

Part 5, 5A, 6 – Transmission Applications

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Part 5, 5A, 6 – Transmission Applications

General Law

[5-0000]

One of the first duties of a personal representative is to reduce the estate of the deceased into possession. The manner of attending to this depends on the nature of the assets to which possession must be asserted or acquired. Title to the deceased's assets passes in the first instance to his/her executor (and if to more than one executor to them as joint tenants) or if there is no executor or no executor able and willing to act, to the Public Trustee (s 45(1) of the *Succession Act* 1981).

Upon the court granting probate of the will or letters of administration of the estate of the deceased, the property vested in his/her executor or in the Public Trustee under the provisions of s 45(1) of the *Succession Act* 1981 devolves to and vests in the person to whom the grant is made (and if to more than one person, to them as joint tenants) (s 45(2) of the *Succession Act* 1981).

Where title to assets comprising the estate of the deceased is formally registered, the personal representative must not only assert and acquire possession of the asset, but must also make application to transmit the title into his/her name or as he/she may direct. Such applications are generally referred to as 'Transmissions by Death' or 'Transmission Applications'. Notwithstanding that a water allocation is a registrable interest and a tradable asset it is part of the deceased's personal property as opposed to their real property.

Division 6 of Part 6 of the *Land Title Act* 1994 deals with, among other things, the transmission of the interest of a deceased person in a lot to that person's personal representative (in accordance with s 111), or to a devisee of a deceased person (in accordance with s 112).

Legislation

[5-1000]

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

[5-2000]

Note: The text *Wills Probate and Administration Practice* by John K de Groot (published by Nina Psaltis Consulting) is recommended as a valuable reference source with regard to estate administration.

A Transmission Application (or Transmission by Death) involves the registration of an estate in the name of a new registered proprietor after the death of a sole registered proprietor. This includes the interest of a tenant in common. Registration of the death of a joint tenant is dealt with by a Form 4 – Request to Record Death.

The land of a deceased person may be transmitted to the personal representative of the deceased (via a Form 5 or Form 5A), to a devisee or legatee named in the person's last will (via a Form 6) or to a person named in an order of the Supreme Court (via a Form 14 – Request to Vest).

A part of an estate, being freehold land, State leasehold or a water allocation, may be transmitted directly to the beneficiary (devisee/legatee) as determined by the will.

Transmissions involve either:

- a will where a grant of probate or a grant of letters of administration with the will have been made by the court;
- the original last will without a grant;
- an intestacy where a grant of letters of administration has been made by the court; or
- an intestacy where no grant has been made.

While transmissions have an effect similar to a transfer in that an interest is conveyed to a new proprietor, the main difference is that, in many instances, as a consequence of the death of the registered proprietor, legal interpretation is involved (with the exception of a Form 5).

Different Estates

[5-2010]

Different estates may be dealt with in the one Transmission Application. For example, separate applications would not be required to transmit the fee simple and an interest in a mortgage or a water allocation.

¶[5-2020] deleted

Merger of Estates

[5-2030]

From time to time, the situation arises where a person (A) who is registered on the title as 'devisee in trust' or as 'personal representative' is also the sole beneficiary under the will of the deceased or is the only person entitled to the deceased's estate under the rules of intestacy.

If A has discharged all the executorial duties required, other than having effected the transfer, and the property is held by A as trustee, the law is well settled that one cannot be a trustee for oneself and so the doctrine of merger will operate to merge the beneficial and legal estates.

Therefore, notwithstanding the fact that A remains registered on the title as trustee, there is, in reality, no trust. It must follow that the property which has already vested in A by merger can be dealt with as an asset of A. On A's death, the provisions of s 16 of the *Trusts Act 1973* (devolution of trust assets and trust powers upon death) do not operate to vest the property in the Public Trustee. Rather, the property vests in A's personal representative pursuant to s 45 of the *Succession Act 1981* (devolution of property on death).

The property which is the subject of such a merger should be dealt with in the manner set out below:

If A is Alive

[5-2040]

A Form 14 – General Request (see part 14, esp ¶[14-2390]) to merge the interest of A as trustee with his/her entitlement to the fee simple or as sole beneficiary should be lodged by A or his/her solicitor.

A declaration by A must be deposited with the Request to the effect that all executorial duties in respect of the administration of the estate of the deceased have been completed.

If A has Died

[5-2050]

A Transmission Application should be lodged by the person entitled to apply for a grant of representation in the estate of A, which should indicate that he/she is the person named as executor in A's will as the basis on which an application for grant would succeed.

A declaration by the executor must be deposited with the Transmission Application to the effect that A had completed all executorial duties in the original deceased estate and that A had not effected transfer to himself/herself and had for some time dealt with the property as beneficial owner rather than as trustee.

Intestate Estate

[5-2060]

Letters of administration in an intestate estate issued by a court outside of Queensland and resealed in Queensland can be applied to property in Queensland (s 111(2)(a) of the *Land Title Act 1994*).

Intestate estates, where the gross value of the estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was valued at no more than \$300,000, may be dealt with in a Form 5A without application for a grant of letters of administration, if no letters of administration of the deceased's estate have been granted in Queensland within six months from the date of death (s 111(2)(b) of the *Land Title Act 1994*).

Public Trustee

[5-2070]

The Public Trustee of Queensland has, under relevant Acts, a wide range of powers in relation to deceased estates. The Public Trustee **may** obtain an 'order to administer' from the Supreme Court in many different cases. For example:

- where the Public Trustee is appointed executor of a will;
- where the executor appointed under a will has renounced;
- where the testator leaves no executor;
- where every executor or administrator has died, is absent from the State, is not known or cannot be found; and
- where the deceased dies intestate.

The Public Trustee may also administer estates in the name of the deceased (s 16 of the *Trusts Act 1973*):

- where assets are the subject of a partnership; and
- which are estates held in trust where the sole or last trustee has died.

This point is expanded in part 51 – Trusts.

An order to administer has the same effect as a grant of probate or letters of administration.

Evidence of the order to administer is given in the form of a ‘certificate of authority’ issued pursuant to s 138 of the *Public Trustee Act 1978*. If the order to administer is in relation to an intestate estate, this certificate should refer to an order to administer in intestacy.

If the deceased estate is valued under \$100,000, it is not necessary for the Public Trustee to obtain the consent of the court to administer the estate. The Public Trustee may instead file in the court an ‘election to administer’. Evidence deposited with a Form 5 – Transmission Application would be in the form of a certificate of authority.

The certificate of authority includes the name and date of death of the deceased, as well as the name/s and address/es of the applicant/s.

Original Will

[5-2080]

Original wills must be treated with **extreme care**. It is essential that no marks or holes are made in an original will. No pencil notes should be made on an original will, nor should any ‘post it’ note stickers be attached to an original will, nor should any pins or staples be added to or removed from an original will. An original will should not be stapled to the application.

