Part 17 – Request to Dispense with Production of Instrument

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Part 17 – Request to Dispense with Production of Instrument

General Law

Where a Certificate of Title has not been cancelled by the Registrar and it has been lost or destroyed and is required to be lodged with the Registrar (e.g. for cancellation to allow registration of an instrument), an application must be made to the Registrar, pursuant to s 164 of the Land Title Act 1994, to dispense with production of the Certificate of Title. The dispensation with production of the Certificate of Title will be noted in the Register.

Practice

Advertising

Generally, the Registrar requires public notice to be given for applications to dispense with production of a Certificate of Title in the following manner, as determined by the Registrar from the evidence deposited:

- in the Courier-Mail if the land is located within 50 kilometres from the Brisbane GPO; or
- in a paper that is acceptable to the Registrar and is circulated in the vicinity of the land, if it is more than 50 kilometres from the Brisbane GPO.

However, for applications to dispense where:

(a) there are two or more proprietors; or

(b) there is only one proprietor and a corroborative statutory declaration from another person is produced,

and the parties declare that, from their own personal knowledge, they can substantiate that:

1. the Certificate of Title was definitely destroyed, no public notice is required; or

2. the Certificate of Title was definitely either lost or stolen at a particular location, public notice is required once only in a newspaper that is acceptable to the Registrar and is circulated in the vicinity where the Certificate of Title was lost or stolen.

Seven clear days after the date of publication of the notice, the dispense may be registered if no caveat (pursuant to s 122 of the Land Title Act 1994 has been lodged e.g. if the advertisement is placed in the newspaper on Wednesday 7th March and given to our office the following day, it would not be able to be registered until Thursday 15th March at the earliest. Where the eighth day is on a weekend or a public holiday, it will be registered on the next business day.

For more information about advertising see [60-0830].
Supporting Statutory Declaration

There are a wide variety of circumstances involved in Form 17 – Requests. The Registrar requires the best evidence available to ensure the Certificate of Title is not able to be located before registering the Request, but has a discretionary power to determine what is acceptable evidence for each individual case. Generally, statutory declarations are required from:

- the registered owner; and

- every person who had custody of the Certificate of Title:
  - since it was last delivered from the Titles Registry; or
  - until and including when it was in the custody of a reliable source (for example, a solicitor’s firm or a financial institution).

The registered owner’s statutory declaration must cover the following points (as applicable):

- the date on which and to whom the Certificate of Title was last delivered from the Titles Registry;
- the history of its custody since delivery from the Titles Registry;
- the point at, and the circumstances through, which the Certificate of Title was lost, mislaid or destroyed;
- the efforts made by the applicant to search for the Certificate of Title if it is lost or mislaid;
- a statement that the search has been conducted in all likely and unlikely places around their home and any other places where valuables are kept;
- they are familiar with the appearance of the missing Certificate of Title; and
- any documentary proof of such searches, such as copies of letters received from banks, solicitors, etc, confirming that the Certificate of Title is not held by them.

Note: If the sole registered owner is deceased and the statutory declaration is being made by their personal representatives, a transmission by death application must be lodged simultaneously when the Form 17 – Request to Dispense with Production of Instrument is lodged.

A supporting statutory declaration may also be required if there is only one proprietor who is unable to declare that they are familiar with the appearance of the missing Certificate of Title. A corroborative statutory declaration should be obtained from at least one person, such as a relative or neighbour who assisted the applicant to search their home and any other places where valuable records are kept and made enquiries on the proprietor’s behalf.

Each declarant other than the registered owner must set out the details within their knowledge, of the movement and custody of the Certificate of Title.

If all the persons who have had custody of the Certificate of Title since it was last delivered from the Titles Registry are not available or able to provide statutory declarations, statutory declarations should be obtained from those who are available and a further statutory declaration made by someone appropriate in the specific circumstances stating who the others are and why statutory declarations cannot be obtained from them.
Statutory declarations prepared on forms purchased from stationers or prepared by word-
processor, as well as on Form 20, are acceptable.

**Loss by a Third Party**

If a registered owner deposits a Certificate of Title with another party (e.g., bank, solicitor, etc.) as
or for security and the Certificate of Title is lost, destroyed or stolen while in the possession of
that party, the following documentation is required:

- a Form 17 – Request to Dispense with Production of Instrument, together with:
  - a statutory declaration by the registered owner regarding the deposit of the
    Certificate of Title with the third party (amend Item 5(b)); and
  - a supporting statutory declaration by the party with whom the Certificate of
    Title was deposited detailing the circumstances of the loss, destruction or theft.

**Original Certificate of Title Located**

If a Certificate of Title is found after production has been dispensed with, it should be produced
to the Titles Registry for cancellation and destruction.

**Forms**

**General Guide to Completion of Forms**

For general requirements for completion of forms see part 59 – Forms.
1. Type of missing document (certificate of title)

CERTIFICATE OF TITLE 16999033

2. Lot on Plan Description

LOT 34 ON RP64731

3. Registered Owner/Lessee

BERTRAM JAMES DUCAL and ELEANOR ELIZABETH DUCAL

4. Applicant

BERTRAM JAMES DUCAL and ELEANOR ELIZABETH DUCAL

5. Request by Applicant

a) The applicant makes this request as REGISTERED OWNER ................................................................. (eg registered owner etc)

b) The missing certificate of title is not deposited with any person as security for any purpose or for safe custody.

c) The facts and circumstances of the loss or destruction of the missing certificate of title and efforts to locate it are set out in the attached declaration.

d) It is requested that:

the production of the missing certificate of title be dispensed with for the purpose of

* cancellation

* registering transfer 711145698 .........................................................................................................................

(insert type of instrument to be registered)

*delete if not applicable

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

H Nelson
..........................................................................................................................signature

HORATIO LAWD NELSON ..................................................................full name

SOLICITOR ...............................................................................qualification 20/9/2007

Witnessing Officer

Execution Date Applicant’s Signature

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)
Title Reference [16999033]

(The facts as to the missing Certificate of Title are declared here in a statutory declaration)
Guide to Completion of Form 17

Item 1

Insert the nature of and the reference to missing Certificate of Title.

Item 2

Description of lot should be ‘Lot… on Plan…’.

Item 3

Insert full name (as registered) of the registered owner/s.

Item 4

Insert full name of applicant.

Item 5

Complete Item 5(a) with the appropriate information.

Select the appropriate request at Item 5(d) and delete the other. If the second alternative is selected, insert the type of instrument to be registered and the dealing number if already lodged.

Execute as required.

Duty

There is no duty notation required on a Form 17 – Request to dispense with production of instrument.

Fees

Fees payable to the Titles Registry are subject to an annual review.

See the current Land Title Regulation 2005 – Schedule 2, item numbers 2(h) and 2(m).

Cross References and Further Reading

See also s 154(1) of the Land Title Act 1994 – Return of Cancelled Instrument.
Notes in text

Note¹ – This part does not apply to water allocations.

Note² – This part does not apply to State land.