

## 2Part 23 – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice

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## **<sup>2</sup>Part 23 – Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice**

### **General Law**

[23-0000]

Part 7A of the *Land Title Act 1994* creates a procedure for deposit in the registry of a priority notice. A priority notice seeks to reserve the priority of instruments that are to be lodged that affect a lot or an interest in a lot.

The most common use of a priority notice is to reserve priority for a transfer and/or a mortgage intended to be lodged in relation to a lot over any instruments not specified in the priority notice lodged in relation to the same lot during the currency of the priority notice.

A priority notice, once entered, alerts all interested parties who perform a title search to the fact that lodgement of the instrument(s) listed in the notice is intended.

### **Legislation**

[23-1000]

#### **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.

### **Practice**

#### **Requirements of Priority Notice**

[23-2000]

A priority notice must:

- be prepared using a *Priority Notice Form*;
- state the name of the person who is or will be a party to an instrument that is to be lodged and will affect the lot or an interest in the lot (the *applicant*);
- be signed by or for the *applicant*; and

- sufficiently describe:
  - the lot(s)/water allocation(s) affected by the instrument which the *applicant* is or will be a party to; and
  - each instrument to be lodged to which the notice relates (the *Transaction Instruments*) including the instrument which the *applicant* is or will be a party to; and
- state the order in which the *Transaction Instruments* are intended to be lodged.

## When Priority Notice can be deposited

[23-2010]

A priority notice may only be deposited in the circumstances set out below.

- (1) In relation to freehold land.
- (2) In relation to a water allocation.
- (3) By or for an *applicant* (a person who is or will be a party to an instrument that is to be lodged that will affect the lot(s)/water allocation(s) or an interest in the lot(s)/water allocation(s)).
- (4) For *Transaction Instruments* including the instrument the *applicant* is or will be a party to.

## Operation and Effect of Priority Notice

[23-2020]

A priority notice operates from the time of deposit until the earlier of:

- the time when the priority notice lapses which is:
  - the time when all the *Transaction Instruments* specified in the notice have been registered in the order stated in the notice (see *Priority Notice Form Transaction Instruments Panel*); or
  - if an extension request has **not** been deposited: the day that is 60 days after the notice was deposited; or
  - if an extension request (*Extension of Priority Notice Form*) has been deposited: the day that is 90 days after the notice was deposited; or
- the time when the priority notice is:
  - withdrawn by the *applicant* (*Withdrawal of Priority Notice Form*); or
  - removed on order of the Supreme Court; or
  - cancelled by the Registrar.

While current, a priority notice prevents registration of any instruments affecting the lot/water allocation or an interest in the lot/water allocation other than:

- an instrument the lodgement of which the *applicant* has consented to. The consent must be in a *Form 18 – General Consent*, deposited with the instrument;

- an instrument of transfer or release of mortgage executed by a mortgagee whose interest was registered before the notice was deposited;
- an instrument lodged before the priority notice was deposited;
- a **Transaction Instrument** if it is lodged in the order stated in the priority notice (see *Priority Notice Form Transaction Instruments Panel*);
- a caveat;
- another instrument that, if registered, would not affect an interest the subject of the notice; and
- an instrument listed as a **Transaction Instrument** in an earlier priority notice if the earlier priority notice has not lapsed or been withdrawn, removed or cancelled.

## Extension of Priority Notice

[23-2025]

The 60 day currency period of a priority notice can be extended by 30 days (to a currency period of 90 days) by depositing an extension request to extend the notice. Only one extension request may be deposited for a priority notice.

An extension request must:

- be prepared using an *Extension of Priority Notice Form*;
- be signed by or for the **applicant** for whom the priority notice was deposited; and
- be deposited while the priority notice is current.

## Lodged Instruments that are not **Transaction Instruments**

[23-2030]

If an instrument is lodged ('A') and it is prevented from being registered by the earlier deposit of a priority notice, it will be requisitioned, advising that a priority notice has been deposited.

