

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest

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Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest

General Law

[13-0000]

Under the provisions of the *Land Title Act 1994* and the *Land Act 1994*, amendments to registered leases, easements, covenants, mortgages, profits a prendre and Building Management Statements may be registered. Form 13 is the appropriate form in each case. A Form 20 – Schedule setting out the amendment may be attached to the Form 13.

Amendment of Lease

[13-0010]

Unless otherwise stated in this numbered section, a reference to a lease means a lease or sublease of freehold land or a water allocation, or a sublease or trustee lease under the *Land Act 1994*.

Section 67 of the *Land Title Act 1994* and ss. 57A and 336 of the *Land Act* provide that a registered lease may be amended by registering an amendment of lease. However, the amendment must not:

For a lease or sublease of freehold land or a water allocation:

- increase or decrease the area leased; or
- add or remove a party to the lease; or
- be lodged after the lease's term has ended.

For a sublease or trustee lease under the *Land Act 1994*:

- increase or decrease the area leased or
- add or remove a party to the lease; or
- increase the term of the lease; or
- be lodged after the sublease's term has ended.

²Section 67(5) of the *Land Title Act* provides that the procedure for amendment set out in s. 67 of the *Land Title Act* is in addition to any other rights, provided that they are not inconsistent with the Act.

¹Amendment of Easement

[13-0020]

Section 91 of the *Land Title Act 1994* and s. 370 of the *Land Act 1994* provide that a registered easement (other than a high-density development easement under Part 6 Division 4AA of the *Land Title Act*) may be amended by registering an amendment of easement. However, the amendment must not:

- change the location of the easement; or
- increase or decrease the area of land affected by the easement; or

- change a party to the easement.

The Land Title Act and the Land Act specifically provide that s. 181 of the *Property Law Act 1974* applies to registered easements (s. 92 of the Land Title Act and s. 373 of the Land Act). Section 181 of the Property Law Act allows a person interested in the land to apply to the Supreme Court for an order that an easement be modified or wholly or partially extinguished. The court may, amongst other things:

- direct that a survey of the land be conducted and a plan of survey be prepared;
- order any person to execute any instrument or document to give effect to the order; and
- order the deposit of any other documentation to give effect to the order. (see [14-2430]).

Amendment of Mortgage

[13-0030]

Section 76 of the *Land Title Act 1994* and s. 343 of the *Land Act 1994* provide that a registered mortgage may be amended by registering an amendment of mortgage. However, the amendment must not:

For a mortgage of freehold land or a water allocation:

- increase or decrease the area of land or the number of water allocations charged by the mortgage; or
- add or remove a party to the mortgage.

For a mortgage of a lease or sublease under the Land Act:

- add or remove a party to the mortgage

¶[13-0040] deleted

¹Amendment of Covenant

[13-0041]

Section 97C of the *Land Title Act 1994* and s. 373C of the *Land Act 1994* provide that a registered covenant may be amended by registering an amendment of covenant. However the amendment must not:

- increase or decrease the area of land which is the subject of the covenant; or
- add or remove a party to the covenant.

¹Amendment of Profit a Prendre

[13-0050]

Section 97K of the *Land Title Act 1994* and s. 373N of the *Land Act 1994* provide that a profit a prendre may be amended by registering an amendment of a profit a prendre. However, the amendment must not:

- increase or decrease the area of land which is the subject of the profit a prendre; or
- add or remove a party to the profit a prendre.

¹Amendment of Building Management Statement

[13-0060]

Section 54E of the *Land Title Act 1994* and s. 294F of the *Land Act 1994* provide for the registration of an amendment of building management statement. However the amendment must not:

- change the lots to which the statement applies.

¹Amendment of Carbon Abatement Interest

[13-0070]

Section 97S of the *Land Title Act 1994* and s. 373X of the *Land Act 1994* provide that a carbon abatement interest may be amended by registering an amendment of a carbon abatement interest. However, the amendment must not:

- increase or decrease the area of land which is the subject of the carbon abatement interest; or
- add or remove a party to the carbon abatement interest.

Legislation

[13-1000]

²Application of the *Land Title Act 1994* to the *Water Act 2000*

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

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

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

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

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

Practice

Amendment of Lease

[13-2000]

Unless otherwise stated in this numbered section, a reference to a lease means a lease or sublease of freehold land or a water allocation, or a sublease or trustee lease under the *Land Act 1994*.

