

Part 4 – Request to Record Death

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Part 4 – Request to Record Death

General Law

Joint Tenancy and Tenancy in Common

[4-0000]

If, at the time of death, the deceased held land or an interest in land with another or others as ‘joint tenants’, his/her death effects an immediate vesting of the deceased’s interest in the land in the surviving joint tenant/s. This principle is called ‘the right of survivorship’ and it operates until there is a sole survivor who thereby acquires sole ownership of the asset notwithstanding any provision in any will.

Another method of holding land is that of ‘tenancy in common’, which means simply the holding of ownership in common. It is possible to hold a tenancy in common in any shares, eg $\frac{1}{3}$, $\frac{2}{3}$ or $\frac{1}{78}$, $\frac{30}{78}$, $\frac{47}{78}$, etc.

The distinguishing features of joint tenancy are:

- the right of survivorship (as described above);
- the so called ‘four unities’ namely:
 - unity of possession (all owners are entitled to possession and no owner has a better right than another);
 - unity of interest (all owners have the same interest in the land as to extent, value and duration);
 - unity of title (all owners’ interests must be derived from the same source); and
 - unity of time (all owners’ interests must vest to them at the same time).

The distinguishing features of tenancy in common are:

- No right of survivorship.
- The land is held in ‘undivided shares’, which means that each tenant in common has a distinct share in the property which has not yet been divided amongst the co-tenants. However, pending such division, all have a unity of possession (see above).
- Other than unity of possession, no other unity referred to above need exist.

In Queensland:

- companies may hold property as joint tenants (see s 34 of the *Property Law Act 1974*);
- dispositions of property to more than one person will generally be considered as being distributed to them as tenants in common, subject to specific rules (see s 35 of the *Property Law Act 1974*);
- it is possible for one owner (whether a joint tenant or a tenant in common) to apply to the court for the sale or partition of the property (see Part 5, Division 2 of the *Property Law Act 1974*).

Legislation

[4-1000]

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

Introduction

[4-2000]

Since vesting occurs on death under the principle of holding property as ‘joint tenants’, such property is unrelated, in a strict sense, to the administration of the deceased joint tenant’s estate. The surviving joint tenant/s, and not the personal representative of the deceased joint tenant, apply to the Registrar to have the land or interest vested in them on proving the death of the deceased joint tenant.

The application is commonly referred to as a ‘Record of Death Application’.

However, in all instances it is essentially the surviving joint tenant/s declaring that they are registered as the proprietors of the asset as joint tenants with the deceased, that the deceased has died (as appears from the office copy of his/her certificate of death) and that he/she/they now claim entitlement to be registered as proprietor/s of the asset as the surviving joint tenant/s.

The most common form of Record of Death Application is discussed below.

Form of Application and Evidence

[4-2010]

Applications in respect of the death of a joint tenant are made to the Registrar by virtue of a person’s right to have an interest registered under s 30 of the *Land Title Act 1994* and s 150 the

Water Act 2000 and the Registrar's power to record particulars in the Register under s 29 of the *Land Title Act 1994* and s 151 of the *Water Act 2000*.

A request is made to record the death in Item 7 of the Form 4 – Request to Record Death. Verification of the death must be deposited to support the request.

It should be noted that, if the surviving joint tenant caused or was implicated in causing the death of the deceased, the joint tenancy is not severed. A constructive trust is created to the extent that the convicted surviving joint tenant's interest would ordinarily be increased by the death of the deceased (*Re Stone* [1989] 1 Qd R 351). In such cases, it is usual for an application to be made to the Supreme Court for the appointment of a statutory trustee of the property pursuant to s 38 of the *Property Law Act 1974*. Consequently, the Request to Record Death of the joint tenant and a Form 14 – Request to Vest (see part 14, esp ¶[14-2330]) in the statutory trustee (see part 51, esp ¶[51-0170]) will be lodged and registered simultaneously.

Spelling of Deceased's Name

[4-2020]

If the spelling of the deceased's name in the office copy certificate of death differs from the spelling on the title to the estate or interest which is the subject of the application, a statutory declaration stating that they are one and the same person may be required. Minor differences are overlooked, such as 'Margot Alison Brown' in one instance and 'Margot Allison Brown' in the other. However, significant differences, eg in the surname, will require explanation.

