

³Part 10 – Surrender of Easement

Table of Contents

General Law.....	[10-0000]
Practice	[10-2000]
Benefit Easement to Common Property for a Community Titles Scheme	[10-2010]
Forms	
General Guide to Completion of Forms.....	[10-4000]
Guide to Completion of Form 10	
Item 1	[10-4010]
Item 2	[10-4020]
Item 3	[10-4030]
Item 4	[10-4040]
Item 5	[10-4050]
Case Law	[10-7000]
Fees	[10-8000]
Cross References and Further Reading	[10-9000]
Notes in text	[10-9050]

³Part 10 – Surrender of Easement

General Law

[10-0000]

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

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

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

Practice

[10-2000]

The owners of both the benefited (dominant tenement) and burdened (servient tenement) lots may together execute the Form 10 – Surrender of Easement. If this option is adopted, the Certificates of Title issued for both the dominant and servient lots must be deposited for cancellation.

A Form 10 – Surrender of Easement executed only by the owner of the lot that benefits from the easement (the dominant tenement) will be effective to surrender the easement. In such a case, only the Certificate of Title for the dominant tenement needs to be deposited for cancellation, if one has issued.

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

The consent, in Form 18 – General Consent, of any registered mortgagees of the benefited lot must also be lodged. Further, the consent of any lessee that receives a benefit from the easement is also required. Where a mortgagee has ‘consented’ to the surrender by lodging the duplicate Certificate of Title for cancellation, the Form 18 – General Consent is not required.

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

Benefit Easement to Common Property for a Community Titles Scheme

[10-2010]

When the Body Corporate for a community titles scheme executes an instrument of surrender of an easement that benefits the common property a copy of the resolution, in accordance with the scheme's regulation module, must be deposited with the instrument of surrender.

Forms

General Guide to Completion of Forms

[10-4000]

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

Dealing Number



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

1. Dealing number of easement being surrendered	Lodger (Name, address, E-mail & phone number)	Lodger Code
700001245	CONSTANTUS & LEE SOLICITORS 200 NORTH QUAY BRISBANE QLD 4000 mail@conlee.com.au (07) 3221 3429	99

2. Description of Easement/Lot on Plan	County	Parish	Title Reference
Servient Tenement (burdened land) EASEMENT G ON RP176953	STANLEY	BULIMBA	13894001
*Dominant Tenement (benefited land)			
* not applicable if easement in gross LOT 4 ON RP176953	STANLEY	BULIMBA	14359147

3. Grantor PETER ROSS THOMPSON	4. Grantee MICHAEL ALLEN MARSDEN JOSEPHINE ELAINE MARSDEN
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5. Surrender/Execution

***Full Surrender**

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

***Partial Surrender**

The Grantee surrenders the easement in item 1 so that the easement is extinguished so far as the easement relates to:-
*part of the Dominant Tenement; or
*part of the Servient Tenement.

* delete if not applicable

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

G I Constantus

.....signature
GUSTAVE IGOR CONSTANTUS
.....full name
SOLICITOR
.....qualification

Witnessing Officer

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

4/12/2007
Execution Date

M A Marsden
J E Marsden
.....
Grantee's Signature

R E Lester

.....signature
ROBERT EDWARD LESTER
.....full name
JUSTICE OF THE PEACE (QUALIFIED) #13445
.....qualification

Witnessing Officer

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

6/12/2007
Execution Date

P R Thompson
.....
Grantor's Signature

Guide to Completion of Form 10

Item 1

[10-4010]

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

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

Item 2

[10-4020]

Insert the description of the easement, for the burdened lot (eg Easement [identifier] on [plan reference]), and the Lot [number] on [plan reference] for the benefited lot. The County, Parish and Title reference for both the burdened and benefited lot must also be inserted.

In the case of an easement in gross, the section of Item 2 relating to the benefited lot should be ruled through.

Where it is a partial surrender and the description of the benefited lot has changed, only the relevant lot is listed (ie, the lot over which the easement is being surrendered). Where it is a full surrender and the original benefited lot is subdivided all the lots may be included in the one instrument provided that all the registered owners of each lot can be clearly identified. Separate executions for each different registered owner are required. If there are a large number of registered owners that cannot be clearly identified then additional surrender instruments will be required.

Item 3

[10-4030]

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

Item 4

[10-4040]

Insert the full names of the grantee/s. The current registered owner of the benefited lot may not necessarily be the person who was the original grantee of the easement. The relevant name to be inserted is that of the current registered owner.

Item 5

[10-4050]

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

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

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

However, the grantor alone may not execute a surrender.

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

¶[10-6000] deleted

Case Law

[10-7000]

Nil.

Fees

[10-8000]

Fees payable to the land registry are subject to an annual review. See the current *Land Title Regulation 2005* – Schedule 2, item numbers 2(h) and 2(m).

Cross References and Further Reading

[10-9000]

Part 9 – Easement

Part 60 – Miscellaneous, ¶[60-0900].

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

Notes in text

[10-9050]

Note ³ – This part is not applicable to water allocations or the Water Allocations Register.