If the **Transaction Instruments** referred to in the priority notice (see Priority Notice Form *Transaction Instruments Panel*) are subsequently lodged within the currency period, the first instrument (A) will be requisitioned for withdrawal within 14 days. If the first instrument (A) is not withdrawn within that 14 day period, it will be withdrawn by the Registrar (s. 147 of the *Land Title Act 1994*). In a situation where the first instrument (A) would be capable of registration after the **Transaction Instruments** referred to in the priority notice are registered, it will be withdrawn and re-entered to follow them.

The result is that competing instruments are taken to have been lodged after the **Transaction Instruments** detailed in the *Transaction Instruments Panel* whilst the notice is still current.

For example:

- (1) A Priority Notice is deposited on 20 February and details a Transfer between the registered owner (Atkins) and Brown (the Purchaser/**applicant**) as a **Transaction Instrument** in the Priority Notice Form *Transaction Instruments Panel*. It is allocated a dealing number as an administrative advice and recorded in the relevant register.
- (2) A Transfer between the registered owner (Atkins) and Johns (a competing instrument not listed as a **Transaction Instrument** in the *Transaction Instruments Panel* in the priority notice) is lodged on 3 March (i.e. during the 60 day currency period of the

priority notice), allocated the dealing number of XXX099093, yet prevented from being registered by the priority notice.

- (3) The transfer from Atkins to Brown (the **Transaction Instrument** specified in the *Transaction Instruments Panel* in the priority notice) is lodged on 14 April (i.e. during the 60 day currency period of the priority notice) and allocated dealing number XXX768952.

In accordance with Part 7A of the Land Title Act, the transfer from Atkins to Brown (the **Transaction Instrument** specified in the *Transaction Instruments Panel* in the priority notice) must register first and the transfer between Atkins and Johns will be taken to have been lodged immediately after the Transfer from Atkins to Brown (s. 148 of the Land Title Act).

To give effect to section 148(1) of the Land Title Act the Registrar is empowered (under s. 147(1) of the Land Title Act) to withdraw the Transfer from Atkins to Johns.

However, prior to that withdrawal, the Registrar is required to notify the person who lodged the transfer of the intended withdrawal 14 days prior to the action (s. 147(2) of the Land Title Act).

After withdrawal, the withdrawn instrument will be considered so as to determine whether it would be capable of registration after the **Transaction Instruments** detailed in the *Transaction Instruments Panel* in the priority notice have registered. If it is, it will be re-entered to follow them and taken to have been lodged immediately after the lodgement of the **Transaction Instruments** detailed in the *Transaction Instruments Panel* in the priority notice. (s. 148 of the Land Title Act). In the above scenario the transfer from Atkins to Johns cannot be registered and the transfer will be rejected.

## Recording Priority Notice

[23-2040]

A priority notice will be entered into the Automated Titles System (ATS) as an administrative advice.

A priority notice notation will appear on a title search from the time of its deposit with a status of 'current' for 60 days (or 90 days if an extension request has been deposited) unless all of the **Transaction Instruments** specified in the notice are lodged or the notice is withdrawn, removed or cancelled. A lapsed priority notice may appear on a title search with a status of 'current' for up to a month following its lapsing until it is automatically removed from the title. This assists registry staff administering provisions of Part 7A of the Land Title Act.

## Withdrawing Priority Notice

[23-2050]

A priority notice may be withdrawn by depositing a request to withdraw the notice.

The request must:

- be prepared using a *Withdrawal of Priority Notice Form* (the approved form); and
- be signed by or for the **applicant** for whom the priority notice was deposited.

## Removing Priority Notice

[23-2060]

If the Supreme Court makes an order to remove a priority notice under s. 144 of the *Land Title Act 1994*, that order must be lodged in the registry with a *Form 14 – General Request* that the priority notice be removed. This Form 14 will attract normal lodgement fees. The **applicant** does not have to be notified of this order or of an application made to the Supreme Court for the order.

