifier Declaration plus full birth certificate or citizenship certificate or descent certificate plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary. (b) Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 5.4(e) plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary. <i>Note: Refer to Verification of Identity Standard paragraph 5.</i>
	For Persons who are not Australian citizens or residents:
6	(a) Foreign passport plus another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary

	(b) Foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary.
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5 The Identifier Declaration

5.1 Where the requirements of:

- (a) Categories 1 to 4 cannot be met, Category 5(a) may be used; and
- (b) Category 5(a) cannot be met, Category 5(b) may be used,
including the provision of an Identifier Declaration in accordance with this paragraph.

5.2 The Identity Verifier must ensure that both the Person Being Identified and the Identity Declarant attend the same face-to-face in-person interview described in paragraph 3.1.

5.3 The Identity Verifier must verify the identity of the Identity Declarant in accordance with this Verification of Identity Standard except that the Identity Verifier cannot utilise Category 5.

5.4 The Identity Verifier must undertake reasonable enquiries to satisfy themselves that the Identity Declarant is:

- (a) an Adult; and
- (b) an Individual who has known the Person Being Identified for more than 12 months; and
- (c) not a Relative of the Person Being Identified; and
- (d) not a party to the Conveyancing Transaction(s) the Person Being Identified has or is entering into; and
- (e) where Category 5(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Local Government Officeholder, Nurse, Public Servant or Police Officer.

5.5 The Identity Verifier must ensure that the Identity Declarant provides a Statutory Declaration detailing the following:

- (a) the Identity Declarant's name and address; and
- (b) the Identity Declarant's occupation; and
- (c) the Identity Declarant's date of birth; and
- (d) the nature of the Identity Declarant's relationship with the Person Being Identified; and
- (e) that the Identity Declarant is not a relative of the Person Being Identified; and
- (f) that the Identity Declarant is not a party to the Conveyancing Transaction(s) the Person Being Identified has or is entering into; and
- (g) the length of time that the Identity Declarant has known the Person Being Identified; and
- (h) that to the Identity Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
- (i) where Category 5(b) is used, that the Identity Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Local Government Officeholder, Nurse, Public Servant or Police Officer.

6 Body Corporate

The Identity Verifier must:

- (a) confirm the existence and identity of the body corporate by conducting a search of the Records of the Australian Securities and Investments Commission or other regulatory body with whom the body corporate is required to be registered; and

- (b) take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the body corporate; and
- (c) verify the identity of the Individual or Individuals signing or witnessing the affixing of the seal on behalf of the body corporate in accordance with the Verification of Identity Standard.

[Note: *body corporate* includes an incorporated association.]

7 Individual as attorney

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) verify the identity of the attorney in accordance with the Verification of Identity Standard.

8 Body Corporate as attorney

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) comply with Verification of Identity Standard paragraph 6.

[Note: *body corporate* includes an incorporated association.]

9 Further checks

The Identity Verifier must undertake further steps to verify the identity of the Person Being Identified and/or the Identity Declarant where:

- (a) the Identity Verifier knows or ought reasonably to know that:
 - (i) any identity Document produced by the Person Being Identified and/or the Identity Declarant is not genuine; or
 - (ii) any photograph on an identity Document produced by the Person Being Identified and/or the Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
 - (iii) the Person Being Identified and/or the Identity Declarant does not appear to be the Person to which the identity Document(s) relate; or
- (b) it would otherwise be reasonable to do so.

Cross References and Further Reading

[60-9000]

Nil.

Notes in text

[60-9050]

Note ¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.