

Part 12 – Request to Register Writ of Execution

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<i>Bissicks v The Bath Colliery Company Limited Ex Parte Bissicks</i> (1878) 3 ExD 174	[12-7020]
<i>Re Crump, Ex parte Crump</i> (1891) 64 LT 799	[12-7030]
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Part 12 – Request to Register Writ of Execution

General Law

[12-0000]

Where an unsatisfied judgment or order of a court exists for the payment of a sum of money by a defendant (enforcement debtor) to a plaintiff (enforcement creditor), enforcement proceedings may be taken to sell interests in real property owned by the debtor and to have the proceeds of the sale applied to the satisfaction of the judgment or order.

Under the *Land Title Act 1994*, the term ‘writ of execution’ means a writ or warrant of execution after judgment in any court, and includes an enforcement warrant. An enforcement warrant includes an enforcement warrant under s 93A of the *Supreme Court Act of Queensland Act 1991* or under s 63 of the *State Penalties Enforcement Act 1999*.

A writ of execution provides the means to compel an involuntary sale of the debtor’s property for the satisfaction of the judgment or order. The normal procedure for enforcement is the registration of a writ of execution against the real property interests of the debtor and for the property to be sold by the relevant enforcement officer of the court that issued the writ of execution.

The Registrar is authorised by s 116 of the *Land Title Act 1994* to register the writ of execution against the title to the land or other interest described in the request, subject to:

- the land or interest the subject of the writ of execution being registered in the name of the debtor/s at the time of lodgement or registration; and
- the writ of execution being issued within the previous 12 months or, if issued for more than 12 months, lodgement of court evidence of its extension.

Registration of a writ of execution against a lot binds the lot as against the interests of purchasers, lessees, mortgagees and creditors during the binding period of six months from lodgement and any extended time allowed by the court, but only if the writ of execution is executed by the delegated court officer by selling the lot during that period.

However, the following instruments override a writ of execution:

- (a) ²a sale of land or an application for registration as owner by a local government under Chapter 14 Part 7 Divisions 3 or 4 of the *Local Government Act 1993*;
- (b) ²a resumption of land pursuant to s 12(5) of the *Acquisition of Land Act 1967* by the State, a local government, or authorised constructing authority;
- (c) actions instituted under statutory charges by the Commonwealth or the State, eg land tax;
- (d) a transfer by mortgagee exercising power of sale, executed on or after 7 June 2001, overrides a writ of execution provided the mortgage under which the power is exercised was registered prior to the registration of the writ of execution.

Legislation

[12-1000]

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

General

[12-2000]

It is not the responsibility of the Registrar to enquire into the nature of a writ of execution. Within Queensland, a writ of execution can be issued by the following:

- High Court of Australia
- Federal Court of Australia
- Supreme Court of Queensland
- District Court
- Magistrates Court
- Registrar of the State Penalties Enforcement Registry (SPER)
- Family Law Court of Australia.

An interstate judgment may be enforced in Queensland by registration of the interstate judgment in the relevant Queensland court, whereupon a writ of execution is issued by the relevant State court in Queensland. Interstate judgments are registered and enforced under the provisions of the *Service and Execution of Process Act 1992* (Cth).

In Queensland judgments obtained in foreign courts to which the *Foreign Judgments Act 1991* (Cth) applies may be registered in the Supreme Court.

Upon registration the foreign judgment has the same force and effect as if it were a judgment of the Supreme Court of Queensland.

A money judgment may be enforced by the same means of execution as is available under the law of the place of registration.

A writ of execution issued on a judgment against a person in their individual capacity cannot be entered against land or any interest which is held in a representative capacity or vice versa.

Currency of the Writ of Execution

[12-2010]

Court Issues Writ of Execution

A writ of execution issued by a court is valid for a period of 12 months from the date of issue (r 820 of the *Uniform Civil Procedure Rules 1999*). However, a writ of execution may state that it ends at an earlier time (s 92 of the *Supreme Court of Queensland Act 1991*). The date of issue of the document will be shown on the face of the writ of execution, regardless of the court which has issued the document. The writ of execution may be extended for a further period of 12 months by order of the court and normally that extension is endorsed upon the face of the writ of execution.

The Registrar must not register a writ of execution if it has been lodged more than 12 months after it was issued by the court and has not been further extended by order of that court.

Writ of Execution issued by Registrar of the State Penalties Enforcement Registry

A writ of execution issued by the Registrar of the State Penalties Enforcement Registry (SPER) is current for up to six months from the date of issue as stated on the writ of execution.

