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Part 10 – Surrender of Easement

General Law

In this part, unless otherwise stated, a reference to a lot means:

- a freehold lot;

- land granted in trust under the *Land Act* 1994; or

- non freehold land (including any lease of non-freehold land or sublease of non-freehold land) other than a road;

For surrenders of easement under the provisions of s 90(5) of the *Land Title Act* 1994, the meaning of owner of a lot or lessee of lease means:

- the registered owner of the lot or registered lessee of the lease; or

- if the mortgagee of the registered owner of the lot or registered lessee of the lease is in possession – the mortgagee in possession.

For surrender of easements under the provisions of s 371 of the *Land Act* 1994, the State is taken to be the owner of unallocated State land and reserves (s 371(5) of the *Land Act* 1994).

For surrenders of easement under the provisions of s 371(6) of the *Land Act* 1994, the meaning of owner of land includes:

- a registered owner; or

- a trustee of land granted in trust; or

- a lessee or licensee; or

- a mortgagee in possession.

An easement is wholly or partially extinguished by the registration of a surrender of that easement. Only the owner of the benefited lot has the power to execute a surrender of that easement. The owner of the burdened lot cannot, alone, effect the surrender of an easement. However, the owners of the benefited and burdened lots, acting together, can surrender an easement.

Lodgement fees are payable and a duty notation is required.

Practice

Surrender Executed by Owner of Dominant Tenement and Servient Tenement

The owners of both the benefited (dominant tenement) and burdened (servient tenement) lots may together execute the Form 10 – Surrender of Easement.

Similarly, if either the dominant or servient tenements are a registered freehold lease, the lessee may execute the Form 10 – Surrender of Easement with the other party.
The Certificates of Title (if issued) for both the dominant and servient lots must be deposited for cancellation or the production of the Certificate of Title be dispensed with by Form 17 – Request to Dispense with Production of Instrument. **Note:** The Certificate of Title for the lot is not required to be deposited if either tenement is a registered freehold lease.

**Surrender Executed only by Owner of Dominant Tenement**

A Form 10 – Surrender of Easement executed only by the owner of the lot that benefits from the easement (the dominant tenement) will be effective to surrender the easement.

Similarly, if the dominant tenement as identified at Item 3 of the Form 9 – Easement is a registered freehold lease, the lessee of the lease may alone execute the Form 10 – Surrender of Easement.

Only the Certificate of Title (if issued) for the dominant tenement needs to be deposited for cancellation. **Note:** The Certificate of Title for the lot is not required to be deposited if the dominant tenement is a registered freehold lease.

**Surrender of Public Utility Easement**

In relation to public utility easements (easements in gross), the public utility provider must execute the surrender.

As there is no lot/s for the dominant tenement, Certificate/s of Title will not exist or need to be deposited. However, the public utility provider must arrange deposit of the Certificate/s of Title (if issued) for the servient tenement/s or dispense with the production. Lodgement fees are applicable to the application to dispense however advertising requirements are waived.

**Partial Surrender of Easement**

If the easement is to be only partly surrendered, the surrendered portion must be capable of precise definition. If the surrendered portion is not capable of precise definition, the area to be surrendered, or the area to remain in the easement, must be defined by a plan of survey drawn in accordance with direction 6 of the Registrar of Titles Directions for the Preparation of Plans. Alternatively the easement should be fully surrendered and a new easement created.

**Consent of Mortgagee or Lessee to a Full or Partial Surrender of an Easement**

The consent, in Form 18 – General Consent, of any registered mortgagees of the benefited lot (the dominant tenement) must also be lodged. Further, the consent of any lessee that receives a benefit from the easement is also required (ss 90(3) and (4) of the **Land Title Act 1994**).

The consent of all persons who have a registered interest in the land benefited by the easement ss 371(3) and (4) of the **Land Act 1994** is also required.

Where a mortgagee has ‘consented’ to the surrender by lodging the Certificate of Title for cancellation, the Form 18 – General Consent is not required.