The reason for this degree of care is that any attachment to a will, or any evidence of an attachment having been made to a will, may raise the presumption that a further testamentary document made by the testator had been attached by or at the direction of the testator, thereby altering the terms of the will. As a consequence, it is necessary to establish how any mark evidencing an attachment to the will was caused. Therefore, a declaration explaining the circumstances will be required.

Probate

[5-2090]

A grant of probate is the approval, or verification, of the Supreme Court that the particular will is actually the last will and testament of the deceased person, and that the person named as executor is authorised to act in that capacity.

It is not essential to take out a grant of probate. However, many people do so simply for the protection it affords the executor. If a later will is discovered, the executor of the probated will cannot be sued by the executor of the later will for actions taken by the first executor pursuant to the court's authority through the grant of probate. The exception is where the existence of the later will was known and not disclosed by the first executor in the probate application.

Where probate is granted, the original will remains permanently in the Supreme Court. A copy of the will is part of an original probate document which bears the seal of the Supreme Court of Queensland.

Generally, when probate has not been taken out, the original will is lodged with the Transmission Application. Where the Public Trustee is the applicant, a certificate is lodged if an order to administer or an election to administer is relied on.

Probate from Outside Queensland

[5-2100]

When probate has been granted in another jurisdiction (that is, the Supreme Court of another State or Territory or the court exercising probate jurisdiction of another country to which the *British Probates Act 1898* applies) and has not been resealed in Queensland the original probate or an exemplification by that court must be deposited with a Transmission Application. Although an exemplification is not 'a grant in Queensland', for the purposes of Forms 5A and 6, no further evidence of death is required.

If, however, the exemplification or original foreign probate goes to the Queensland Supreme Court and is re-sealed, it has the same standing as a Queensland grant of probate. Such probates are called 'reseals', because the original grant of representation has been re-sealed by a Queensland court.

Exemplifications or original probates are produced to the Titles Office with the Transmission Application. Exemplifications of probate are accepted from a number of other countries. The *British Probates Act 1898* lists those countries.

Intestacy

[5-2110]

When a registered proprietor dies without leaving a will, the Supreme Court may appoint an administrator to administer the estate in accordance with the rules laid down in the *Uniform Civil Procedure Rules 1999*. A person who wishes to administer an estate applies to the Court to be appointed as the administrator.

The Supreme Court issues a document known as 'letters of administration', which authorises the person named as administrator to control and administer the estate of the deceased person in accordance with r 610 of the *Uniform Civil Procedure Rules 1999*. It is also referred to as a grant of administration. The letters of administration are the authority for a transmission to the administrator as personal representative.

Under the *Land Title Act 1994* it is not essential to apply for letters of administration before making a Transmission Application unless the gross value of the estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was over \$300,000.

If letters of administration are not lodged, then the applicant on a Form 5A must explain in the declaration annexure to Form 5A his/her entitlement to administer the estate. The applicant must declare the names and relationships of all those entitled to the estate and details of the existence or non-existence of a de-facto spouse under the *Uniform Civil Procedure Rules 1999*.

Name Variation

[5-2120]

The deceased registered proprietor's name is given in full in Item 1 of the Forms 5, 5A and 6 and minor differences in spelling do not require identification. If it is considered that the name in the other documents being lodged cannot be safely accepted as being that of the deceased registered proprietor (eg upon a change in surname), then a supplementary declaration (in Form 20) identifying one with the other, together with any relevant evidence (eg an office copy of a certificate of marriage) is required.

Where the name of a beneficiary or personal representative is different in the Transmission Application to that shown in the will, a statutory declaration supported by relevant evidence, is required from that person setting out the circumstances of the difference in the name.

Return of Certain Deposited Documents

[5-2130]

Registry practice is to return to the lodger certain original documents that are required to be deposited as evidence. The following comments relate to the return of some documents deposited with a Form 5, 5A or 6 – Transmission Application.

All original grants, reseals and exemplifications of grants of representation, will be returned to the lodger. Office copies of certificates of death will also be returned if requested at the time of lodgement. Lodgers should present the original document and a good quality photocopy at the time of lodgement. The photocopy will be compared with the original, noted, initialled and dated by the Receiving Officer and the original document will be returned to the lodger.

An original will once deposited with a Transmission Application in the registry will be dealt with in a similar manner as if it was deposited in the Supreme Court of Queensland Court of Probate. The original will is examined by registry staff to ensure it is in order and retained as a permanent public record.

An original will held the Registry with a registered Transmission Application will only be released to the Supreme Court of Queensland for a grant of representation application. Where the original will is required for such an application, the personal representative or their solicitor must request in writing for the Registrar to forward the original will to the Court. The request must state the authority for them to make the request and details of the probate registry where the application will be made. The Registrar will forward the original will and other relevant documentation (eg codicil) to the Court and notify the applicant it has been sent.

An original will held by the Registry with an unregistered Transmission Application will only be released in the following circumstances:

- to attend to a requisition on the Transmission Application where the requisition requires the temporary borrowing out of the original will; or
- in response to a written request from the lodger to fully withdraw the Transmission Application; or
- where the Transmission Application is rejected under s 157 of the *Land Title Act* 1994.

Where an original will is required for grant of representation in Queensland and the will is held with an unregistered Transmission Application, the dealing must be fully withdrawn from registration prior to its release from the Registry. The lodger must request in writing for the Transmission Application to be fully withdrawn. Registry staff will notify the lodger by letter once the dealing has been fully withdrawn. The original will can then be released with the Transmission Application to the lodger on presentation of the letter at the office where the Transmission

Application was lodged. It is then the responsibility of the personal representative to arrange for deposit of the original will with the grant of representation application.

Where a grant of representation is to be sought in a jurisdiction other than Queensland, a certified copy of the relevant Transmission Application, including a certified copy of the original will, may be provided on request and payment of the relevant fees.

Forms of Transmission

Form 5 – Transmission Application by Personal Representative (Grant in Queensland)

[5-2140]

This form of Transmission Application is used by a personal representative who has obtained a grant of representation or a reseal of a grant of representation in Queensland.

On registration, the applicant appears on the title as the registered proprietor ‘as personal representative’.

Form 5A – Transmission Application by Personal Representative (No Grant in Queensland)

[5-2150]

This form of application is used where:

- (a) the deceased registered proprietor left a will and the applicant is or is entitled to be the deceased’s personal representative or, in the opinion of the Registrar, would succeed in an application for a grant of representation (ie probate or letters of administration with the will annexed); or
- (b) in the case of an intestacy, the applicant would, in the opinion of the Registrar, succeed in an application for a grant of letters of administration, and:
 - (i) the gross value of the deceased’s estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was not over \$300,000 (or such other amount as may be prescribed by regulation); and
 - (ii) six months has elapsed from the date of death of the intestate and no letters of administration of the deceased’s estate have been granted.