A registered lease may be amended by registering a Form 13 – Amendment of Lease. However, the amendment **cannot**:

For a lease or sublease of freehold land or a water allocation:

- (a) increase or decrease the area leased; or
- (b) add or remove a party to the lease; or
- (c) be lodged after the lease's term has ended

For a sublease or trustee lease under the *Land Act 1994*:

- increase or decrease the area leased or
- add or remove a party to the lease; or
- increase the term of the lease; or
- be lodged after the lease's term has ended.

The covenants to be amended must be included on a Form 20 – Schedule. The covenants may be amended by deleting a particular clause, amending a particular clause or inserting a new clause. The Form 20 – Schedule need only refer to the particular clause(s) to be deleted, amended or inserted for the purpose of the amendment.

If a lease is to be amended in any of the ways above, then it will be necessary to surrender the existing lease and to enter into a new lease (see part 8 – Surrender of Lease).

A lease may be amended more than once.

^{1,3}Before an amendment of a trustee lease or a sublease under the Land Act is registered, the amendment must be endorsed with, as appropriate, either the Minister's approval under s. 57A(1) or s. 332 of the Land Act, or the Minister's general authority to amend under s. 333 of the Land Act.

^{1,3}However, the Minister's approval is not required if the trustee lease is:

- a trustee lease (construction); or
- a construction trustee sublease; or
- a trustee lease (State or statutory body); or
- a sublease of a trustee lease (State or statutory body) (s. 57A(2) of the Land Act).

An amendment of a freehold lease, a lease of a water allocation or a sublease under the Land Act executed after the registration of a mortgage is not valid against the mortgagee unless the

mortgagee consents to the amendment before it is registered (s. 66 of the *Land Title Act 1994* and s. 338 of the *Land Act*). The Registrar will register the amendment of lease even if the lot or interest is mortgaged and the consent of the mortgagee is not included. However, registration will not give validity to the amended lease against the mortgagee as a matter of law.

It is in the lessee's interest to obtain the consent of any mortgagee of the fee simple, a sublease under the *Land Act 1994* or a water allocation to an amendment of lease (s. 66 of the *Land Title Act* and s. 338 of the *Land Act*); however it is not a prerequisite for registration.

An amendment of lease does not require the consents of any sublessees in order to be registered, even if the covenants in the (head) lease are being amended.

²An amendment may increase or decrease the term of the lease. However, an amendment to increase the term must be lodged during the term of the lease as defined in s. 67(3) of the *Land Title Act*. An amendment to extend the second or subsequent option period can only be registered if the preceding option period is the subject of a registered amendment.

²An amendment of lease can create, cancel, extend or shorten a period of a further term available under an option.

An amendment of lease **cannot** amend the commencement date of a lease that has commenced.

If the amendment of lease decreases the term, it must be for a term which is longer than the term, including those available under options, of any sublease of the lease. ²Conversely, any increase in the term, including those available under options in a sublease must not exceed the term of the head-lease. **Note:** Only the initial term and first unexercised option period of the lease are recorded on the relevant title.

²If the amendment extends the term and the lessor is a trustee, the new term, including further terms available under options, should not exceed 21 years (s. 32(1)(e) of the *Trusts Act 1973*) unless the trust deed authorises leases for a greater term.

^{1, 2}If a lease is over part of the land and the term is extended, the approval of the local government is required if the new term, including further terms available under options, is for a period of over ten years (s. 65(3A) of the *Land Title Act* and s. 6 (Schedule 2) of the *Planning Act 2016* – reconfiguring a lot).

²Given the nature of a lease the Registrar will not enquire whether all titles subject to the lease are included in the Form 13 – Amendment of Lease.

Refer to the following table for duty requirements. The table has been compiled in consultation with the Office of State Revenue (OSR).

Amendment of Lease	
Any Form 13 that:	Duty notation required
Increases the term (where the amendment of the lease term commenced prior to 1 January 2006)	Yes
* Increases the term (where the amendment of the lease term commenced on or after 1 January 2006)	No
Increases the rental (where the amendment of the lease rental commenced prior to 1 January 2006)	Yes
* Increases the rental (where the amendment of the lease rental commenced on or after 1 January 2006)	No
Amends the covenants only	No

* **Note** – From 1 January 2006 lease duty was abolished by the *Revenue Legislation Amendment Act 2005*.