Documents Deposited with Request

Certificate of Death

[4-2030]

A request to record death may be supported by an office copy of the certificate of death certified by the relevant issuing authority in the appropriate jurisdiction (eg Registrar of Births, Deaths and Marriages). The certificate may be either a short or long extract of the certificate of death.

If the death certificate has not issued in English, a full translation of it is required. The translator's qualifications or experience must be stated in the statutory declaration verifying the translation.

See part 60 – Miscellaneous, esp ¶[60-1020] for more details.

Grant of Representation

[4-2035]

On occasions a grant of representation in the deceased's estate (ie probate or letters of administration) may be deposited as evidence with a record of death by the surviving joint tenant. The surviving joint tenant may or may not be the person to whom the grant is made.

As evidence of death is deposited with the Supreme Court to obtain a grant of representation, the grant is acceptable to the Registrar as evidence of death for a Record of Death.

¹Certificate of Title

[4-2040]

Where the Request to Record Death relates to an estate or interest in fee simple, the relevant Certificate of Title for the land must be lodged if one has been issued.

When the Request relates to an interest in a mortgage or registered lease, the Certificate of Title must be lodged, if issued. However, duplicate/triplicate leases or mortgages are not required to be lodged.

Return of Office Copy Certificate of Death

[4-2050]

See ¶[60-1030] Deposit of Supporting Documentation.

Multiple Deaths

[4-2060]

Multiple Record of Death Applications in the one document will be acceptable in cases typified by the following examples:

- A, B and C are joint tenants and all are deceased. One Request to record the deaths of A and B, and a Transmission Application (see part 5, 5A, 6 – Transmission Applications) in respect of C's death may be filed. The Form 4 – Request to Record Death, suitably amended, may be executed by the personal representative of the last surviving owner. Similarly, if A and B only are deceased, one Record of Death Application, filed by C, will suffice. Office copies of the certificates of death of the deceaseds must be provided.

NOTE: In a case (such as in the example above) where all joint tenants are deceased, their deaths are recorded or transmitted chronologically as they died, as shown on the death certificates. Usually this will be obvious from the respective dates of death. However, if the dates of death are the same, evidence will be required to show who survived the longest. In some circumstances, the provisions of s 65 of the *Succession Act* 1981 may apply.

Consequently, in this example, it will be necessary to show that C was younger than A and B. This will generally be apparent from the death certificates.

- A, B and C are trustees and all are deceased. There may be one Request to record all deaths, providing there is simultaneous lodgement of a Form 14 – Request to Vest by the Public Trustee or a Form 1 – Recording of New Trustees by the personal representative of the last surviving trustee or other person authorised (see part 51 – Trusts and part 1 – Transfer, esp ¶[1-2400] to ¶[1-2430]).

Death of a Trustee

[4-2070]

For the requirements to record the death of a trustee see part 51 – Trusts, esp ¶[51-2060] to ¶[51-2090].

The requirements to record the appointment of new trustee/s after the death of the sole or last surviving trustee are dealt with by a Form 1 – Recording of New Trustees (see part 1 – Transfer, esp ¶[1-2400] to ¶[1-2430]).

Forms

General Guide to Completion of Forms

[4-4000]

For general requirements for completion of forms see part 59 – Forms, esp ¶[59-2000].

Dealing Number

Lodger (Name, address, E-mail & phone number)

Lodger Code



OFFICE USE ONLY

EILEEN VERONICA WHITE
42 GLENN STREET
ENOGGERA QLD 4051
PH: 3268 4095

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. Deceased's name

VERNON THOMAS WHITE

2. Lot on Plan Description

LOT 34 ON RP64643

County

STANLEY

Parish

ENOGGERA

Title Reference

14643034

3. Interest held by deceased

FEE SIMPLE

4. Applicant

Given Names

Surname

EILEEN VERONICA

WHITE

Address for service of notices to the applicant: 42 GLENN STREET, ENOGGERA QLD 4051
(for rates purposes, etc.)