## Cancelling Priority Notice

[23-2070]

The Registrar may cancel a priority notice if a *Form 14 – General Request* to cancel the notice is deposited outlining the basis for cancellation and the Registrar is satisfied that it is unlikely the ***Transaction Instruments*** listed in the *Transaction Instruments Panel* in the notice will be lodged before the notice lapses (s. 145 of the *Land Title Act 1994*). The *Form 14 – General Request* must be accompanied by a *Form 20 – Declaration* supporting the cancellation of the priority notice and any relevant documentary evidence. For information about depositing supporting documentation see ¶[60-1030]. Normal lodgement fees apply.

Before cancelling a priority notice under s. 145 of the Land Title Act, the Registrar must give written notice to the ***applicant*** of the Registrar’s intention to cancel the priority notice at least seven days prior to cancelling the priority notice.

Notice of the Registrar’s intention to cancel a priority notice required to be given under s. 145 of the *Land Title Act 1994* will be properly served if left at or sent to the address stated in the *Lodger Details Panel* for the person who deposited the notice (the lodger).

## Minor Corrections

[23-2080]

The Registrar may make a minor correction to a priority notice if a written request is received and the Registrar is satisfied that the correction is minor (s. 149 *Land Title Act 1994*).

The written request must be:

- in the form of a letter or e-mail addressed to the Registrar; and
- must be sent by or on behalf of the ***applicant*** for whom the priority notice was deposited.

Minor corrections would include incorrect spelling of names. However, changes of names, details of ***Transaction Instruments*** and lots/water allocations are not considered minor corrections. For example a minor correction might be the incorrect spelling of ‘Jon’ rather than ‘John’ but would not include the name ‘James’ rather than ‘John’.

## Forms

### General Guide to Completion of Forms

[23-4000]

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.

**Lodger Details**

Lodger Code  
 Name SMITH & HAYES  
 Address 10 MARY STREET BRISBANE  
 QLD 4000  
 Lodger Box 123  
 Phone (07) 3227 5055  
 Email info@smithhayes.com.au  
 Reference SMITH:ABC

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 MUST NOT BE USED**

**PRIORITY NOTICE**

**Jurisdiction** QUEENSLAND

**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

<b>Title Reference</b>	<b>Lot on Plan Description</b>
16172222	LOT 2 ON RP3467

**Applicant**  
 Name JOHN THOMAS CLARE

**Transaction Instruments**

Order

**Document Type** RELEASE OF MORTGAGE  
Dealing No. MORTGAGE NO. 714818456  
Title Reference 16172222

**Document Type** TRANSFER  
Party Receiving JOHN THOMAS CLARE  
Title Reference 16172222

**Document Type** MORTGAGE  
Party Receiving SUNPAC FINANCE PTY LTD  
Title Reference 16172222

The recording of this Priority Notice is requested.

**Applicant Execution**

Executed on behalf of    JOHN THOMAS CLARE

Signer Name                    PETER PAUL JAMES

Signer Role                    SOLICITOR

Signature                      *P P James*

Execution Date                10 / 10 / 2017

SAMPLE

**Lodger Details**

Lodger Code  
 Name BIG CITY LAW  
 Address 100 QUEEN STREET  
 BRISBANE QLD 4000  
 Lodger Box 321  
 Phone (07) 3220 1000  
 Email info@bigcity.com.au  
 Reference DOBBY:ABC

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**PRIORITY NOTICE**

**Jurisdiction** QUEENSLAND

**Privacy Collection Statement**

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<b>Title Reference</b>	<b>Lot on Plan Description</b>
11223078	LOT 1 ON SP102568

**Applicant**

Name BARGAIN BUYS PTY LTD  
 ACN 321654987

**Transaction Instruments**

Order

<b>Document Type</b>	LEASE
<u>Party Receiving</u>	BARGAIN BUYS PTY LTD
<u>Title Reference</u>	11223078
Part Land?	Y
Part Description	LEASE A ON SP345684 IN LOT 1 ON SP102568

The recording of this Priority Notice is requested.