In these circumstances, the Registrar performs a role somewhat akin to that of a court of probate. The Registrar will require a supplementary statutory declaration to establish the validity of the will if considered necessary, eg a statutory declaration of due execution where no attestation clause appears in the will or the will is undated. In such cases, the original last will (not a copy) must be provided as an exhibit to any supplementary statutory declaration and endorsed with the appropriate exhibit marking and certificate.

The Registrar will also scrutinise the deceased’s certificate of death to ensure that the cause of death does not suggest a lack of testamentary capacity at the date of the will. If it does, the Registrar will ask for evidence to clarify the matter.

On registration the applicant appears on the title as the registered proprietor ‘as personal representative’.

Form 6 – Transmission Application for Registration as Devisee/Legatee

[5-2160]

This form of application is made by a devisee of the deceased registered proprietor with the written consent of the personal representative or person entitled to appointment as such.

As indicated, the applicant must be the person beneficially entitled under a will to a lot or an interest in a lot of a deceased registered proprietor.

Where there is no clear indication in the will as to the tenancy of the beneficiaries, the common law presumption of a joint tenancy applies unless the will provides otherwise by express word or by necessary implication from the words used, eg a substitutional provision in a will is an indication that the primary beneficiaries are not to take as joint tenants. A substitutional provision or words of severance expressed in a will shall be taken as tenants in common. Further, when a will is made or republished after 1 January 1982 the presumption of a joint tenancy does not apply when s 33N of the *Succession Act* 1981 operates.

Section 33B of the *Succession Act* 1981 requires a beneficiary under a will to survive the testator for a period of 30 days, unless a contrary intention appears in the will. Accordingly, an application in Form 6 cannot be executed within 30 days of the deceased's death unless such a contrary intention appears in the will.

As a Transmission Application in Form 6 is akin to a transfer from the personal representative to the beneficiary, for deaths prior to 1 April 2006 the terms of s 15 of the *Succession Act* 1981 applicable prior to 1 April 2006 and in force at the date of death are relevant. Section 15 of the *Succession Act* 1981 renders dispositions other than payments of debts or remuneration to a witness, his/her spouse or persons claiming under the witness or spouse, null and void.

The applicants are to declare that neither they nor a spouse of theirs was a witness to the deceased's will. If this is not declared to, the application will be requisitioned as follows:

The applicant should, by statutory declaration, declare that neither they nor a spouse of theirs was a witness to the will of... deceased.

New s 11 of the *Succession Act* 1981 replacing s 15 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 is required from the applicant stating that they were not a witness to the will. If the declaration is not produced the application will be requisitioned as follows:

‘The applicant should declare that they were not a witness to the will of [name of deceased], if such is the case (see s 11 of the *Succession Act* 1981).’

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. If there are more than two witnesses to the will, the matter would be gauged on its merits.

On registration, the devisee appears on the title as registered proprietor. The personal representative is obliged to ensure that a distribution of the assets is in order before consenting to these applications.

¹Life Estate Created by Will

[5-2163]

The recording of a beneficial remainder estate is prohibited by s 30(2) of the *Property Law Act* 1974. That section states that ‘an interest in remainder created after the commencement of the Act must not be registered in the freehold land register’. Section 30(2A) provides that ‘subs (2) has effect despite anything in the *Land Title Act* 1994’.

Under a will, only the personal representative (as trustee) can exercise the powers conferred by the *Trusts Act* 1973 in respect of trust property, including any life estate.

As a result, it is **not** appropriate to register a Form 6 – Transmission Application (by beneficiary) and a charge relating to the life estate.

A Form 5 or 5A – Transmission Application for transmission to the personal representative is the only acceptable instrument in this circumstance. A request to record the life estate is **not** registrable in conjunction with the Form 5 or 5A.

¹Rights to Reside, Charges and Conditions in Will

[5-2167]

Section 5 of the *Trusts Act* 1973 includes within the definition of ‘trust property’ a personal licence to reside for life given by will. However, this is a personal right or licence and, like other conditions and charges contained in the will, it does not constitute an estate or interest in land.

A Form 14 – General Request to register a right to reside, a charge or some other condition contained in a will may **not** be recorded on the title.

Unregistered Trust

[5-2170]

The Registrar is not required to supervise undisclosed trusts and will register applications which, on their face, are entitled to registration.

Limitations

[5-2180]

Most Transmission Applications in Form 5 are straight forward, as the validity of the will or the administration in intestacy has already been established and proved in the court and some form of evidence issued. These applications register the applicant as ‘personal representative’. However, care must be taken to ensure recognition of the exceptions to the practice set out above, which occur when limitations have been imposed by the court in the grant of probate or letters of administration.

The court may impose a limitation on a person to whom administration has been granted. When checking the probate or letters of administration for the applicant’s right to claim, a check should also be made for any such limitations. These will usually follow the name of the appointed person and will begin ‘limited until...’.

For example:

‘Limited until Tom Jones attains the age of 18 years’; or

‘Limited until such time as a more authenticated copy of will can be produced to the Court’.

In such a case, Item 6 should be amended by adding ‘Limited’ after ‘Personal Representative’.

Further information on limited grants is contained in part 51 – Trusts, esp ¶[51-2150].

Other Equities

[5-2190]

There may be other equities affecting the land, such as trust or partnership equities or the equity of a purchaser under a contract of sale (between the deceased and the purchaser). Land which is the subject of a trust, partnership or contract of sale should **not** be dealt with by way of a ‘limited transmission’, ie a recording of the personal representative as ‘personal representative – trust’, ‘personal representative – partnership’ or ‘personal representative – contract of sale’. The personal representative should simply be recorded (by the transmission application) as ‘personal representative’. Once this has occurred, the other equities can be dealt with by way of the appropriate Form 1 – Transfer (eg a Form 1 – Transfer to Trustees (see part 1, esp ¶[1-2380] and ¶[1-2390])).

Advertising Requirements

[5-2200]

The Registrar, under s 18 of the *Land Title Act* 1994 or the Chief Executive under s 294(2) of the *Land Act* 1994, may, by written notice, require an applicant to give public notice of an application to register the transmission of a registered interest. The Chief Executive has delegated all responsibility relating to administration under Chapter 6 of the *Land Act* 1994 to the Registrar. The Registrar will specify in the notice to the applicant what is to be included in the public notice and how and when the public notice is to be published. Prior to registration of the Transmission Application, the applicant must satisfy the Registrar that the public notice has been given.

