

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 chief executive 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. 322AA of the Land Act, the chief executive may grant exemption from the approval requirement.

^{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, 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

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].

Please note: All transfers must have a duty notation even if no transfer duty is payable

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, 2Freehold 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, 3Water 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, 3State 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.

Unless prior written approval has been received from the Titles Registry, where multiple titles (not being titles for a share of the one lot) are involved in a single transaction, each of these titles must be held in the same name such that the registered proprietor is consistent as transferor for each lot. For example, if Party A owns one lot on one title and Party B owns another lot on another title and they are transferring to a mutual transferee, separate forms are required for each lot. See also ¶[51-2115].

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.

^{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 (Refer to the Titles Fee Calculator available online or see the current Land Title Regulation).

Monetary Consideration

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

Monetary consideration must be shown inclusive of the amount of any Goods and Services Tax (GST) payable.

Non-Monetary Consideration

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]’.

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.

Reference to the terms of an agreement

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].

Transfers pursuant to oral agreements

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 true and correct legal name includes an initial, e.g. John J Brown, where the ‘J’ does not represent a given name, this is acceptable. Written confirmation from a solicitor acting for the person or from the person concerned should be deposited explaining that this is the true and correct legal name of the transferee. This requirement also applies where a person does not have a surname.

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 or the Australian Registered Body 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	as joint tenants
	Maureen Frances	BROWN	

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	as joint tenants
	Maureen Frances	BROWN	inter se
	Michael Andrew	BROWN	
	Peter John	BROWN	as tenants in common
	Bernard Edward	BROWN	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. 73 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 61, esp. ¶[61-1000], ¶[61-2000] and ¶[61-3000]).

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 as transferor. 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 Registrar will accept execution by or for a minor as transferee in the following ways:

- by a person authorised by Court Order to execute the transfer on behalf of the minor;

- By the minor if the transfer is accompanied by a letter from a solicitor, instructed and employed independently of any other party to the transfer. The letter must state that the solicitor is satisfied the minor understands the nature and effect of the transfer and the minor is entering into the transaction freely and voluntarily;
- by a solicitor acting for the minor.

The above list does not necessarily include all methods of execution permitted by law. The normal witnessing requirements for an individual or a solicitor apply to this type of execution.

For further information about executions see part 61, esp. ¶[61-3000].

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]

Please note: All transfers must have a duty notation even if no transfer duty is payable

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

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

- (1) a Form 24 – Property Information (Transfer); and
- (2) 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); and
- (4) a Form W2F164 – Acknowledgement notice for water allocation to which a distribution operations licence applies (for water allocations subject to a Distribution Operations Licence).

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

- (1) the chief executive’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), unless an exemption under s. 322AB of the *Land Act 1994* has been recorded on the State Lease. It should be noted that the exemption does not apply to transfers by mortgagees in possession and transfers by mortgagees exercising power of sale; and
- (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 (foreign individual, foreign corporation or trustee of a foreign trust) as defined in the *Foreign Ownership of Land Register Act 1988* (and the *Duties Act 2001*), 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 chief executive's approval to the transfer of the road licence, and any additional documentation or requirements mentioned in the chief executive's 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*, chief executive 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 will be recorded in the same capacity (e.g. personal capacity); 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.

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 (signature, full name & qualification)	23/10/93	A Ham (Director) Common Seal L Bacon (Secretary)
	Execution Date	Transferor's Signature
IA Lee Ian Alistair Lee Lawyer	23/10/93	Michael James Smith
	Execution Date	Transferee's Signature
IA Lee Ian Alistair Lee Lawyer	23/10/93	Jacqueline Theresa Smith
	Execution Date	Transferee's Signature

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’

A copy of the court order must be deposited with the transfer (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) 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
- (2) 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 ¶[1-2425]).

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.

Chief executive 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). Notwithstanding the recording of an exemption pursuant to s. 322AB, the requirement for written approval still applies to transfers by mortgagee exercising power of sale. (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 [61-3070].

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 in a Form 20 – Trust Details Form [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

An original Form 20 – Trust Details Form detailing the schedule of trusts (in item 2) must be annexed to the transfer (refer to ¶[51-4100]). All of the beneficiaries must be identified and if a beneficiary is a minor, the date of birth must be shown.

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 or Form 20 – Trust Details Form 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.

There are three options:

- (1) an original Form 20 – Trust Details Form must be deposited (refer to ¶[51-4100]); or
- (2) all document(s) that 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; or
- (3) in Item 5, **all dealings with which the document(s) that create the trust (including any variation) 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). Please note that it is not acceptable to refer to a Form 20 – Trust Details Form previously deposited with another instrument or document. A newly completed original Form 20 – Trust Details Form must be deposited with each transfer.

Example 1.

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

Deed of trust deposited with 712223335 and deed of retirement and appointment deposited with 721114444

Example 2.

5.	Transferee	Given names	Surname/Company (include tenancy if Name and Number 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], ¶[51-2040], ¶[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).

