

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.

²The 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* 1994.

The registration of an instrument of transfer for an interest in a water allocation to the extent provided for in s 151(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* 1994. However, on registration of the transfer there are no provisions for the protection of indefeasibility of title.

Legislation

[1-1000]

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

Under the provisions of ss 150(1) and 151 of the *Water Act* 2000, subject to the exceptions provided in ss 150(2), 151(1) and (5) of the *Water Act* 2000, the *Land Title Act* 1994 applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act* 2000 an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act* 1994 and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act* 1994:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 part 4 Division 6 of the *Water Act* 2000; 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) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

Practice

Transfer of Freehold and Water Allocation Title

General

[1-2000]

The following is a general guide to completing a Form 1 – Transfer under the *Land Title Act* 1994 and *Water Act* 2000 to enable the transfer of an interest in freehold title 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].

Item 1 The Interest being Transferred

[1-2010]

Generally, the interest being transferred is the fee simple or water allocation (or a combination).

Item 2 Lot on Plan Description

[1-2020]

²Freehold 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). The area of the lot/s is not shown.

The entire panel of Item 2 must be completed. All information needed to complete Item 2 will appear on a search of the title.

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on RP 204939	Stanley	South Brisbane	11223078

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.

All information needed to complete Item 2 will appear on a search of the water allocation title.

eg	Lot on Plan Description	County	Parish	Title reference
	WA 27 on AP 7900			46012345

Item 3 The 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.

²If 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] eg ‘Body corporate for Seaview community titles scheme 1234’.

If a transferor holds the property as trustee or personal representative, then this must be stated, eg ‘[name of transferor] as Trustee’ or ‘[name of transferor] as personal representative’.

There is no authority for a minor (a person who has not yet reached 18 years of age) to execute a transfer. 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 1994*).

If a registered owner 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 of lot or water allocation] contained in title reference 16543002.
- (2) I am the son of John Anthony Smith, the remaining registered owner of the above land 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 of lot or water allocation] contained in title reference 16543002. My client is the son of John Anthony Smith, the remaining registered owner of the above land, not one and the same person as him. Please register both names on the title as registered owners.’

If a transferor is registered as an owner of a lot in a name that has subsequently been changed either by marriage, deed poll or change of name of company then the name should be shown as [changed name] formerly [registered name]. Relevant documentary evidence (eg 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 [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.

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

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

²For 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 (see the *Land Title Regulation 2005* – Schedule 2).

If the basis of the transfer is other than monetary, this should be fully expressed, eg ‘pursuant to the terms of will dated [date] deposited with Instrument No [number]’ or ‘pursuant to deed of retirement and appointment dated [date]’.

The consideration may be expressed in part as being, eg ‘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.

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 may be required to be deposited to assess any additional lodgement fees bases on the consideration.

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’.

A transfer for an interest, other than to a trustee or of State land, where the consideration is stated as ‘\$1.00’ must be accompanied by statutory declaration from the transferee, or a letter from the solicitor for the transferee stating that this was the true consideration paid. See [51-0245] for information about a trustee transferring trust property pursuant to a gift or a nominal amount.

If any evidence required has been previously deposited there is no need to deposit it a second time. The evidence may be exhibited against the transfer by including the reference to the prior instrument.

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 1974*). Such a transfer is acceptable for registration without further evidence provided the full terms of the oral agreement are set out, eg ‘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 Plan 456789’.

Item 5 Transferee

[1-2050]

The full name/s of the transferee/s must be inserted.

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. Section 56(2) of the *Land Title Act 1994* 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 transferee or the solicitor for the transferee stating the tenancy was intentionally not shown and expects the transferees to be registered as tenants in common.

A corporation may hold land as joint tenants with an individual or another corporation (s 34 of the *Property Law Act* 1974). (For trustees, see ¶[1-23801, ¶[1-2390] and ¶[1-2400] to ¶[1-2430]). If they are tenants in common, the interests held by the transferees must be specified in fractions, eg $\frac{1}{4}$ and $\frac{3}{4}$.

If the transferee is a minor their date of birth must be shown.

Generally, while full names must be inserted, if a person's legal name is described, for example, as John J. Brown, where the 'J' does not represent a given name, then that is acceptable, upon written confirmation from the solicitor lodging or the party concerned that this is the case.

If the transferee is a corporation registered by the Australian Securities and Investment Commission, either the Australian Company Number, Australian Registered Body Number or the Australian Business 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, eg office copy of certificate of incorporation together with a qualified translation (if required).