Similarly, if the dominant tenement as identified at Item 3 of the Form 9 – Easement is a registered freehold lease, the consent of any registered mortgagee or sublessee of the lease who receive the benefit of the easement must also be lodged.
Surrender of Easement Affecting Common Property for a Community Titles Scheme

When the body corporate executes a surrender of an easement either as a grantee or as a grantor a copy of the resolution from the relevant body corporate, in accordance with the scheme’s regulation module, must be deposited with the instrument of surrender. Where the surrender has been signed by both the grantee and the grantor a resolution is required from each body corporate.

Forms

General Guide to Completion of Forms

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

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1. Dealing number of easement being surrendered

    Dealing number: 700001245

2. Description of Easement/Lot on Plan

   Servient Tenement (burdened land)
   EASEMENT G ON RP176953

   * Dominant Tenement (benefited land)
   LOT 4 ON RP176953

3. Grantor

   PETER ROSS THOMPSON

4. Grantee

   MICHAEL ALLEN MARSDEN
   JOSEPHINE ELAINE MARSDEN

5. Surrender/Execution

*Full Surrender
The Grantee surrenders the easement in item 1 so that the easement is extinguished.

*Partial Surrender
The Grantee surrenders the easement in item 1 so that the easement is extinguished so far as the easement relates to:
* part of the Dominant Tenement; or
* part of the Servient Tenement.
* delete if not applicable

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

G I Constantus
.......................................................signature
GUSTAVE IGOR CONSTANTUS
.......................................................full name
SOLICITOR
.......................................................qualification
4/12/2007
Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

J E Marsden

P R Thompson

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)
Guide to Completion of Form 10

Item 1

Insert the dealing number of the easement being surrendered (eg 602148090). If the easement is one that was registered while the land was State leasehold land, it may have two numbers:

• the dealing number given when the land was freeholded; and
• the original dealing number when first registered, which should be shown in brackets.

Item 2

Insert the description of the easement, for the burdened lot/s or freehold lease e.g. Easement [identifier] on [plan reference], and the Lot [number] on [plan reference] for the benefited lot or lot the freehold lease is registered over. The county, parish and title reference for both tenements must also be inserted.

In the case of an easement in gross, the section of Item 2 relating to the benefited lot should be marked “Not applicable”.

Item 3

Insert the full names of the grantor/s. The current registered owner of the burdened lot or lessee of the freehold lease may not necessarily be the same as the original grantor. The relevant name to be inserted is that of the current registered owner or lessee of the freehold lease.

Item 4

Insert the full names of the grantee/s. The current registered owner of the benefited lot or lessee of the freehold lease may not necessarily be the person who was the original grantee of the easement. The relevant name to be inserted is that of the current registered owner or the lessee of the lease if the dominant tenement is a registered lease.

Item 5

Both parties, grantor and grantee, or alternatively, only the grantee alone (ss 90(2)(b) and (c) of the Land Title Act 1994 or ss 371(2)(b) and (c) of the Land Act 1994) complete where indicated.

At Item 5, there are paragraphs applicable to a full and to a partial surrender. When completing the Form, the paragraph not applicable to the situation is to be ruled through.

The grantee alone may execute, or both the grantor and the grantee may execute, the surrender.

However, the grantor alone may not execute a surrender.

See also part 60 – Miscellaneous, esp ¶[60-0900] ff.
Case Law

Nil.

Fees

Fees payable to the land registry are subject to an annual review. See the current:

- *Land Title Regulation 2005* – Schedule 2, item numbers 2(h) and 2(m); and
- *Land Regulation 2009* – Schedule 11, item numbers 2(e) and 2(f).

Cross References and Further Reading

Part 9 – Easement

Part 60 – Miscellaneous, ¶[60-0900] ff

Bradbrook and Neave, *Easements and Restrictive Covenants*, Butterworths, 1986

Notes in text

Note¹ – This part 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.