

Operational policy

SLM/2013/415
Formerly PUX/901/521
Version 6.00
26 November 2019

Transfer of leases, licences and subleases

Purpose

This policy provides guidance on considering applications to transfer a lease, licence or sublease under the *Land Act 1994* (Land Act).

Rationale

Transfers

Leases and licences may be transferred when a right or interest in the lease or licence is assigned to another person by sale or gift.

A transfer includes:

1. if a lease, licence or sublease is held as tenants in common, a transfer by one or more of the tenants in common of all or part of their interest to someone else;
2. if a joint tenant (the severing party), unilaterally severs the joint tenancy. *Note: the transfer need only be executed by the severing party who becomes entitled as a tenant in common with the other joint tenants immediately before the transfer.*

A lease, licence or sublease may not be transferred if a provision of the Land Act or a condition of the lease, licence or sublease prohibits the transfer.

If a lease, licence or sublease is transferred, the transfer must be registered. Unless registered, no legal interest is created.

Note: A permit to occupy cannot be transferred.

Approval to transfer

Under section 322 of the Land Act, the chief executive's approval is required to transfer a lease, licence or sublease.

The chief executive's approval to transfer may be given on conditions, including that all rent and charges owing to the State on the lease or licence are paid before the transfer is lodged.

The approval lapses unless the transfer is lodged in the land registry within 6 months (or a later date if approved) after the chief executive's approval.

When approval to transfer is not required

The chief executive's approval is not required to transfer in the following circumstances:

1. leases

- If the lessee is exempt by written notice from the requirements to obtain chief executive approval to transfer a lease or sublease.

The exemption applies to all lessees of:

- primary production leases in rental category 11
- residential leases in rental category 12
- business and government core business leases in rental category 13

except where the lease:

- is subject to a performance guarantee bond
- deed of indemnity
- was issued for a significant development that may require a financial and managerial capability assessment prior to transfer
- is subject to mortgagee in possession
- is subject to a sale by a mortgagee exercising a power of sale or
- has an appointed receiver/manager.

2. road licences

- If the licence is tied by covenant to adjoining freehold land and the requirements relating to road licences over temporarily closed roads in section 322(2) of the Land Act are satisfied.

3. subleases

- If the sublessee is exempt by written notice from the requirements to obtain chief executive approval to transfer the sublease (see 1 above)
- if the lessee has a general authority (section 333 of the Land Act) to sublease/transfer or
- for transport land or a perpetual lease to the State for marine facility purposes (section 390A of the Land Act).

The chief executive's approval is not required to transfer a mortgage.

Policy

Eligibility

The transfer of a lease, licence or sublease must be to a person (including those acting as a trustee) who is eligible to hold the lease, licence or sublease under the Land Act, and is appropriate to hold the land.

- see [Eligibility to hold land Policy](#)

Commercial timber

On conversion of tenure to freehold, commercial timber is owned by the lessee, unless subject to a forest entitlement area or an agreement with the Minister administering the *Forestry Act 1959*.

While a lessee may have elected to pay for the commercial timber on terms over a period of years, there is no

- restriction (subject to any necessary vegetation clearing requirements/approvals) as to when the timber may be harvested and sold; and
- obligation for the State to provide an incoming lessee with similar terms.

Accordingly, it is not unreasonable that a condition of approval to transfer is the balance outstanding should be paid.

Where the value of commercial timber on a freeholding lease is being paid over a term of years, the outstanding balance of the timber purchase price must be paid to the state as a condition of the approval to the transfer prior to the registration of a transfer, unless the transfer is to a member or members of the transferor's family.

Conversion of tenure application

Where an application has been lodged for conversion of tenure of a lease and the lease is subsequently transferred, the transferee is required to advise if it is desired to proceed with the application.

If no advice is received, the application for conversion of tenure will lapse upon registration of the transfer.

Covenants and 'tied' covenants (i.e. no separate transfers)

A lease or licence may be 'tied' to other land by a covenant under section 373A of the Land Act to ensure there is no separate transfer of the land.

A lease or licence may also be 'tied' to other land under a condition of the lease or licence.

If a lease or licence to be transferred is 'tied' to other land (e.g. to a lease or freehold), then all the lands held together must be transferred, including for a transfer of a tenant in common or for severing a joint tenancy, unless it is agreed to accept a surrender of a road licence that is no longer needed.

Further, if a lease or licence is 'tied by a condition, and the lease or licence is not subject to a covenant, then a condition of approval to a transfer is that the lessee or licensee is to enter into a covenant under section 373A of the Land Act to provide for no separate transfers for all the lands "tied".

Indigenous land use agreement

Rural leasehold land may be subject to an Indigenous Land Use Agreement.

On transfer of rural leasehold land, the new lessee is a party to any Indigenous Land Use Agreement for the lease and accepts the rights and responsibilities of the previous lessee under that agreement.

The new lessee must also advise the native title group/parties to the agreement and the native title registrar of the transfer within 28 days.

Land management agreement

A lease may be subject to a land management agreement.

Existing land management agreements may be cancelled, with the lessee's agreement, if the Minister is satisfied the land management agreement is no longer required.

Under section 325 of the Land Act, if the lease is subject to a land management agreement, on transfer, the new lessee is a party to that agreement and accepts the rights and responsibilities of the lessee under that agreement.

Previous approvals

Where a prior approval has been given to a transfer and that approval has not lapsed, a fresh application for a consent to transfer to a different party will be considered only if a Statutory Declaration is lodged by the vendor (lessee) detailing that the earlier sale is no longer proceeding.

Rent and instalment payments

When a lease is transferred, any hardship concession applying to the outgoing lessee stops from the day the transfer is registered.

If an incoming lessee considers that they would meet the criteria to be eligible for residential hardship, the incoming lessee will need to apply for this concession.

Where a lease is subject to deferred rent, due to being declared as a hardship area (natural disaster or adverse economic conditions) at the time of transfer, the lease continues to be subject to the deferral for the period of the declaration.

Legislation

Land Act 1994, particularly section 301, and sections 322 to 325 dealing with transfer, section 391A and sections 40F, 40E, 40B of Land Regulation 2009.

Approval

Position	Name	Date
Director, Land Services, Land and Native Title Services	Anita Haenfler	26/11/2019

Version history

Version	Effective Date	Comments
2	15/07/2003	Updated
2.1	01/07/2005	Conversion Project - New WORD/XML template
3	13/12/2007	Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
3.1	02/02/2011	Minor updates to reflect departmental name change to DERM
3.2	24/10/2012	Minor updates to reflect departmental name change to DNRM
3.03	14/03/2014	Updated to DNRM template
4.00	12/06/2014	Updated to include amendments due to LOLA 2014
4.01	1/08/2014	Minor amendment to correct wording
4.02	24/01/2017	Minor amendment to insert text on new template
5.00	28/07/2017	Amended to include LOLA 2017 changes to transfer of road licences
5.01	10/10/2019	Minor amendments to reflect Land Act
6.00	26/11/2019	Updated to reflect amendments to Land Act

Further information

- Contact your nearest business centre (https://www.dnrme.qld.gov.au/?contact=state_land), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

This publication has been compiled by Land Services, Land and Native Title Services, Lands Division,, Department of Natural Resources, Mines and Energy.

© State of Queensland, 2019



For more information on this licence, visit <https://creativecommons.org/licenses/by/4.0/>.

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.