²If the transferee is a body corporate constituted under the *Body Corporate and Community Management Act* 1997, then the following words must be inserted: 'Body Corporate for [name of the Body Corporate] community titles scheme [scheme number]' eg 'Body corporate for Seaview community titles scheme 1234'.

²A transfer of land to the State does not attract a lodgement fee (reg 4(3)(a) of the *Land Title Regulation* 2005).

There may be situations where two transferees hold shares in a tenancy in common as joint tenants with one another. For example, Item 5 may be phrased as 'A and B as joint tenants *inter se* and C as tenants in common in equal shares'. Here, A, B and C are tenants in common, but A and B hold their respective shares as joint tenants with one another. For further information, see ¶[1-2260].

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	

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* 1994. 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 60, esp ¶[60-0360], ¶[60-0390] and ¶[60-0900]).

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.

The execution for a minor as transferee must be by his/her legal guardian or the solicitor for the legal guardian, eg 'AB, father and legal guardian of DE' or 'XY, solicitor for AB, father and legal guardian of DE'. The normal witnessing requirements for an individual or a solicitor apply to this type of execution.

For further information on executions see part 60, esp ¶[60-0900].

Lodgement of Transfer

[1-2070]

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

For a fee simple title:

- (1) the Certificate of Title, where one is currently issued;
- (2) a Form 24 – Property Information (Transfer); and
- (3) a Form 25 – Foreign Ownership Information (if applicable).

For a water allocation title:

- (1) a Form 24 – Property Information (Transfer); and
- (2) a Form ROP13 – Notice 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).

Property Information (Transfer)

[1-2080]

A transfer of fee simple, transfer of a lease under the *Southbank Corporations Act* 1989 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 or foreign company as defined in the *Foreign Ownership of Land Register Act* 1988, then a Form 25 must be completed and attached to the Form 24.

For further information relating to Form 25, see part 25.

Transfer to Mortgagee

[1-2100]

If a lot is transferred to the mortgagee 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 1994*, 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 1994*)’; 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 1974*. However, it is important to note that the provisions of the *Family Law Act 1975* (Cth) do not apply to a de facto couple. 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 1974* a copy of the agreement or Court order must be deposited.

Item 4 of the transfer must be completed to indicate that the transfer is pursuant to part 19 of the *Property Law Act 1974* and include details that clearly identify the agreement or order eg. the date the agreement or order was made.

A duty notation is required and lodgement fees are applicable.

Transfer Pursuant to Family Court Order

[1-2110]

Where a transfer is made pursuant to an order of the Family Court, the transfer is registrable without production of the order when the transferee is one of the registered owners and both registered owners 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, eg an office copy of her former marriage certificate if she has adopted her maiden name and/or her current marriage certificate if she has remarried. The marriage certificates must be certified copies 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,

the Family Court order must be produced to establish that it allows the land 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 Family 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 court issued certified (sealed) copy of the order must be deposited with the transfer.

Under s 90(1) of the *Family Law Act 1975* (Cth), an instrument lodged for the purposes of or in accordance with a Family Court order 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 court issued (sealed) copy of the order must be deposited to authenticate that the instruments were included in the Court's order.

The *Family Law Reform Act 1995* (Cth) included provisions for matters under the *Family Law Act 1975* (Cth) to be dealt with by a court exercising jurisdiction under the *Family Law Act 1975* (Cth) in each State after 11 June 1996. If Item 4 of the Form 1 includes a reference to an order made in the [name of the Court] and dated after 11 June 1996 and has a Queensland Duty notation indicating that duty has been assessed under the provisions of the *Family Law Act 1975* it does not attract registry fees.

Any transfer dated after 1 March 2002, with a consideration as being pursuant to an order of a court exercising jurisdiction under the *Family Law Act 1975* (Cth), the duty notation may not indicate that duty has been assessed pursuant to the provisions of the *Family Law Act 1975*.

Therefore, Item 4 of the Form 1 should also include a reference that the transaction is pursuant to the *Family Law Act 1975* eg:

Pursuant to an order dated [date] made in the [name of court] **and pursuant to the *Family Law Act 1975***

for the instrument to be exempted from the payment of lodgement fees.

Transfer pursuant to part VIIIA of the *Family Law Act 1975* (Cth)

[1-2115]

Part VIIIA of the *Family Law Act 1975* provides for parties to enter into a financial agreement before marriage (s 90B), during marriage (s 90C) or after dissolution of a marriage (s 90D). For a financial agreement to be valid it must comply with the provisions set out in part VIIIA of the *Family Law Act 1975*.