Lodgement fees are payable.

For further information see part 7 – Lease.

¶[13-2010] to [13-2030] deleted

¹Amendment of Easement

[13-2035]

A registered easement (other than a high-density development easement under Part 6 Division 4AA of the *Land Title Act 1994*) may be amended by registering an amendment of the easement in Form 13 (s. 91(1) of the *Land Title Act* and s. 370(1) of the *Land Act 1994*). However, the amendment must not:

- (a) change the location of the easement; or
- (b) increase or decrease the area of land affected by the easement; or
- (c) change a party to the easement.

An amendment may replace, delete and/or insert provisions to the easement. If the covenants are inserted or replaced they should be included on a Form 20 – Schedule. The Form 20 need only refer to the particular clause(s) to be deleted, amended or inserted for the purpose of the amendment.

Due to the nature of an easement, all titles subject to an easement must be included in the Form 13 – Amendment of Easement.

For duty requirements refer to the following table, which has been completed in consultation with the Office of State Revenue.

Easements	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes
Amends the purpose	No
Amends the covenants	No

Lodgement fees are payable (see ¶[13-8000]).

¶[13-2040] to [13-2050] deleted

Amendment of Mortgage

[13-2055]

A registered mortgage may be amended by registering an amendment of the mortgage in Form 13 (s. 76 of the *Land Title Act 1994* and s. 343 of the *Land Act 1994*). However, the amendment must not:

For a mortgage of freehold land or a water allocation:

- (a) increase or decrease the area or the number of water allocations charged by the mortgage; or
- (b) add or remove a party to the mortgage.

For a mortgage of a lease or sublease under the Land Act:

- add or remove a party to the mortgage.

The covenants to be amended must be included on a Form 20 – Schedule. The covenants may be amended by deleting a particular clause, amending a particular clause or inserting a new clause. The Form 20 – Schedule need only refer to the particular clause(s) to be deleted, amended or inserted for the purpose of the amendment.

If the purpose of the amendment is a variation in accordance with s. 79 of the *Property Law Act 1974*, usually prepared prior to the commencement of the Land Title Act, the terms of the variation in the appropriate form under the Property Law Act should be deposited with a Form 13.

Given the nature of a mortgage, when an amendment of mortgage is lodged the Registrar will not enquire as to whether all the lots in the mortgage are included in the amendment.

A duty notation is not required. Lodgement fees are payable.

Section 11A of the Land Title Act and s. 288A of the Land Act places an onus on **ALL** mortgagees to adopt appropriate *due diligence* practices prior to lodging for registration any amendment of mortgage. The provisions under s. 11A of the Land Title Act and s. 288A of the Land Act apply to **ALL** amendments of mortgage lodged for registration in Queensland, whether or not the mortgagee has other business relationship with the mortgagor. For more information see ¶[2-2005].

¶[13-2060] to ¶[13-2100] deleted

¹Amendment of Covenant

[13-2110]

A registered covenant may be amended by registering an amendment of the covenant provided the amendment is validly executed by all parties to the covenant (i.e. the current registered owner or lessee and the State, a statutory body representing the State or a local government). If non-freehold land is involved, written approval of the amendment by the Minister is required.

An amendment of covenant must not:

- increase or decrease the area of land which is the subject of the covenant; or
- add or remove a party to the covenant.

Due to the nature of a covenant an amendment of covenant must include all of the titles to which the covenant relates.

A duty notation is not required. Lodgement fees are payable.

¹Amendment of Profit a Prendre

[13-2130]

An amendment of profit a prendre must not:

- increase or decrease the area of land which is the subject of the profit a prendre; or
- add or remove a party to the profit a prendre.

Given the nature of a profit a prendre the Registrar will not enquire whether all titles subject to the profit a prendre are included in the Form 13 – Amendment of Profit a Prendre.

For duty requirements refer to the following table, which has been completed in consultation with the Office of State Revenue.

Profit a prendre	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes
Amends the covenants	No

Lodgement fees are payable.