However, the Registrar has the discretion in regard to Transmission Applications to require any or all of the following:

- the giving of public notice of the application; and/or
- the giving of notice to one or more specified individuals named in a will or death certificate; and/or
- the consent to the application of others named in a will or death certificate who, in the opinion of the Registrar, may also be entitled to apply.

Unless requested by the Registrar, or some other designated officer, no notices requiring an applicant to give public notice of his/her Transmission Application will be issued. The officer who authorises the issue of a notice will also determine the paper/s in which public notice is to be given.

To evidence compliance with the requirements for a written notice, tear sheets of newspapers must be provided to the Registrar prior to registration. No affidavit or statutory declaration confirming that the notice was advertised is required. Tear sheets must, as well as displaying the notice, show the name of the newspaper and the date of publication.

If no caveat has been lodged within seven days of the public notice appearing in the newspaper/s as required by the written notice, registration will proceed promptly.

The advertising requirements defined above do not in any way prevent the applicant from voluntarily giving public notice (advertising) prior to lodging the application in the registry. If this option is taken, a copy of the advertisement deposited with the application will avoid registration delays, particularly if the Registrar later considers that advertisement is warranted.

¶[5-2210] to ¶[5-2240] deleted

Forms

General Guide to Completion of Forms

[5-4000]

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

COATES & SULLIVAN
SOLICITORS
210 ELIZABETH STREET
BRISBANE QLD 4000
mail@coatessullivan.com.au
(07) 3227 5280

320

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

JOHN MICHAEL BROWN

2. Lot on Plan Description

LOT 1 ON RP155755

County

STANLEY

Parish

BULIMBA

Title Reference

16560051

3. Interest held by deceased

FEE SIMPLE

4. Applicant

Given Names

Surname/Company Name and Number

MARY ALICE

BROWN

Address for service of notices to the applicant: 1 DOE STREET, CARINA QLD 4152
(for rates purposes, etc.)

5. Document(s) deposited

- *Grant of Probate)
- *Grant of letters of Administration with the will annexed)
- *Grant of letters of administration (intestacy)) issued by the Supreme Court of Queensland in the
- *Reseal of grant of representation) estate of the deceased
- *Exemplification of grant of representation)

* delete if not applicable

6. Request

The applicant is the personal representative of the deceased and it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

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

J Coates

..... signature

JOHN IAN COATES

..... 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)

12/11/2007

Execution Date

M Brown

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

Dealing Number

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

Lodger Code
205



OFFICE USE ONLY

Privacy Statement

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PHELPS & FOX
SOLICITORS
48 CREEK STREET
BRISBANE QLD 4000
mail@phelpsfox.com.au
(07) 3227 4646

1. Deceased's name

JAMES MICHAEL BROWN

2. Lot on Plan Description

LOT 1 ON RP145344

County

STANLEY

Parish

BULIMBA

Title Reference

16561151

3. Interest held by deceased

FEE SIMPLE

4. Applicant

Given Names

Surname/Company Name and Number

HELEN PETRA

BROWN

Address for service of notices to the applicant: 11 HARE STREET, CARINA QLD 4152
(for rates purposes, etc)

5. Document(s) deposited

*Original last will)
Office copy of certificate of death) of the deceased

~~*(Exemplification of) grant of representation from a state, territory or country to which The British Probates Act, 1898 applies.~~

* delete if not applicable

6. Request

In accordance with the particulars disclosed in the attached declaration, it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

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

..... signature

J E Phelps

..... full name

JOHN ERIC PHELPS

..... qualification

24/10/2007

Witnessing Officer

Execution Date

Applicant'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 Applicant and no witness is required in this instance

I, HELEN PETRA BROWN
of 11 Hare Street, Carina, Brisbane
in the State of Queensland

do solemnly and sincerely declare that:

- 1. The applicant is or is entitled to be the personal representative of the deceased because:
 - * the applicant is the executor of the last will of the deceased.
 - ~~*(if other, state basis of entitlement)~~
- 2. I have caused a search to be made and find that no grant of administration of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.

If a will

- 3. *(a) The deceased did not marry on or after the date of execution of the will.
- ~~*(b) The deceased married me on or after the date of execution of the will however, our marriage was solemnised on or after 1 April 2006 and I was married to the deceased at the time of his/her death.~~

If a will and applicant is surviving husband or wife of the deceased

- 4. *The marriage between the deceased and me had not been dissolved nor had any proceedings for annulment been commenced.

If a will and marriage between applicant and deceased has been dissolved/annulled

- ~~5. *The marriage between the deceased and me was dissolved/annulled on or after 1 April 2006 however, by the deceased's will the deceased expressed an intention that my appointment as executor not be revoked.~~

If deceased died intestate

- ~~6. *The deceased died intestate and his/her gross estate in Queensland at the date of death did not exceed \$300,000.~~

*delete if not applicable

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867 (Qld)* #.

The form of wording should comply with the appropriate Oaths/Evidence Act under which the declaration is being made. Note a declaration under the Oaths Act 1867 Qld can only be taken by the persons listed in section 13 of that Act.

J E Phelps

.....signature

JOHN ERIC PHELPS

.....full name

SOLICITOR

.....qualification

Witness

as authorised under the relevant *Oaths/Evidence Act*

24/10/2007
Execution Date

H P Brown
.....
Applicant's Signature

.....signature

.....full name

.....qualification

Witness

as authorised under the relevant *Oaths/Evidence Act*

/ /
Execution Date

.....
Applicant's Signature

Dealing Number



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.

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

WILSON & CO
SOLICITORS
200 ANN STREET
BRISBANE QLD 4000
mail@wilsonco.com.au
(07) 3227 7495

Lodger Code
200

1. Deceased's name

WILLIAM JOHN BROWN

2. Lot on Plan Description

LOT 1 ON RP15575

County

STANLEY

Parish

BULIMBA

Title Reference

16560051

3. Interest held by deceased

FEE SIMPLE

Note: A Form 24A - Property Information (Transmission Application) must be attached to this Form where interest being transmitted is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "water allocation" (Water Act 2000)

4. Applicant

Given Names

Surname

(include tenancy if more than one)

PATRICIA ALICE

BROWN

5. Document(s) deposited

~~*Grant of Probate~~

~~*Grant of letters of Administration with the will annexed~~

~~*Reseal of grant of representation~~

~~*Exemplification of grant of representation~~

~~*(Exemplification of) grant of representation from a state, territory or country to which The British Probates Act 1898 applies~~

) issued by the Supreme Court of Queensland in the
) estate of the deceased
)

*Original last will and office copy certificate of death of the deceased

* delete if not applicable

6. Request

In accordance with the particulars disclosed in the attached declaration and the consent of the (entitled) personal representative having been given, it is requested that the applicant be registered as proprietor of the above interest in accordance with this claim.