Item 4 of the Form 1 must state that the transfer is pursuant to a financial or other agreement executed under the provisions of part VIIIA of the *Family Law Act 1975* and show the date of the agreement. The transfer is exempt from the payment of registry lodgement fees (s 90L of the *Family Law Act 1975*). The transfer must have a Queensland duty notation.

A complete copy of the signed agreement must be deposited with the instrument. If the land 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 land, must also be deposited.

Transfer from the Returned & Services League of Australia (Queensland Branch)

[1-2120]

When land 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*).

Transfer to or from the Queensland Ambulance Services

[1-2130]

Originally, land held on behalf of the Queensland Ambulance Services Board was held by way of a Nomination of Trustees (a form previously used in the Land Registry) to individual named trustees.

Section 31A(7) of the *Hospital Acts* 1936 vested land held in the names of trustees at the time of the passing of the *Hospital Acts Amendment Act* 1962 in the Executive Committee of the Queensland Ambulance Transport Brigade upon the trusts for which such lands were vested in the trustees (s 31A(8)).

Land acquired after the passing of the *Hospital Acts Amendment Act* 1962 was vested in the Executive Committee of the Queensland Ambulance Transport Brigade upon the trusts and for the purposes for which the Ambulance Brigade in question acquired such lands.

Section 3(2)(j) of the *Ambulance Services Act* 1967 provided for land held in the name of the Executive Committee of the Queensland Ambulance Transport Brigade to vest, without fee, in the State Council of the Queensland Ambulance Transport Brigade, as trustee upon the same trusts for which the Executive Committee held those lands and, by s 35(1) of the Act, all later acquired lands were similarly vested in the State Council of the Queensland Ambulance Transport Brigade upon trust for the Committee of the Ambulance Brigade concerned. The latter vesting was by way of a Nomination of Trustees on which the usual fees were payable.

By s 8 of the *Ambulance Services Act Amendment Act* 1985, the body corporate constituted by and under the *Ambulance Services Act* 1967 styled 'the State Council of the Queensland Ambulance Transport Brigade' was preserved, continued in existence and constituted as a body corporate styled the 'Queensland Ambulance Services Board' and, by that name, gained perpetual succession and a common seal.

There are therefore five possible ways in which Queensland Ambulance Service lands could appear on the register:

- (1) under a Transfer to Trustees to named trustees (see paragraph 2 re vesting in the Executive Committee);
- (2) in the name of the Executive Committee of the Queensland Ambulance Transport Brigade as trustee under a Nomination of Trustees;
- (3) in the name of the State Council of the Queensland Ambulance Transport Brigade as trustee under a Nomination of Trustees;
- (4) in the name of Queensland Ambulance Services Board as trustee; and
- (5) in the name of Queensland Ambulance Services Board in its own right.

The *Ambulance Service Act* 1991 consolidated the ownership of Queensland Ambulance Service land. Section 3A defines the Queensland Ambulance Service. The service may delegate its powers under the Act to the Commissioner or an appropriate service officer (s 22(1)). The Commissioner may delegate the commissioner's powers under the Act to an appropriately qualified service officer.

The corporation may not acquire land by purchase, lease or exchange, or dispose of, lease or mortgage land, without the written consent of the Minister (s 3E(3) of the *Ambulance Service Act* 1991).

Any trust property which is vested in the corporation vests on the same trusts applicable immediately before vesting.

Under the *Emergency Services Legislation Amendment Act 2001*, which commenced on 13 November 2001, all the assets, rights and liabilities of the Queensland Ambulance Service vests in the State.

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 lands 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 transfer duty or other fee is payable on any instrument which evidences vesting in the Board.

Definitions

[1-2150]

'*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.

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.

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*.

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

[1-2200]

‘Westpac Banking Corporation, successor to Defence Service Homes Corporation by virtue of s 6B of the *Defence Service Homes Act 1918*.’

¶[1-2210] to ¶[1-2220] deleted

¹Transfer of Part of the Land

[1-2230]

A transfer of one of the lots in a title will operate to create separate indefeasible titles, eg 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 prescribed 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	County	Parish	Title reference
	Lot 13 in SP114549	Canning	Bribie	Part of 11234067

A transfer of one of the lots in a title requires the relevant plan to be checked to establish whether:

- a variation of the local government consent is needed to any conditions that may apply;
- the lot being dealt with is not part of more than one indefeasible title in different ownerships; and
- the parcel being dealt with has a separate surveyed area.

Transfer Involving Tenants in Common

[1-2240]

Transfers involving tenants in common are completed as set out in ¶[1-2000] to ¶[1-2090] with the variations set out below.