¶[13-2140] deleted

¹Amendment of a Building Management Statement

[13-2150]

A Form 13 that amends a building management statement (BMS) must:

- (a) include in Item 2 of the form all lots (and common property if applicable) affected by the BMS; and
- (b) be signed by:
 - the registered owners or lessees under the *Land Act 1994* of all lots to which it applies; or
 - ²the body corporate where lots affected by the BMS form part of a community titles scheme. A certified copy of the resolution agreeing to the amendment of the BMS must be deposited with the amendment; or
 - both of the abovementioned, if relevant.

Lots may not be added to or removed from a building management statement by an amendment.

A duty notation is not required. Lodgement fees are payable.

¹Amendment of Carbon Abatement Interest

[13-2160]

A registered carbon abatement interest may be amended by registering a Form 13 – Amendment of Carbon Abatement Interest provided the amendment is validly executed by all parties to the carbon abatement interest.

If non-freehold land is involved, the Minister administering the Act must consent to the amendment on a Form 18 – General Consent. Alternatively, if the State is a party to the Amendment of the Carbon Abatement Interest (i.e. a grantor), the consent on a Form 18 is not required.

An amendment of carbon abatement interest must not:

- (a) increase or decrease the area of land which is the subject of the carbon abatement interest; or
- (b) add or remove a party to the carbon abatement interest.

Given the nature of a carbon abatement interest, when an amendment of a carbon abatement interest is lodged the Registrar will not enquire as to whether all the lots in the carbon abatement interest are included in the Form 13 – Amendment of Carbon Abatement Interest.

For duty requirements refer to the following table, which has been completed in consultation with the Office of State Revenue.

Carbon Abatement Interest	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes
Amends the carbon abatement interest	No

Lodgement fees are payable.

Forms

General Guide to Completion of Forms

[13-4000]

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

Example 1 – Amendment of Easement

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

AMENDMENT

FORM 13 Version 7
Duty Imprint Page 1 of 2

Dealing Number



OFFICE USE ONLY

Privacy Statement

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Print one-sided only

1. Type/Dealing No of Instrument/Document being amended Lodger (Name, address, E-mail & phone number) Lodger Code

Type of Instrument/Document EASEMENT..... D A McCALLUM
1 OCEAN DRIVE
Dealing Number 700004070 SURFERS PARADISE QLD 4217
(07) 5202 1495

2. Lot on Plan Description Title Reference

LOT BURDENED 11462065
LOT BURDENED 12356047

3. Grantor/Mortgagor/Lessor/Covenantor

ANDREW DOUGLAS BARTON

4. Grantee/Mortgagee/Lessee/Covantee

DOUGLAS ANGUS McCALLUM

5. Amendment of Lease Details (Both parts (a) AND (b) must be completed. Do not complete if amending covenants only)

(a) Expiry date (DD/MM/YYYY): / / AND/OR Event (if applicable):

(b) Option/s#:

Insert NIL if no option or insert option period (e.g. 2 years or 2 x 3 years)

6. Request/Execution

The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:-
*item 5; *item 5 and attached schedule; *attached schedule.

* rule through or delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

A D Lein

.....signature

ARNOLD DOUGLAS LEIN

.....full name

JUSTICE OF THE PEACE (C.DEC) #27345

.....qualification

Witnessing Officer

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

11/11/2007

Execution Date

A D Barton

Grantor's/Mortgagor's/Lessor's/
Covantee's Signature

P J Writ

.....signature

PETER JOHN WRIT

.....full name

SOLICITOR

.....qualification

Witnessing Officer

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

17/11/2007

Execution Date

D A McCallum

Grantee's/Mortgagee's/Lessee's/
Covantee's Signature

Example 1 (cont'd)

QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

SCHEDULE

Form 20 Version 2
Page 2 of 2

Title Reference [11462065]

(Changes to clauses of the easement to be set out here)

Example 2 – Amendment of Lease

AMENDMENT

Dealing Number



OFFICE USE ONLY

Privacy Statement

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Table with 3 columns: 1. Type/Dealing No of Instrument/Document being amended, Lodger (Name, address, E-mail & phone number), Lodger Code. Includes details for LEASE 601447298 and SACHS & CO SOLICITORS.

Table with 2 columns: 2. Lot on Plan Description, Title Reference. Includes LOT 42 ON RP99332 and 13131166.