**Applicant Execution**

Executed on behalf of BARGAIN BUYS PTY LTD

Signer Name HAROLD ARTHUR JAMES

Signer Role SOLICITOR

Signature H A James

Execution Date 10 / 10 / 2017

## General Guide to Completion of *Priority Notice Form*

For more detailed instructions on the completion of the *Priority Notice Form* Panels and how to add or delete Fields within the Panels in Microsoft Word – refer to the *Guide to completion – Priority Notice Form* available from the Titles Registry forms page.

### Lodger Details

[23-4010]

Complete with the Lodger Details.

The combination of details must contain the minimum information necessary for positive identification and contact by mail, electronic mail and telephone.

If the Lodger Code Field is completed, there is no need to complete the Name Field, Address Field, Lodger Box Field, Phone Field or Email Field.

If the Lodger Code Field is not completed, the following fields should be completed:

1. The Name Field with the name of the lodger;
2. The Address Field with the postal address of the lodger;
3. The Lodger Box Field with the lodger box reference (if applicable);
4. The Phone Field with the telephone number of the lodger;
5. The Email Field with the email address of the lodger.

The Reference Field can be completed with the lodger's internal reference for the matter. This data is not required or used by the Titles Registry.

### Jurisdiction

[23-4020]

The Jurisdiction must always state QUEENSLAND.

### Title Reference/Lot on Plan Description

[23-4030]

#### <sup>1</sup>Freehold Land Description

Complete with the Title Reference(s) over which the priority notice will be deposited and insert all of the Lot on Plan Descriptions for each Title Reference. The Lot on Plan Description 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.

Example:

Title Reference	Lot on Plan Description
11223078	Lot 27 on RP204939
52223988	Lot 1 on SP123456 Lot 2 on SP123456

#### <sup>3</sup>Water Allocation Description

Complete with the Title Reference(s) over which the priority notice will be deposited and insert the relevant description for each Water Allocation. 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.

Example:

Title Reference	Lot on Plan Description
46012345	WA 27 ON AP7900

## Applicant

[23-4040]

For an individual – insert the full legal name of the individual in the Name Field. The ACN Field and ARBN Field can be left blank or deleted.

For an organisation – insert the legal name of the organisation in the Name Field. For a company or entity registered under the *Corporations Act 2001* (Cth) the legal name is the name that is shown on an ASIC search in the Current Organisation Details:

### Current Company Extract

ASIC Company Pty Ltd  
ACN 000 000 123

Organisation Details	Document Number
<b>Current Organisation Details</b>	
Name: ASIC Company Pty Ltd	000 000 123
ACN: 000 000 123	
ABN: 11 000 000 123	
Registered in: Victoria	
Registration date: 01/01/2011	
Next review date: 01/01/2011	
Name start date: 01/01/2011	
Previous state number: BN0000123	
Status: Registered	
Company type: Australian proprietary company	
Class: Limited by shares	
Subclass: Proprietary company	

If the organisation has an ACN or ARBN this must be inserted in either the ACN Field or ARBN Field as applicable. If an ACN Field or ARBN Field is not required it can be left blank or deleted.

## Transaction Instruments

[23-4050]

List the *Transaction Instruments* that will be lodged in the order in which they will be lodged.

## Applicant Execution

[23-4070]

The form must be executed by the Applicant(s) or a legal practitioner on behalf of the Applicant(s). Refer to the Guide to completion for execution examples.

For a company *applicant* executing the Priority Notice, the ACN or ARBN does not need to be included in the company name in the Applicant Execution Panel if it has been included in the Applicant Panel.

Electronic Form – The requirements for the execution and certification for the Applicant are contained in the Participation Rules (Queensland) for electronic conveyancing.