¶[1-2250] deleted

Item 5 Transferee

[1-2260]

How the transferees are taking the land must be specified, as this is not already noted in the register. Therefore, the tenancy in common or joint tenancy is noted at Item 5. In addition, it must be specified what ‘share’ each tenant owns. This is represented as a fraction. 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.

Transferee		(include tenancy if more than one)
Given name	Surname	
Terrence James	Brown and	
Maureen Frances	Brown	as joint tenants inter se
Michael Andrew	Brown,	
Peter John	Brown	
Bernard Edward	Brown	as tenants in common in the interests of 3/9, 2/9, 2/9 and 2/9 respectively

A separate title may be created for a tenant in common if any of the tenants in common requests the Registrar to do so. A separate indefeasible title will be created by the Registrar for the remaining tenants in common.

Transfer of a Share or Part of an Interest in Land

[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 amount of the interest must be disclosed as a fraction. This is not to be confused with the transfer of a part of a lot. Transfer of part of the interest in a lot can occur in many circumstances, eg where one person owns all the property 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 a transfer operates to transfer the share shown in item 1, of the lot shown in item 2 to the transferee/s shown in item 5.

Item 1 Interest Being Transferred

[1-2280]

For example:

1. Interest being transferred

‘ $\frac{1}{4}$ interest in fee simple’ or

‘ $\frac{1}{4}$ interest in water allocation’.

Item 2 Lot on Plan Description

[1-2290]

The description of the land is completed in the same manner as a transfer of the whole of an interest. For example:

2. Lot on Plan Description	County	Parish	Title reference
Lot 13 in BUP4549	Canning	Bribie	11234067

Severing a Joint Tenancy under s 59 of the *Land Title Act 1994*

[1-2300]

Under the provisions of s 59 of the *Land Title Act 1994* (the Act) a joint tenant of a fee simple 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 a copy of the instrument has been given to all other joint owners (s 59(2) of the Act). On registration of the transfer, **that** registered owner becomes entitled as tenant in common with the other registered owners (s 59(3) of the Act) in a share proportionate to the number of joint tenants before severance.

That is, s 59 of the Act provides a mechanism for a joint registered owner to terminate the right of survivorship of other registered owners while still retaining their interest in the property. Section 59(1) of the Act is not applicable where all registered owners execute the transfer or where one of the registered owners transfers their interest to a third party.

A transfer pursuant to s 59 of the 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*’.

The share being transferred must be proportionate to the total number of joint tenants i.e. the share in Item 1 would be:

$$\frac{\text{number of severing joint tenants}}{\text{total number of registered joint owners}}$$

(eg where A and B are joint tenants and A intends to sever the joint tenancy, the share would be $\frac{1}{2}$. Where A, B and C are joint tenants and A severs the joint tenancy with B and C, the share being transferred would be $\frac{1}{3}$).

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*.

Section 59(2) of the *Land Title Act 1994* provides that the Registrar must be satisfied that a copy of the instrument has been given to the other registered owners. 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 tenants by hand, mail, courier or other reliable means (for example, by being sent by email and the sender having received a received receipt). Where a copy of the transfer was sent by email the declaration must also state that the email was received, if such was the case.

²Separate 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.

²Section 154 of the *Land Title Act 1994* provides that an instrument may be registered for a lot only if any Certificate of Title is returned for cancellation. Where the Certificate of Title is not able to be deposited by the severing joint tenant/s (eg, because it is being held by an uncooperative registered owner), the declaration by the severing joint tenant/s as to the giving of notice and copies of the transfer must also state:

- (a) that the other joint tenant/s is/are in possession of the Certificate of Title; and
- (b) that a request has been made to the other joint tenant/s to deposit the Certificate of Title with the Registrar for cancellation; and
- (c) that that request has been refused; and
- (d) the name/s and address/es of the other joint tenant/s for service of notice.

²The Registrar will then forward a notice to the other joint tenant/s requiring the Certificate of Title to be deposited for cancellation within seven days from the receipt of the notice in accordance with s 160 of the *Land Title Act* 1994.

²If the Certificate of Title is not deposited within fourteen days (allowing seven days for delivery of the notice) the Registrar will:

- 1 prepare a Request to Dispense of the duplicate certificate of title in accordance with s 154(2)(f) of the *Land Title Act* 1994; and
- 2 register the Transfer and the Request to Dispense and cancel the owner's copy of the certificate of title.

Severing a Joint Tenancy Under Principles of Common Law

[1-2305]

A holder of a fee simple, water allocation or a State lease may sever a joint tenancy by alienation of their interest at common law ie. 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.

²Separate 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 tenants 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, eg 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*, eg. 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 at 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.