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 when 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, either the continuing trustee/s or the new trustee/s (acting under s. 12(6) of the *Trusts Act*) may execute the transfer as the transferor. 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

[1-2425]

A Form 1 – Transfer is required that shows:

- (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:

- (1) Either:
- (a) an original Form 20 – Trust Details Form (refer to ¶[51-4100]) and if applicable – evidence of the death of the registered proprietor/holder/trustee (e.g. certificate of death or grant of representation); or
 - (b) the following:
 - (i) evidence of the retirement/discharge/death of the registered proprietor/holder/trustee (e.g. a deed of retirement/discharge or the certificate of death or grant of representation);
 - (ii) a copy of the original instrument of appointment of new trustees (not required if the new trustee is the Public Trustee); and
 - (iii) a copy of the original trust instrument (not required if a copy of the original trust instrument has been previously deposited or reference made to the instrument it was deposited with) or partnership evidence.

A duty notation is required.

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

Death of Sole Trustee

[1-2430]

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.

^{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 is as 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]

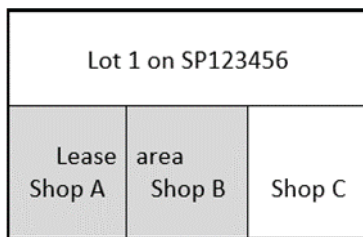
General

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.

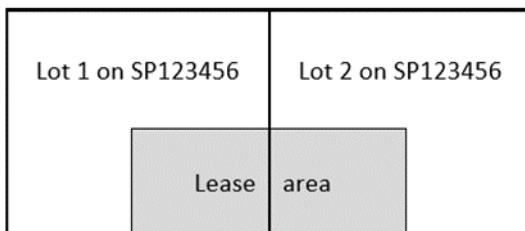
A lessee cannot transfer an interest in only part of the leased area to another. Refer to examples 1 and 2 below for a more detailed explanation.

Example 1



- Lease 712345678 is registered over the area of Shop A and Shop B contained within Lot 1 on SP123456.
- Any transfer of an interest in Lease 712345678 cannot be for only part of the leased area (e.g. Shop A only) – any transfer must be for the entire leased area (Shops A and B).

Example 2



- Lease 782258258 is registered over an area that straddles Lots 1 and 2 on SP123456 on Title Reference 11223078.
- Any transfer of an interest in Lease 782258258 cannot be for only part of the leased area (e.g. the area contained within Lot 1 on SP123456 only) – any transfer must be for the entire leased area.

The following options are available where there is a desire to only deal with part of the leased area of a registered lease:

- A lessee may sub-lease part of the leased area to another (e.g. in example 1 – a sub-lease of Shop A); or
- A lessee may surrender the relevant part of the leased area followed by a new lease for the surrendered area (e.g. in example 1 – a partial surrender of Lease 712345678 so far as relates to Shop A followed by a new lease for Shop A).

While it is a requirement that any transfer must be for the whole of the leased area; because of the nature of a lease the Registrar will not enquire as to whether all of the lots in the registered lease are included in a lodged transfer of a lease.

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 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 new lessee is a foreign person (foreign individual, foreign corporation or trustee of a foreign trust) as defined in the *Foreign Ownership of Land Register Act 1988* (and the *Duties Act 2001*) and the term of the lease exceeds 25 years (inclusive of further term/s available under any option/s).

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

Prior to the *Land Title Act 1994*, 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. 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 chief executive approval to the transfer, and any additional documentation or requirements mentioned in the chief executive approval, e.g. declarations, a rental clearance certificate and a copy of the contract of sale. The written approval and additional documentation is not required where an exemption has been recorded pursuant to s. 322AB of the *Land Act 1994*.

^{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 chief executive and the trustee. A Form 18 – General Consent is the appropriate form for the written approval. The chief executive'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 or chief executive’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.

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.

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’.

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.

Where the land is taken to have been sold at auction to the local government (s. 143(4) of the Local Government Regulation 2012), an application by the local government to be recorded as registered owner of the land, or holder of the lease under the Land Act can be made. See [14-2410].

See also [61-3210] and [61-3220].

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.

If the interest being sold is the interest of a joint tenant, the joint tenancy is severed and a tenancy in common is created.² However, 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, ²Transfer 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.
- (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

²Transfer 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 schedule of trusts in an original Form 20 – Trust Details Form may be incorporated in the Transfer (see ¶[51-4100]);
- where there is a trust document, either the trust document or an original Form 20 – Trust Details Form (see ¶[51-2040, ¶[51-2043] and ¶[51-4100]).

^{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, 2Transfer 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, 2^{Transfer 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

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.

Print one-sided only

1. Interest being transferred (if shares show as a fraction)	Lodger (Name, address, E-mail & phone number)	Lodger Code
FEE SIMPLE	SMYTHE & CO. SOLICITORS 45 ADELAIDE STREET BRISBANE QLD 4000 mail@smytheco.com.au (07) 3227 9850	490

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)

2. Lot on Plan Description	Title Reference
LOT 16 ON RP323361	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		BROWN	AS JOINT TENANTS
MAUREEN		BROWN	

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

.....
Witnessing Officer (signature, full name & qualification)

11/11/2017
Execution Date

I M Law
IAN MAURICE LAW
*
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 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; 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.