5. Document(s) deposited

Office copy of Death Certificate issued by the Registrar General of Births, Deaths & Marriages (Qld) or equivalent evidence from other jurisdictions

6. Authority of applicant

The applicant is:

- * the surviving joint tenant of the land
- * ~~the surviving trustee under Instrument No.~~
- * ~~the attorney (appointed under section 56 of the Trusts Act) of the surviving trustee~~
- * ~~the reversioner of the interest held by the deceased pursuant to clause of Lease/Standard Terms Document no.~~
- * ~~the last surviving joint tenant and this application is made by~~
- * ~~the personal representative of the applicant as evidenced by the original Will deposited with Transmission by Death no.~~

* delete if not applicable

7. Request

In accordance with the particulars disclosed above, it is requested that this death be recorded.

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

I I Stravinsky

..... signature

IVAN IGOR STRAVINSKY

..... full name

SOLICITOR

..... qualification

Witnessing Officer

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

10/9/2007

Execution Date

E V White

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant and no witness is required in this instance

Guide to Completion of Form 4

Item 1

[4-4010]

Insert the name, as recorded, of the deceased joint tenant (registered proprietor, lessee, mortgagee, etc). If the interest is held on a recorded trust or by a personal representative, then this should be identified, eg ‘as a trustee under Transfer to Trustees No. D76543’ or ‘as a personal representative’.

Item 2

[4-4020]

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

[4-4030]

Insert the interest of the deceased joint tenant as appropriate, ie ‘fee simple’, ‘Lease No. [number]’, ‘Water Allocation’ or ‘State leasehold’.

Item 4

[4-4040]

Insert the applicant’s full name and the address for service of notices to the applicant. In circumstances where the personal representative of the last surviving joint tenant to die is making the application, complete the item by inserting either:

- [name of the last surviving joint tenant] (since deceased); or
- [name of personal representative] personal representative of [name of last surviving joint tenant] (since deceased).

For requirements relating to the authority of the applicant see ¶[4-4060]

Item 5

[4-4050]

Apart from the office copy certificate of death of the deceased, the only other documents which might be required are a grant of representation or, alternatively, the original will and office copy death certificate of the last surviving joint tenant (where the claim is by the personal representative of the last surviving joint tenant who has subsequently died). These documents would normally accompany a Transmission Application (see part 5, 5A, 6 – Transmission Applications) in relation to the interest of the last surviving joint tenant.

Item 6

[4-4060]

The authority for making the application must be established. In practice, the applicant will most commonly be the surviving joint tenant. Other options are provided on the Form. However, in all cases the inapplicable statements must be deleted.

Item 7

[4-4070]

Execute as required.

If the application is by ‘the attorney (appointed under s 56 of the *Trusts Act* 1973) of the surviving trustee’, reference should be made, adjacent to the applicant’s signature, to the lodgement number of the power of attorney (eg ‘Power of Attorney No. 67532’). There should also be a declaration by the attorney identifying the reason for the attorney to act as defined in s 56 of the *Trusts Act* 1973.

¶[4-6000] deleted

Case Law

Re Stone [1989] 1 Qd R 351

[4-7000]

Where a joint tenant kills a co-joint tenant in circumstances amounting to manslaughter, the killer acquires that person’s interest at law as joint tenant, but holds that interest on trust for the persons entitled under the will of the deceased. That is, the incidence of survivorship inherent in a joint tenancy is not affected, but a constructive trust is imposed on the killer to the extent to which his/her interest is enlarged by the killing.

Re Beiers [1954] QWN 9

[4-7010]

Where a joint tenant kills his/her co-joint tenant and is adjudged to be insane at the time of the killing, there is no bar to the killer taking under the principle of survivorship.

Fees

[4-8000]

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

- ²*Land Title Regulation* 2005 – Schedule 2, item numbers 2(a)(i), 2(a)(ii) and 2(h); and
- *Water Regulation* 2002 – Schedule 16, item numbers 7, 11 and 15.

Cross References and Further Reading

[4-9000]

Part 1 – Transfer

Part 5, 5A, 6 – Transmission Applications

Part 51 – Trusts

De Groot, J, *Wills Probate and Administration Practice (Queensland)*, Nina Psaltis Consulting (loose-leaf service)

Duncan and Vann, *Property Law and Practice*, Law Book Co (loose-leaf service)

Notes in text

[4-9050]

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

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