Transfer by Way of Gift or for a Nominal Consideration

[1-2310]

See [1-2040]

Transfer with an Intermediate Purchaser

[1-2320]

A transfer with an intermediate purchaser occurs when the purchaser under the contract of sale sells its 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 \$99,000 paid to First Home Estates Pty Ltd by John East and Eileen May East and the sum of \$189,000 paid to John East and Eileen May East by Michael James Smith and Jacqueline Theresa Smith.

Item 6 Execution

Witnessing Officer	Execution Date	Transferor's Signature
	23/10/93	A Ham (Director) Common Seal L Bacon (Secretary)
Witnessing Officer	Execution Date	Transferee's Signature
IA Lee Ian Alistair Lee Lawyer	23/10/93	Michael James Smith and Jacqueline Theresa Smith

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.

²Only the last amount of consideration is taken into account for the purpose of assessing additional fees.

Transfer Duty needs to be noted for each amount of consideration shown in Item 4. There may be a separate notation for each amount of duty paid or a single notation that includes the amount of duty paid for each consideration. The notation may be by an authorised self-assessor or by the Office of State Revenue.

The maximum number of intermediate purchaser transactions allowable is two.

Transfer by Mortgagee Exercising Power of Sale

Mortgagee Exercising Power of Sale

[1-2340]

A transfer by a mortgagee exercising a power of sale occurs where the mortgagor has defaulted under the mortgage, eg by failing to repay principal and interest as specified in the mortgage. The mortgagee is entitled to sell the land to recover the debt.

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 exercising power of sale under Mortgage No [number]

The following must be deposited with the transfer:

- ²(1) Certificate of Title, if issued; and
- (2) 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
- (3) a copy of the notice served upon the mortgagor.

Other Information

[1-2350]

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 1974*;
- the method and date of the service of notice of demand;
- 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 1974* 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 1974*.

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.

A mortgagee exercising power of sale cannot sell to themselves or their spouses without the consent of the mortgagor (*Re White, Ex p Goggs* (1866) 1 QSCR 149).

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 ¶[1-2430]).

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, eg ‘evidence of default deposited with instrument [number]’.

Steps when Dealing with State Leasehold

[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 mortgagee must notify the Minister within 28 days of entering into possession. The lease must be offered for public auction or may be sold by private contract with the written consent of the Minister. The lease must not be offered for sale until at least 28 days after the mortgagee has published a notice that the lease is for sale in a newspaper with the largest circulation in the locality of the lease (s 346 of the *Land Act* 1994).

The transferee must be a person qualified to hold a lease under the *Land Act* 1994.

The following items must be deposited with a transfer by mortgagee of a State lease:

- (a) a declaration in Form 20 that:
 - sets out the facts of the default;
 - indicates that the mortgagee has entered into possession if that is the case;
 - states that notice(s) of default and intention to sell were served on the mortgagor;
 - details the sale of the lease (at least 28 days after advertisement); and
 - advises that default continued to the date of declaration;
- (b) a copy of the sheet of the newspaper containing the notice that the property is for sale;
- (c) Ministerial consent to the transfer, together with any intimations or declarations required as a condition of the consent; and

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 of them.

If the land 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.

The mortgagee must serve the necessary notices on the personal representative of the deceased. If there is no personal representative, service must be in the manner directed by a court order (ss 347(2A) and (3) of the *Property Law Act 1974*).

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.

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 ARBN 007 457 141 as mortgagee exercising power of sale under Mortgage No. [number] pursuant to the provisions of s 45B 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.

Transfer to Trustee with Schedule of Trusts

[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

A schedule of trusts in Form 20 must be annexed to the transfer. 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 land under more than one trust.

For further information see part 51 – Trusts.

Transfer to Trustee with Trust Document 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. All document(s) that specify the details of or 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. Alternatively, in Item 5, **all dealings with which the document(s) 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).

Example 1.

5. Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)	
	Mary	SMITH		Deed of trust deposited with 712223335 and deed of retirement and appointment deposited with 721114444
	John	SMITH	as trustee	

Example 2.

5. Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)	
	Mary	SMITH		Trust documents deposited with 712223335 and 721114444
	John	SMITH	as trustee	

For more information see [51-2043].

Where a transfer to trustee or recording new trustee is registered on title, the endorsement will identify the dealing number where the trust first was registered on the title. For more information see [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). For more information see [51-2050].

Death of Sole Trustee

[1-2410]

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 part 60 – Miscellaneous ¶[60-1030]); and
- (b) a copy of the notice to the Public Trustee.¹

For further information see part 51 – Trusts.

Appointment of New Trustees

[1-2420]

Subject to the *Land Title Act 1994*, trust property vests in new trustees immediately 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 1973*).