3. Grantor/Mortgagor/Lessor/Covenantor
SUBURBAN SHOPPING CO PTY LTD ACN 685 742 321

4. Grantee/Mortgagee/Lessee/Covenantee
PARKER JAMES SCHRIVNER and AQUILLA NEIL SCHRIVNER

5. Amendment of Lease Details (Both parts (a) AND (b) must be completed. Do not complete if amending covenants only)
(a) Expiry date (DD/MM/YYYY): 31/12/2013 AND/OR Event (if applicable): ON THE DEATH OF THE LESSEE
(b) Option/s#: NIL
Insert NIL if no option or insert option period (e.g. 2 years or 2 x 3 years)

6. Request/Execution
The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:-
*item 5; *item 5 and attached schedule; *attached schedule.
* rule through or delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Witnessing Officer signature, full name, qualification, Execution Date (4/9/2007), Grantor's/Mortgagor's/Lessor's/Covenantor's Signature (J Thomas, Director JOHN PETER THOMAS, P Dean, Secretary PAUL IAN DEAN)

Witnessing Officer signature, full name, qualification, Execution Date (5/9/2007), Grantee's/Mortgagee's/Lessee's/Covenantee's Signature (E E Shield, EGERTON ELI SHIELD, JUSTICE OF THE PEACE (QUALIFIED) #39145, P J Schrivner, A N Schrivner)

Example 2 (cont'd)

QUEENSLAND TITLES REGISTRY

Land Title Act 1994, Land Act 1994 and Water Act 2000

SCHEDULE

Form 20 Version 2

Page 2 of 2

Title Reference [13131166]

(Changes to clauses of the lease to be set out here)

Guide to Completion of Form 13

Item 1

[13-4010]

Insert the dealing number of the document being amended.

¶[13-4020] deleted

Item 2

[13-4021]

^{1,2}Freehold Description

The description of the relevant lot/s should always read “Lot [no.] on [plan reference]”. Plan references must contain the appropriate prefix (eg “SP” for a survey plan, “RP” for a registered plan, “BUP” for a building units plan, “GTP” for a group titles plan or the relevant letters for crown plans).

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

For an amendment of an easement the descriptions of both the lot/s benefited and lot/s burdened must be shown.

^{2,3}Water Allocation Description

A water allocation should be identified as “Water Allocation”, “Allocation” or “WA”. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

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

^{1,3}State Tenure Description

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

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

Item 3

[13-4030]

Insert the full name of the grantor/mortgagor/lessor/covenantor.

Item 4

[13-4040]

Insert the full name of the grantee/mortgagee/lessee/covenantee.

Item 5**[13-4050]**

This item is not to be completed for an amendment of a mortgage, easement, profit a prendre, building management statement, covenant or carbon abatement interest.

^{1, 2}This item is to be completed only where the term and/or the option of a lease is being amended.

Where only the terms and conditions (covenants) of a lease are being amended, this item is to be left blank.

Where Item 5 is to be completed BOTH parts (a) and (b) must be completed in every instance:

- For part (a) – insert the date (in DD/MM/YYYY format) and/or event on which the lease term or amended lease term is to expire; and
- For part (b) – insert the details of all option/s or if there are no options *NIL* must be inserted.

Where Item 5 is to be completed – if part (a) or (b) is not completed a requisition will issue for the completion of the relevant part.

Item 6**[13-4055]**

Complete where indicated. The amendment document or a completed Form 20 that sets out the amendments must be attached.

Execute as required.

¶[13-4060] deleted

¶[13-4070] deleted

¶[13-6000] deleted

Case Law**[13-7000]**

Nil.

Fees**[13-8000]**

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

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

Cross References and Further Reading**[13-9000]**

Part 2 – Mortgage (National Mortgage Form)

Part 3 – Release of Mortgage

Part 7 – Lease

Part 8 – Surrender of Lease

Part 9 – Easement

Part 10 – Surrender of Easement

Part 14 – General Requests (Removal of Profit a prendre)

Part 29 – Profit a prendre

Part 31 –Covenants

Part 32 – Building Management Statements

Part 33 – Release of Covenant/Profit a prendre

Part 34 – Extinguishment of Building Management Statement

Part 36 – Carbon Abatement Interest

Part 48 – State Land

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

Property Law and Practice, Duncan and Vann, Law Book Company Limited (loose-leaf service)

Notes in text

[13-9050]

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

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

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