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

G H Wilston

..... signature

GREGORY HAROLD WILSTON

..... 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)

14/10/2007

Execution Date

P A Brown

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

I, PATRICIA ALICE BROWN
of 24 Buck Street, Carina
in the State of Queensland
do solemnly and sincerely declare that:

- 1. The applicant is the devisee / legatee under the last will of the deceased.
2. *The land described in clause (2) of the will is the land described in item 2 on Form 6.
Only required if the reference to land in the will is different to the description in item 2 on Form 6
3. The information contained on the attached Form 24A is true and correct.
4. If a will
*(a) The deceased did not marry on or after the date of execution of the will.
*(b) The deceased married me on or after the date of execution of the will however, our marriage was solemnised
on or after 1 April 2006 and I was married to the deceased at the date of his/her death.
5. If deceased died before 1 April 2003
*(a) Neither I nor a spouse of mine was a witness to the execution of the will.
If deceased died on or after 1 April 2003 but before 1 April 2006
*(b) Neither I nor a spouse of mine as defined by section 5AA of the Succession Act 1981 was a witness to the
execution of the will.
If deceased died on or after 1 April 2006
(c) *(i) I was not a witness to the execution of the will.
*(ii) I was a witness to the execution of the will but documentation is deposited herewith evidencing the
application of section 11(3) of the Succession Act 1981.
6. *I have caused a search to be made and find that no grant of administration of the estate of the deceased
(including a reseal) has been made, applied for, or caveated against in Queensland.
Only required if the will is not proved or not resealed in Queensland
7. *The marriage between the deceased and me had not been dissolved nor had any proceedings for annulment
been commenced.
Required if the applicant is surviving husband or wife of the deceased and has not been granted a grant of
representation in Queensland
8. *The marriage between the deceased and me was dissolved/annulled on or after 1 April 2006 however, by the
deceased's will the deceased expressed an intention that my entitlement as a beneficiary not be revoked.

*delete if not applicable

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the
Oaths Act 1867 (Qld).#

The form of wording should comply with the appropriate Oaths/Evidence Act under which the declaration is being made. Note a declaration under the
Oaths Act 1867 Qld can only be taken by the persons listed in section 13 of that Act.

G H Wilston

.....signature

GREGORY HAROLD WILSTON

.....full name

P A Brown

SOLICITOR

.....qualification

14/10/2007

Witness

Execution Date

Applicant's Signature

As authorised under relevant Oaths/Evidence Act

.....signature

.....full name

.....qualification

/ /

Witness

Execution Date

Applicant's Signature

As authorised under relevant Oaths/Evidence Act

I, PATRICIA ALICE BROWN
of 24 Buck Street, Carina, Brisbane
declare that:

- *I am the person to whom the grant of representation was made.
- ~~*I am the person named as executor in the original last will.~~
- ~~*I am entitled to be the personal representative of the deceased by virtue of~~

*delete if not applicable

All just debts and funeral expenses have been paid and testamentary expenses have been adequately provided for.
Legacies, if any, have been paid or adequately provided for.

AND I consent to this application.

G H Wilston
.....signature
GREGORY HAROLD WILSTON
.....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)

14/10/2007
Execution Date

P A Brown
.....
Personal Representative's Signature

.....signature
.....full name
.....qualification

Witnessing Officer

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

/ /
Execution Date

.....
Personal Representative's Signature

Guide to Completion of Form 5

Item 1

[5-4010]

Insert the name, as recorded, of the deceased registered proprietor/lessee/mortgagee.

Item 2

[5-4020]

Insert the details of the lot which is being transmitted or the lot over which the interest is being transmitted. If the transmission relates to State leasehold, the tenure type and lease number should be inserted. For further information see part 1 – Transfer, esp ¶[1-2020].

As with a Form 1 – Transfer, more than one parcel of land may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is not required for the transmission of different interests, eg an interest in State leasehold and/or water allocation may be transmitted in the same application as an interest in fee simple or an interest in a mortgage etc.

Item 3

[5-4030]

Insert the deceased's interest in the land. This may be an estate in fee simple, an interest in a lease, an interest in a bill of mortgage, etc. The interest is described, for example, as:

- 'fee simple'
- 'Lease No. G123456'
- 'Bill of Mortgage No. 11654321'
- 'State Leasehold'
- 'Water Allocation'

Where the interest being transmitted constitutes only part of an interest in a lot, it is necessary to insert, eg '½ interest in fee simple' or '½ interest in Lease No. G123456' or '½ interest in water allocation or '½ interest in State Lease No. 654321'.

Item 4

[5-4040]

Insert the applicant's full name. This should coincide with the name of the person in whose favour the grant of representation (referred to in Item 5) was made. Where the Form 5 is supported by a Queensland Reseal of Probate, the person claiming the estate in the application must be the person who submitted the documents to the Court for reseal and is named on the face of the reseal.

In the case of a (trustee) company, its Australian Company Number should be provided.

Item 5**[5-4050]**

The document/s deposited in support of the Transmission Application must be identified here. The inapplicable documents indicated on the Form must be deleted.

It will be noted that the wording of s 111(2)(a) of the *Land Title Act* 1994 refers simply to the ‘resealing of a grant of representation’ and therefore includes the reseal of a grant of letters of administration on intestacy, overcoming the difficulty previously presented by the decision in *Re Heathcote* [1903] St R Qd 57.

Item 6**[5-4060]**

Item 6 contains the formal transmission request and, strictly, the irrelevant descriptions (eg lessee/mortgagee or as the case may be) should be deleted.

Execution**[5-4070]**

Execution and dating of the Transmission Application is required as indicated on the Form. As noted on the Form, the Application may be signed by a solicitor on behalf of the applicant and no witness is required in this instance. However, the solicitor **must** print his/her full name immediately below the signature.

Declaration by Applicant**[5-4080]**

In the usual case, no declaration by the applicant is required and it will be noted that the Form does not incorporate one. However, if the deceased’s name as recorded in the Register differs from the deceased’s name as shown in the deposited grant of representation or reseal, a statutory declaration confirming that they are one and the same person is required.

For example:

‘The George Brown shown as the registered proprietor of Lot [no.] is one and the same person as the George Howard Brown referred to in the grant of probate deposited with the Form 5 application dated the... day... of 20...’.

If the differences are significant, the Registrar may require the grant to incorporate, as an alias, the name of the deceased as recorded in the register.