New trustees may execute and lodge an instrument with the Registrar to have their appointment recorded in the register (s 15(3) of the *Trusts Act 1973*). 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

[1-2430]

The transfer must show:

- (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 land 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*’.
- (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:

- (a) evidence of the retirement/discharge/death (eg a deed of retirement/ discharge or the certificate of death or grant of representation) of the registered proprietor/trustee;
- (b) the original instrument of appointment of new trustees (not required if the new trustee is the Public Trustee);
- (c) the original trust instrument (not required if the trust is already recorded on title) or partnership evidence; and
- ²(d) if issued, the Certificate of Title or a Form 17 – Request to Dispense with Production of Instrument if unavailable due to loss, etc.

A duty notation is required.

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

Item 3 Transferor

William Alexander Doe

Item 4 Consideration

\$10,000.00

Item 5 Transferee

William Thomas Greaves

Under the *Trusts Act 1973*, a life tenancy is regard as ‘trust property’. The creation of a separate indefeasible title for an interest for life is not permitted.

The life estate is created by a transfer to the life tenant disclosed 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.

When the beneficiary of the life estate shown on the title dies or relinquishes all rights, a Form 14 – General Request to remove the life estate should be lodged. One of following must be deposited with the relevant request:

- (a) a copy of the death certificate; or
- (b) a declaration setting out the details of the relinquishment with the original document attached.

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

Fee simple/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, eg:

‘William Alexander Doe as personal representative’.

Item 4 Consideration

The consideration may be either:

- (1) ‘the terms of the will of [name of deceased] deceased’; or
- (2) 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* 1981, the divorce or annulment would not affect the disposition in the will.

Section 33B of the *Succession Act* 1981 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* 1981 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* 1981 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 *Successions Act* 1981. Therefore a statutory declaration may be 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* 1981 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 (eg marriage).
- In such cases one of the following must be deposited with the transfer:
 - (a) an office 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 land is required to be transferred to those entitled to the estate the land 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* 1981 sets 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* 1981 applies the personal representative should include, in the personal representative's declaration, the basis upon which the entitlement to the land in question was arrived at.

For example:

One spouse and two children survived the deceased and the gross value of the deceased estate at the date of death did not exceed \$150,000. In this case the spouse alone is entitled to the land 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* 1981, 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* 1981 must also be included in the declaration by the personal representative.

¹Transfer to the State

[1-2470]

These actions were previously referred to as transfers or surrenders to ‘the Crown’. Current legislation relevant to these actions (ie 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* 1994 states that ‘the State may, under this Act, acquire, hold and deal with lots’.

Transfers of freehold lots to ‘the State’ (ie 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 (ie 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* 1994 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* 1994. 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* 1994.

- (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* 1994, all interests are extinguished from the day the surrender is registered (s 331(2) of the *Land Act* 1994). However, a public utility easement may still continue over the resulting unallocated State land with the Minister’s written approval (s 372(3) of the *Land Act* 1994).

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 1994*).

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 (r 4(3)(a) of the *Land Title Regulation 2005*).

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 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 Freehold Lease or Water Allocation Lease

[1-2480]

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. 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.

Leases will not be perused by the Registrar for any prohibition against assignment.

²There is no requirement for the Certificate of Title (if it exists) to be deposited with the transfer, unless the lessor consents to the transfer (s 154(2)(a) of the *Land Title Act 1994*).

²However, if the lessor does consent to a transfer of freehold lease, by signing a Form 18 – General Consent, the Certificate of Title (if issued) is required as, by consenting, the lessor becomes a party to the transfer.

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.

²If an existing Certificate of Title for a lot subject to a mortgage is deposited with the transaction for cancellation, the mortgagee of the fee simple will be deemed to have consented to the transfer of the lease.

However, there is no requirement for the consent of the mortgagee to be obtained as a prerequisite to registration.

A lessee cannot transfer his/her interest in part of the leased land to another, even if the lease is of several parcels and the lessee desires to transfer his/her interest in only some of those parcels. A sub-lease is appropriate.

If 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.

A transfer of lease may be capable of registration even if lodged after the initial term. For further information see ¶[7-2190].

A Form 25 – Foreign Ownership Information will be required where the lessee is a foreign person, as defined, under the *Foreign Ownership of Land Register Act 1988*, where the term of the lease and the further term/s available under any option/s total 25 years or more.

²Previously, the lessee's instrument of title was his/her registered copy of the lease and any dealings with the lessee's interest (eg 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. Again, it is prudent to search both the indefeasible title and the registered original lease for any notations of dealings in respect of a 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.

