

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 or s. 386 of the Land Act 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 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 binds the lot or lease or sublease under the Land Act as regards the interests of purchasers, lessees, mortgagees and creditors (Land Title Act), or buyers, sublessees, mortgagees and creditors (Land Act) 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 during that period.

Legislation

[12-1000]

^{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.

1,³Reference 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

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
- Federal Circuit Court of Australia
- Supreme Court of Queensland
- District Court
- Magistrates Court
- Registrar of the State Penalties Enforcement Registry (SPER)
- Family Court of Australia.

The above list is not necessarily exhaustive.

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.

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*), 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*. ^{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* 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.

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* or s. 306(1) of the *Land Act*). 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* 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 sold by the Chief Executive pursuant to Chapter 5, Part 4, Division 3A, Subdivision 4 of the Land Act 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	Title Reference
LOT 77 ON RP94912	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 – MAGISTRATES COURT, BRISBANE Enforcement Debtor – LEONARD LLEWELLYN 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)	<i>MW Smith</i>
or	Mark Wayne Smith Director

.....Signature	(name of company and A.C.N.)	<i>JD Smith</i>
.....full name		John David Smith Director/Secretary
.....qualification	6/12/2007

Witnessing Officer

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

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 (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’. 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.

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 crown plans).

e.g.	Lot on Plan Description	Title reference
	Lot 27 on CP LIV1234	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, 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 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 relevant particulars from the writ of execution:

1. Writ/Warrant of Execution No.

Insert either the Court File Number or the handwritten Warrant Number (only if present) recorded on the Warrant (refer to the Queensland Enforcement Warrant example below).

2. Court

Insert the Court issuing the Enforcement Warrant (and registry if relevant).

3. Enforcement Debtor

Insert the name of the Enforcement Debtor.

Queensland Enforcement Warrant Example:

	MAGISTRATES COURT	OF QUEENSLAND	Warrant Number
	2	REGISTRY: BRISBANE	W/N 106/07
		NUMBER: 125/2006	1
		Court File Number	
Plaintiff:	SMITH AND SMITH PTY LTD A.C.N. 123 123 123		
	AND		
Defendant:	LEONARD LLEWELLYN JONES		
	ENFORCEMENT WARRANT - SEIZURE AND SALE OF PROPERTY		
Enforcement Creditor:	SMITH AND SMITH PTY LTD A.C.N. 123 123 123		
Enforcement Debtor:	LEONARD LLEWELLYN JONES	3	

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*, six months).

¶[12-7010] to [12-7040] deleted

Fees

[12-8000]

Fees payable to the 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; and
- ^{2,3}Water Regulation.

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.