Documentation to be Lodged**[5-4090]**

The following documentation must be lodged to register the transmission:

- (1) Form 5;
- (2) probate (either original or Supreme Court office copy);

or

reseal of probate;

or

letters of administration;

or

where there is an order to administer or an order to administer in intestacy, certificate of authority and Supreme Court office copy of the will;

or

election to administer and certificate of authority;

- (3) declarations and evidence to establish identity, if name changes are involved;
- (4) ²Certificate of Title, if it exists, or a request made to dispense with production; and
- (5) for a water allocation title:
 - (a) ROP 13 – Notification of existence of Supply Contract (for water allocations managed under a Resource Operations Licence) – see part 49, esp ¶[49-0030];
or
 - (b) Water Allocation Dealing Certificate – (for water allocations not managed under a Resource Operations Licence) – see part 49, esp ¶[49-0080].

[Form 5A (two pages)]

Guide to Completion of Form 5A

Item 1

[5-4100]

Insert the name, as recorded, of the deceased registered proprietor/lessee/mortgagee.

Item 2

[5-4110]

Insert the details of the lot which is being transmitted or the lot over which the interest is being transmitted. If the transmission relates to State leasehold, the tenure type and lease number should be inserted. For further information see part 1 – Transfer, esp ¶[1-2020].

As with a Form 1 – Transfer, more than one parcel of land may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is not required for the transmission of different interests, eg an interest in State leasehold and/or water allocation may be transmitted in the same application as an interest in fee simple or an interest in a mortgage.

Item 3

[5-4120]

Insert the deceased's interest in the land. This may be an estate in fee simple, an interest in a lease, an interest in a bill of mortgage, etc. The interest is described, for example, as:

- 'fee simple'
- 'Lease No. G123456'

- ‘Bill of Mortgage No. 11654321’
- ‘State Leasehold’
- ‘Water Allocation’

Where the interest being transmitted constitutes only part of an interest in a lot, it is necessary to insert, eg ‘½ interest in fee simple’ or ‘½ interest in Lease No. G123456’ or ‘½ interest in State Lease No. 654321’.

Item 4

[5-4130]

Insert the applicant’s full name. In the case of a company, its Australian Company Number should be provided.

Item 5

[5-4140]

The document/s deposited in support of the application should be identified here. The inapplicable documents indicated on the Form must be deleted.

Item 6

[5-4150]

Item 6 contains the formal transmission request and, strictly, the irrelevant descriptions (eg lessee/mortgagee or as the case may be) should be deleted.

If the certificate of death of the registered proprietor is being deposited, the cause of death should be checked to ensure that it does not suggest a lack of testamentary capacity at the time the will was made. If it does, a letter from a registered medical practitioner stating, in his/her opinion, at the date of execution of the will the testator had testamentary capacity to make a will or a statutory declaration from a solicitor who witnessed the will setting out how the solicitor satisfied himself/herself as to the testator’s testamentary capacity, will be required.

Declaration by Applicant

[5-4160]

The document/s deposited will be those necessary to establish the entitlement to be the personal representative of the deceased. In the simple case of an application by the executor of any unproved will, the original will and the certificate of death of the deceased are likely to be the only documents required.

As the Form is used in different circumstances, it is necessary to comment separately on the declarations required for the separate circumstances in which the Form is used. This Form of Transmission Application is used where:

- (a) the deceased registered proprietor/lessee/mortgagee left a will and the applicant would be entitled to a grant of representation (ie probate or letters of administration with the will annexed) but has not obtained such a grant; or
- (b) in the case of an intestacy, the applicant would be entitled, in the opinion of the Registrar, to obtain a grant of letters of administration (but has not obtained such a grant); and:

- (i) the gross value of the deceased's estate in Queensland, other than property held by the deceased as a joint tenant, was not over \$300,000 (or such other amount as may be prescribed by regulation); and
- (ii) six months have elapsed from the date of death of the intestate.

A declaration in the prescribed Form 5A annexure must be completed and lodged with the Transmission Application. The statements required to be included or deleted are indicated on the declaration. However, two paragraphs are deserving of comment.

Paragraph 1

[5-4170]

This paragraph may require the applicant to state the basis upon which he/she is entitled to be the personal representative. For example, if the instituted executor has died or renounced and the substituted executor is the applicant, this should be made clear and the relevant certificate of death or renunciation and affidavit of due execution of it must be deposited. Similarly, if the applicant is the surviving executor, this should be made clear and an office copy certificate of death of the deceased executor should be deposited with the Application. In these circumstances, the statement which should appear in paragraph 1 might be:

- (a) The applicant is the surviving executor appointed under the will referred to above.
- (b) AB, the other executor so appointed, died on 10 July 1992 as appears by the office copy of certificate of death deposited herewith.'

If the applicant is entitled to appointment as an administrator with the will annexed, the evidentiary statements required to establish this are the same as are required by the Supreme Court of Queensland in an application for a grant of letters of administration with the will annexed. It may be that the basis of entitlement can be simply stated, such as 'The executor AB appointed by the will referred to above has died (certificate of death deposited herewith) and I am the sole residuary beneficiary'. In such a case, the space provided on the Form may be sufficient.

Where there is insufficient space on the single page declaration annexed to Form 5A for all paragraphs or for all declarants to execute on the same page as the declaration, additional declarations must be completed and executed on Form 20.. (Office copy certificates of death, renunciations and/or consents should be referred to as 'deposited' with the Application).

If the situation is that referred to in paragraph (b) above, Paragraph 1 will require the applicant to establish his/her entitlement to a grant of letters of administration. If the space provided on the Form is insufficient for this purpose, a Form 20 – Enlarged Panel must be used.

Prior to 1 April 2003, s 5 of the *Succession Act* 1981 included a definition of 'de facto spouse' to provide for a sharing by a de facto spouse of the estate of a person who died intestate.

Section 5AA of the *Succession Act* 1981 now includes the definition of a spouse generally as 'the person's husband or wife; or de-facto partner as defined in the *Acts Interpretation Act* 1954, s 32DA'.

Where a Grant of Letters of Administration in Queensland of an intestate's estate has not been made and the deceased died on or after 1 May 1998, if in an application of this type the applicant is:

- (a) the deceased spouse, the following is required:

for a death between 1 May 1998 and 31 March 2003, inclusive –

- a statement that he/she is the spouse of the deceased and the deceased was not survived by 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.

for a death on or after 1 April 2003 –

- a statement that he/she/they is/are the surviving spouse/s of the deceased as defined by s 5AA of the *Succession Act* 1981.

(b) the deceased's de facto spouse, the following is required:

for a death between 1 May 1998 and 31 March 2003, inclusive –

- a statement that he/she is the de facto spouse of the deceased as defined by s 5 of the *Succession Act* 1981, as in force at the date of death of the deceased, and that the deceased was not survived by a spouse.