A transfer of a freehold lease or lease of a water allocation are 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.

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 lots in the mortgage 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.

²The Certificate of Title must be lodged if issued.

Confirmation of Identity of Mortgagor by Mortgage Transferee

[1-2495]

Section 11B of the *Land Title Act* 1994 places an onus on **all** mortgage transferees to adopt appropriate *due diligence* practices prior to lodging a transfer of mortgage instrument 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* 1994. A mortgage transferee also has the same record keeping obligations as an original mortgagee. These guidelines are set out in part 2 – Mortgage, esp ¶[2-2005].

Alternatively, if the original mortgagee has complied with s 11A of the *Land Title Act* 1994 and transfers to the mortgage transferee copies of identification documents or the record kept under s 11A(4) of the *Land Title Act* 1994 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* 1994. In some cases, such as where a large number of mortgages are to be transferred, the mortgage transferee may, by written submission to the Registrar, request guidance regarding the ‘reasonable steps’ proposed to be taken by the mortgage transferee.

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* 1974. 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 instrument 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 14 Part 7 Division 3 of the *Local Government Act 1993*

[1-2520]

A transfer of land by a Local Governments is completed as set out in ¶[1-2000] to ¶[1-2090] with the following variations:

Item 3 Transferor

The words ‘pursuant to chapter 14 part 7 division 3 of the *Local Government Act 1993*’ must follow the name of the local government. For example:

‘Council of the Shire of [name of the local government] pursuant to chapter 14 part 7 division 3 of the *Local Government Act 1993*’.

By this division of the *Local Government Act 1993*, a local government, after giving due notice of its intention to do so, may sell by public auction land on which rates are in arrears for three years or more. The local government may execute a transfer in favour of a purchaser and on registration the purchaser becomes the registered owner of an estate in fee simple free of all encumbrances other than State debts (s 1049(3) of the *Local Government Act 1993*).

Section 1057 of the *Local Government Act 1993* preserves the priority of State debts to the extent that any land that is subject to an encumbrance which confers rights on the State or a government entity may only be sold subject to that encumbrance.

Section 3 of the *Local Government Act 1993* defines an encumbrance as:

- (a) a mortgage, lien or charge;
- (b) a caveat (unless it is against the local government process);
- (c) an agreement;
- (d) a judgment, writ or process; and
- (e) an interest adverse to the interest of the land’s owner,

but does not include an easement.

Registration is effected without the production of the Certificate of Title, however, lodgement fees are payable.

If the transfer is of all the land in an indefeasible title, no new indefeasible title will be created. However, if the land is owned by tenants in common with separate titles, or only part of the land in an existing indefeasible title is sold, a new indefeasible title must be created and applicable fees paid.

Execution must be by a designated officer who must show either their official designation (eg, mayor, chief executive officer) or by a delegated officer who must show the word ‘delegate’ after their signature. There is no requirement for the full name of the signatory to be shown.

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 land.

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 notation as to the payment of transfer duty and lodgement fees are payable.

²The Certificate of Title, if issued, must be deposited for cancellation. However, experience has shown that in almost all cases the enforcement debtor will refuse to make the Certificate of Title available. In such a case, the Certificate of Title is dispensed with through lodgement of a Form 17 – Request to Dispense with Production, on the grounds that the Certificate of Title was not able to be exchanged at settlement and no advertising is required.

If the interest being sold is the interest of a joint tenant, the joint tenancy is severed and a tenancy in common is created. 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 and 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 land 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.

However, land 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 1918* (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 land when executed and put into force (s 117(b) of the *Land Title Act 1994*). 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 1994*).

A registered writ of execution binds purchasers, lessees, mortgagees and creditors of the lot if the writ is executed (ie the land 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 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 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 (ie the land 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, 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.

A 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 the land 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 against an interest in land 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.

¹Transfer 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, nor is the Certificate of Title required to be produced.
- (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* 1994 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.

¹Transfer Affected by s 174 of the *Land Act* 1994

[1-2560]

When a deed of grant issues and an indefeasible title is created for a former perpetual lease for agricultural or grazing purposes that is subject to the provisions of s 174 of the *Land Act* 1994, it will carry the following notation:

‘The provisions of s 174 of the *Land Act* 1994 apply to a transfer of the whole or part of the land.’

Evidence of the consent of the Governor in Council to any transfer of such lands to a corporation or to a trustee for a corporation will be required before registration can take place. Acceptable evidence is a copy of the letter to the purchaser or the purchaser’s lawyer, signed by a delegated State land assets management officer, advising that the Governor in Council has approved the transfer of the land.

See also part 21–Plans and Associated Documents, esp ¶[21-2260].