**Lodger Details**

Lodger Code  
 Name SMITH & HAYES  
 Address 10 MARY STREET BRISBANE  
 QLD 4000  
 Lodger Box 123  
 Phone (07) 3227 5055  
 Email info@smithhayes.com.au  
 Reference SMITH:ABC

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**EXTENSION OF PRIORITY NOTICE**

**Jurisdiction** QUEENSLAND

**Privacy Collection Statement**

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<b>Title Reference</b>	<b>Lot on Plan Description</b>
16172222	LOT 2 ON RP3467

**Priority Notice Number** 712345678

The extension of this Priority Notice is requested.

**Applicant Execution**

Executed on behalf of	JOHN THOMAS CLARE
Signer Name	PETER PAUL JAMES
Signer Role	SOLICITOR
Signature	<i>P P James</i>
Execution Date	10 / 10 / 2017

## Guide to Completion of Extension of Priority Notice Form

### Lodger Details

[23-5010]

Complete with the Lodger Details.

### Jurisdiction

[23-5020]

The Jurisdiction must always state QUEENSLAND.

### Title Reference/Lot on Plan Description

[23-5030]

Complete with the Title Reference(s) over which the priority notice was deposited and insert all of the Lot on Plan Descriptions or Water Allocation description for each Title Reference.

### Priority Notice Number

[23-5040]

Insert the dealing number of the Priority Notice to be extended.

### Applicant Execution

[23-5070]

The form must be executed by the Applicant(s) or a legal practitioner on behalf of the Applicant(s).

Electronic Form – The requirements for the execution and certification for the Applicant are contained in the Participation Rules (Queensland) for electronic conveyancing.

**Lodger Details**

Lodger Code  
 Name SMITH & HAYES  
 Address 10 MARY STREET BRISBANE  
 QLD 4000  
 Lodger Box 123  
 Phone (07) 3227 5055  
 Email info@smithhayes.com.au  
 Reference SMITH:ABC

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**WITHDRAWAL OF PRIORITY NOTICE**

**Jurisdiction** QUEENSLAND

**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Title Reference	Lot on Plan Description
16172222	LOT 2 ON RP3467

**Priority Notice Number** 712345678

The withdrawal of this Priority Notice is requested.

**Applicant Execution**

Executed on behalf of	JOHN THOMAS CLARE
Signer Name	PETER PAUL JAMES
Signer Role	SOLICITOR
Signature	<i>P P James</i>
Execution Date	10 / 10 / 2017

## Guide to Completion of Withdrawal of Priority Notice Form

### Lodger Details

[23-6010]

Complete with the Lodger Details.

### Jurisdiction

[23-6020]

The Jurisdiction must always state QUEENSLAND.

### Title Reference/Lot on Plan Description

[23-6030]

Complete with the Title Reference(s) over which the priority notice was deposited and insert all of the Lot on Plan Descriptions or Water Allocation description for each Title Reference.

### Priority Notice Number

[23-6040]

Insert the dealing number of the Priority Notice to be withdrawn.

### Applicant Execution

[23-6070]

The form must be executed by the Applicant(s) or a legal practitioner on behalf of the Applicant(s).

Electronic Form – The requirements for the execution and certification for the Applicant are contained in the Participation Rules (Queensland) for electronic conveyancing.

## Fees

[23-8000]

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

- <sup>1</sup>Land Title Regulation; and
- <sup>3</sup>Water Regulation.

## Cross References and Further Reading

[23-9000]

Part 1 — Transfer

Part 2 — Mortgage (National Mortgage Form)

Part 3 — Release of Mortgage

Part 4 — Request to Record Death

Part 5, 5A, 6 — Transmission Applications

Part 7 — Lease

Part 8 — Surrender of Lease

Part 9 — Easement

Part 10 — Surrender of Easement

Part 14 — General Request

Part 18 — General Consent

Part 49 — Water Allocations

Part 50 — Corporations and Companies

Part 51 — Trusts

## Notes in text

[23-9050]

Note<sup>1</sup> – This numbered section, paragraph or statement does not apply to water allocations.

Note<sup>2</sup> – This part does not apply to State land.

Note<sup>3</sup> – This numbered section, paragraph or statement does not apply to freehold land.