(c) the deceased's child, the following is required:

for a death between 1 May 1998 and 31 March 2003, inclusive –

- a statement that he/she is a child of the deceased and that the deceased was not survived by a spouse or 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.

for a death on or after 1 April 2003 –

- a statement that he/she is a child of the deceased and the deceased was not survived by a spouse as defined by s 5AA of the *Succession Act* 1981.

The applicant child of the deceased must also identify, by name, all the children of the deceased who survived the deceased and their dates of birth.

However, if the deceased was survived by more than one child, as many as four children may apply as personal representatives.

Order 610 (Priority for letters of administration) of the *Uniform Civil Procedure Rules* 1999 requires that a person with a higher priority to the applicant must be accounted for (eg if a child of the deceased is the applicant and the deceased was survived by a spouse/de facto spouse, the spouse/de facto spouse must renounce his/her right to administer the deceased's estate).

Paragraph 2

[5-4180]

The 'search' which this paragraph states as having been caused to be made is the same as the one required in an application for a grant of representation. It is not necessary to lodge any evidence that the search referred to in this paragraph has been made, nor is it necessary to specify the date on which the search was made. In practice, the search should be conducted immediately prior to the execution of the Application, which should be lodged promptly thereafter. It is generally made by a law clerk in the employ of the solicitor who prepares the Application.

Paragraph 4

[5-4185]

When the spouse of the deceased is the applicant in a Form 5A, then he/she must indicate that the marriage between the deceased and the spouse has not been dissolved or annulled (s 15 of the *Succession Act* 1981) unless the divorce or annulment occurred on or after 1 April 2006 and a contrary intention appears in the will that the former spouse is entitled despite the divorce or annulment by retaining either clause (a) or (b) of paragraph 4 on the annexure to Form 5A.

Paragraph 5

[5-4190]

Substantiation of the statement that the gross value of the estate in Queensland does not exceed \$300,000 is **not** required. The Registrar relies on the applicant's statement in the declaration.

General Comments

[5-4200]

Separate executions are required for each declarant. Where there is sufficient space on the annexure to Form 5A, it is permissible for more than one declarant to make and execute the declaration on the annexure. However, where there is insufficient space for all declarants to execute on the same declaration, additional declarations must be completed and executed.

If the applicant is to execute the declaration outside of Queensland, the appropriate form of attestation clause should be used.

Although not required to be disclosed, if the land is an asset of a partnership or the deceased was the undisclosed sole trustee of it, the Form 5A may be inappropriate as a grant of representation may be necessary to enable the trust to be assumed. Such land should **not** be dealt with by way of a 'limited transmission', ie a recording of the personal representative as 'personal representative – trust' or 'personal representative – partnership'. The personal representative should simply be recorded (by the transmission application) as 'personal representative'. Once this has occurred, these other equities can be dealt with by way of the appropriate Form 1 – Transfer (eg a Form 1 – Transfer to Trustees (see ¶[1-2380] and ¶[1-2390])).

As previously noted, a Transmission Application may be registered in these circumstances only after six months from the date of death, where no letters of administration have been granted in that time and where the gross estate of the intestate in Queensland, other than property held by the deceased as a joint tenant, was not over \$300,000 (or as otherwise prescribed by regulation).

Documentation to be Lodged

[5-4210]

The following documentation must be lodged to register the transmission:

- (1) Form 5A;
- (2) those referred to as 'deposited' as set out in Item 5 of the Transmission Application;
- (3) Form 20 and supplementary statutory declaration/s, as appropriate; and
- (4) ²Certificate of Title, if it exists, or a request made to dispense with production.
- (5) for a water allocation title:

- (a) Form ROP 13 – Notification of Existence of Supply Contract (for water allocations managed under a Resource Operations Licence) – see part 49, esp ¶[49-0030]; or
- (b) Water Allocation Dealing Certificate (for water allocations not managed under a Resource Operations Licence) – see part 49, esp ¶[49-0080].

[Form 6 (three pages)]

Guide to Completion of Form 6

Item 1

[5-4220]

Insert the name, as recorded, of the deceased registered proprietor/lessee/mortgagee.

Item 2

[5-4230]

Insert the details of the lot which is being transmitted or the lot over which the interest is being transmitted. If the transmission relates to State leasehold, the tenure type and lease number should be inserted. For further information see part 1 – Transfer, esp ¶[1-2020].

As with a Form 1 – Transfer, more than one parcel of land may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is not required for the transmission of different interests, eg an interest in State leasehold and/or water allocation may be transmitted in the same application as an interest in fee simple or an interest in a mortgage etc.

Item 3

[5-4240]

Insert the deceased's interest in the land. This may be an estate in fee simple, an interest in a lease, an interest in a bill of mortgage, etc. The interest is described, for example, as:

- 'fee simple'
- 'Lease No. G123456'
- 'Bill of Mortgage No. 11654321'
- 'State Leasehold'
- 'Water Allocation'

Where the interest being transmitted constitutes only part of an interest in a lot, it is necessary to insert, eg '½ interest in fee simple' or '½ interest in Lease No G123456' or '½ interest in State Lease No 654321'.

Item 4

[5-4250]

If there is more than one applicant, their entitlement should be shown, eg 'as joint tenants' or 'as tenants in common in equal shares' or 'as tenants in common in the shares of one-third and two-thirds respectively', etc as the case may be.

Item 5

[5-4260]

The document/s deposited in support of the Transmission Application should be identified here. The inapplicable documents indicated on the Form must be deleted.

It will be noted that the wording of s 111(2)(a) of the *Land Title Act* 1994 refers simply to the ‘resealing of a grant of representation’ and therefore includes the reseal of a grant of letters of administration on intestacy, overcoming the difficulty previously presented by the decision in *Re Heathcote* [1903] St R Qd 57.

Item 6

[5-4270]

Item 6 contains the formal transmission request and irrelevant descriptions (eg lessee/mortgagee or as the case may be) should be deleted.

If the certificate of death of the registered proprietor or lessee is being deposited, the cause of death should be checked to ensure that it does not suggest a lack of testamentary capacity at the time the will was made. If it does, a letter from a registered medical practitioner stating, in his/her opinion, at the date of execution of the will the testator had testamentary capacity to make a will or a statutory declaration from a solicitor who witnessed the will setting out how the solicitor satisfied himself/herself as to the testator’s testamentary capacity, will be required.

Declaration by Applicant

[5-4280]

A declaration in the prescribed Form 6 annexure must be completed and lodged with the Application. The statements required to be included or completed are indicated on the declaration. However, some paragraphs are deserving of comment.

Paragraph 1

[5-4290]

Where the devisee/legatee is a corporation, this paragraph should be varied to begin ‘The applicant is’ (not ‘I am’). The declarant should include a statement that he/she is authorised to make the declaration on the corporation’s behalf. Further, even in the normal case where the applicant declares that he/she is the devisee/legatee, additional identification or evidence of entitlement may be required, for example, where:

- (a) the applicant is not named or is named differently in the will and/or is a substituted beneficiary; or
- (b) the effectiveness of the devise/legacy depends, as a matter of law, on other conditions being fulfilled.