Transfer 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 (²however, 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 under seal in Item 6;
- a Form 20 – Schedule of Trusts may be incorporated in the Transfer or an instrument of trust, must be deposited (see ¶[51-2043]).

²A transfer of a lot that is obviously an access restriction strip on a plan of subdivision approved under the *Integrated Planning Act 1997* 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(1) and Chapter 5 part 5 of the *Integrated Planning Act 1997*).

The Transfer to the local government as trustee is then registered on the title for the lot. Transfer duty and lodgement fees are applicable.

If the land is encumbered (by a mortgage or lease), documentation to remove the encumbrances to the extent they relate to the parcel of land in the transfer should be lodged to precede the Form 1 – Transfer.

²However, land transferred to a local government as trustee may be subject to easements, and these need not be surrendered.

¹Transfer 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 1973* requires the transferor to provide a statutory declaration under the *Oaths Act 1867* that the land is not being transferred to the local government as sole trustee.

The Registrar of Titles 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 Transfer must have a transfer duty notation and it attracts a lodgement fee.

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 be 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’.

The information inserted in Item 4 Consideration of any Form 1 – Transfer of a lot to a local government and the statutory declaration are carefully examined to ensure that the land being transferred to the local government is not park land.

If the lot is to be park land, the following procedure must be followed:

- (a) the subject lot must be identified by describing the nature of the use (ie, ‘park’) on the face of the plan (see ¶[21-2140]); and
- (b) the Form 1 – Transfer must be withdrawn.

¹Transfer 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 are to be lodged for registration in the order listed:

- (a) a new CMS to bring the lot into the scheme;
- (b) a transfer of the lot to the body corporate;
- (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.

¹Transfer 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 are 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.

¹Transfer 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.

¹Transfer 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.

¹Transfer 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, esp ¶[59-2000].

Dealing Number

Duty Imprint



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy see the department's website.

1. Interest being transferred (if shares show as a fraction)
FEE SIMPLE

Lodger (Name, address, E-mail & phone number) **Lodger Code**
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 **County** **Parish** **Title Reference**
LOT 16 ON RP323361 STANLEY WARNER 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 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 on 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)

15/10/2007
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)

15/10/2007
Execution Date

P M Smith
.....
Transferor's Signature

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

11/11/2007
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

Case Law

Re White Ex parte Goggs (1866) 1 QSCR 149

[1-7000]

A mortgagee with power of sale is a trustee, and cannot, without the express consent of its *cestui que trust* (beneficiaries), purchase an estate of which it is mortgagee.

Hoy and Anor v A.A.A. Home Loans Pty Ltd and Others [1985] VR 281

[1-7010]

In this case it was held that successive copies of a writ of execution or warrant of execution may be served on the Registrar. These copies have the effect of giving priority for the period of three months (under the *Land Title Act 1994*, six months) after the service of such writ of execution. However, the lodgement of a successive writ of execution is not effective against instruments lodged in the previous three month (under the *Land Title Act 1994*, six month) period.

Ex parte Bank of Australasia; Re Registrar General and Master of Titles [1865] 1 QSCR 126

[1-7020]

Land was sold by the Sheriff of the Supreme Court pursuant to a writ of execution and a transfer was executed prior to the writ of execution being registered. The court held that the sale was of no less effect by reason only of its having taken place prior to the writ of execution being entered in the Register.

Re Pellick's Transfer [1986] Q Conv R 55-226

[1-7030]

An intermediate purchaser is not a transferor as he/she acts in the capacity of a purchaser directing a transfer to another and not as a transferor.

Daamen v W & T Investments Pty Ltd (No. 2) [1974] Qd R 400

[1-7040]

At settlement the vendor tendered two transfer documents: one from the vendor to an intermediate party and one from the intermediate party to the purchasers. The purchasers objected. The court held the purchaser's objection was valid.

Hall v Hall [1956] QWN 28

[1-7050]

A mortgage covenant provided that in the case of default the mortgagee could immediately sell the mortgaged property. The court held that the statutory requirement of notice could not be contracted out of.

Fees

[1-8000]

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

- ²*Land Title Regulation 2005* – Schedule 2, item numbers 1, 2(a)(i), 2(a)(ii), 2(h) and 1(d)(vii); and
- *Water Regulation 2002* – Schedule 16, item numbers 6, 7 and 11.

Cross References and Further Reading

[1-9000]

Part 2 – Mortgage

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 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]

Note ¹ – This numbered section is not applicable to water allocations or the Water Allocations Register.

Note ² – This paragraph or statement is not applicable to water allocations or the Water Allocations Register.