In either of these circumstances, evidence must be provided to establish the entitlement of the applicant to the devise/legacy.

The Registrar does not require evidence of the payment of legacies and debts.

Examples falling within (a) above are as follows:

- (i) Where the devise/legacy is to a class such as ‘to such of my children as shall survive me’. Here, the applicant must give details of the testator’s children, including age, and make it clear that, if a child has failed to survive the testator, that child died without

issue. Otherwise, the implications of s 33N of the *Succession Act* 1981 must be considered (ie the entitlement of the deceased child's issue to take the deceased child's share). An appropriate statement in this Item might be:

‘The deceased left as his only children surviving him, us, your declarants.’

‘No child of the deceased predeceased him.’

‘AB, the only other child of the deceased, died on 10 January 1985 as appears by the office copy certificate of death deposited herewith, without issue.’

Note that s 65 of the *Succession Act* 1867 continues to have relevance where the will was executed prior to 1 January 1982 (the commencement date of the *Succession Act* 1981).

- (ii) If the devisee/legatee is named ‘Albert Brown’ in the will, but his correct name is ‘Albert William Brown’, then no statement is required to identify them as one and the same. However, a significant difference, eg in the surname, will require explanation.
- (iii) If the applicant received his/her entitlement to claim by virtue of being a substituted or residuary beneficiary, then particulars of the predeceasing of the primary beneficiary should be declared and an office copy certificate of death of the primary beneficiary should be deposited with the Application. The statement required might be:

‘I am the substituted beneficiary of the land described in Item 2, AB the primary beneficiary having predeceased the deceased as appears by the office copy certificate of death deposited herewith.’

Where the primary beneficiary was ‘issue’ of the testator, the relevance of s 33N of the *Succession Act* 1981 should be addressed as discussed in example (i) above. Again, the relevance of s 65 of the *Succession Act* 1867 should also be considered.

Examples falling within (b) above are as follows:

- (i) If the applicant is required by the will to have attained a certain age or met a certain qualifying condition (eg to have married), then evidence will be required showing that the age or other condition has been met.

If the provisions of ss 28, 29 or 30 of the *Succession Act* 1981 or the comparable sections that replaced those sections from 1 April 2006 as contained in Division 5 of Part 6 of the *Succession Act* 1981 appear to affect the devise, appropriate evidence would need to be provided to establish entitlement.

Paragraph 2

[5-4300]

This paragraph will require amendment as appropriate to ensure that the land which is the subject of the Transmission Application is clearly identified or confirmed as the land devised or bequeathed to the applicant under the will.

Paragraph 6

[5-4310]

As indicated on the Form, this paragraph is relevant only where the applicant's claim is pursuant to an unproven will.

Paragraph 7

[5-4320]

When the spouse of the deceased is applying for transmission supported by a reseal of probate, or an original grant or exemplification from another jurisdiction, then he/she must indicate that the marriage between the deceased and the spouse has not been dissolved or annulled (s 15 of the *Succession Act* 1981) by retaining paragraph 7 on the annexure to Form 6 unless the divorce or annulment occurred on or after 1 April 2006 and a contrary intention appears in the will that the former spouse is entitled despite the divorce or annulment.

General Comments

[5-4330]

Separate executions are required for each declarant. Where there is insufficient space on the annexure to Form 6 for declarants to make and execute on the annexure, additional declarations must be completed and executed on Form 20.

The form of wording of the attestation should comply with the appropriate Oaths/Evidence Act under which the declaration is being made.

Consent of Personal Representative

[5-4340]

This part of the Form requires the completion of the name and address of the personal representative or person entitled to appointment as such and requires the deletion of the inapplicable items.

As with a devisee/legatee, if the unproven will showed the executor's name as 'Alice Brown', but her correct name was 'Alice Emily Brown', no evidence is required to identify them as one and the same. However, a significant difference (eg in the surname) will require an explanation.

It is necessary to insert in this section of the Form the basis of entitlement to be the personal representative. Where the Form 6 is supported by a Queensland Reseal of Probate, the person entitled to consent to the transmission as personal representative is the person whose name appears on the face of the reseal.

The execution of the consent by the personal representative must be witnessed by a person qualified in accordance with s 161 of the *Land Title Act* 1994.

A personal representative, without a grant of representation in Queensland, who was the spouse of the deceased and who is not the applicant, must make a statutory declaration in terms of paragraph 7 of the declaration to Form 6 (see ¶[5-4330]).

General Comments

[5-4350]

The consent of the personal representative is required even if the personal representative and the applicant are one and the same.

Separate executions are required for each personal representative consenting to a Form 6.

It is noted that the consent incorporates statements regarding the payment of or provision for just debts, funeral and testamentary expenses and legacies. The Registrar does not require evidence that these matters have been attended to. It is the personal representative's responsibility. These statements are incorporated to replace the need for a declaration relating to

these issues by alerting personal representatives to some basic matters they should consider before consenting to the application.

Appropriation

[5-4355]

Where an appropriation has taken place in the course of administering the estate, a Form 6 will be permitted provided that it is accompanied by a declaration from the personal representative stating, if such is the case:

- an appropriation has occurred during the course of administering the deceased's estate;
- the provisions of s 33(1)(l) of the *Trusts Act* 1973 have been complied with; and
- no application has been made to the Court to vary the appropriation.

Documentation to be Lodged

[5-4360]

The following documentation must be lodged to register the transmission:

- (1) Form 6;
- (2) those referred to as 'deposited' as set out in Item 5 of the Transmission Application;
- (3) Form 20 and supplementary statutory declaration/s, as appropriate;
- (4) ²Certificate of Title, if it exists, or a request made to dispense with production; and
- (5) for fee simple and a water allocation title a Form 24A – Property Information (Transmission Application); and
- (6) ²for fee simple a Form 25 – Foreign Ownership Information, if applicable; and
- (7) for a water allocation title:
 - (a) ROP 13 – Notification of existence of Supply Contract (for water allocations managed under a Resource Operations Licence) – see part 49, esp ¶[49-0030]; or
 - (b) Water Allocation Dealing Certificate – (for water allocations not managed under a Resource Operations Licence) – see part 49, esp ¶[49-0080].

¶[5-6000] deleted

Case Law

[5-7000]

Nil.

Fees

[5-8000]

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 13;
and
- *Water Regulation 2002* – Schedule 16, item numbers 7 and 11.

Cross References and Further Reading

[5-9000]

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

Notes in text

[5-9050]

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.