The Registrar of SPER may renew the writ of execution for a period of not more than six months at any one time before the writ of execution ends. However to bind the register a new Form 12 together with an office copy of the renewed writ of execution must be lodged.

A writ of execution issued by the Registrar of the State Penalties Enforcement Registry may not be extended.

General Request to Record Extension of a Writ of Execution

[12-2020]

In seeking to record an extension of a writ of execution, the following matters must be attended to:

- a Form 14 – General Request must be lodged;
- no fee is payable in respect of the lodgement of the Form 14;
- all items on the Form 14 must be appropriately completed;
- the affected land or interest in the land must be identical to that which is contained in the writ of execution;

- a court certified or sealed copy or a good quality photocopy order presented with the original for sighting, of the order extending the binding time for the writ of execution to comply with s 117(b) of the *Land Title Act* 1994 must be lodged with the Form 14; and
- the writ of execution must not have been cancelled.

²The certificate of title (if issued) is not required to be deposited.

If a writ of execution has been cancelled and a Form 14 – General Request to record extension of the writ of execution is subsequently lodged, it cannot be registered. The appropriate documentation is another Form 14 – General Request to register the writ of execution with court certified copies of:

- the original writ of execution; and
- the court order extending the time.

Effect of the Writ of Execution

[12-2025]

A registered writ of execution binds the interest of the enforcement debtor as regards purchasers, mortgagees, lessees and creditors from him/her for a period of six months from the date of lodgement or such extended time that is allowed by the court and notified to the Registrar. This allows the authorised court officer (generally the Bailiff or Sheriff) to auction the land or other interest and to execute a transfer to the purchaser. Any instrument other than those by purchasers, mortgagees, lessees and creditors lodged after the writ of execution and during the initial or extended binding period may be registered.

Any prior unregistered dealings are not affected by the lodgement of a writ of execution.

On registration of a transfer executed by the Bailiff or Sheriff, the transferee becomes the registered owner of the lot, only subject to registered interests (s 120(2)(a) of the *Land Title Act* 1994) and equitable mortgages notified by caveat lodged before registration of the writ of execution (s 120(2)(b) of the *Land Title Act* 1994. Note: this provision is only capable of application to equitable mortgages notified by non-lapsing caveats lodged under s 30A of the *Real Property Act* 1877.)

If a lot is sold by an authorised court officer under a registered writ of execution, the authorised officer is empowered to execute a Form 1 – Transfer to the purchaser under the seal of the court. Officers who affix the seal of the court must show their official designation or position adjacent to their signature.

²If the land is subdivided after the issue of the writ of execution, but the plan is lodged prior to the writ of execution, a declaration identifying the new lots (excluding road and public use land) as being the same land as that referred to in the writ of execution is required.

¶[12-2030] deleted

Request to Register Writ of Execution

[12-2040]

To register a writ of execution, a Form 12 – Request to Register Writ of Execution or Warrant of Execution needs to be completed and lodged, together with a copy of the writ of execution. If the writ of execution (other than that issued by the Registrar of State Penalties Enforcement Register (SPER)) has been previously deposited for registration is still within its 12 month currency, it may be exhibited as evidence for the lodgement of a further writ of execution.

Separate writs of execution under different writ may be registered against a lot.

Where an enforcement debtor under a writ of execution issued by SPER has incurred multiple fines for different offences the Registrar of SPER may issue multiple writs of execution. In such instances it is acceptable for multiple writs of execution to be lodged with one Form 12.

The following items must be attended to in the registration of a writ of execution:

- all items on the Form 12 must be appropriately completed;
- the lodgement fee must be paid;
- a court certified copy or office copy if issued by the Registrar of SPER, or a good quality photocopy presented with the original for sighting or alternatively, a court sealed copy of the writ of execution must be lodged;
- the land or interest described in the Form 12 must be in the name of the enforcement debtor shown in the writ of execution.

²The certificate of title (if issued) is not required to be deposited.

Removal of Writ of Execution

General

[12-2050]

Writs of execution expire; they do not lapse in the same manner as caveats.

A writ of execution issued from a court may be removed from the register by:

- lodging a Form 14 – Request to Record Discharge or Satisfaction of a Writ of Execution at any time after payment of the debt in full;
- lodging a Form 14 – Request to Cancel a Writ of Execution for a writ of execution which has expired and has not been put into force and effect;
- withdrawing an unregistered writ of execution by letter from the enforcement creditor or their solicitor.

For further information see part 14 – General Request, esp ¶[14-2125].

A writ of execution issued by the Registrar of the State Penalties Enforcement Register (SPER) may only be removed from the land register by registration of a withdrawal by the Registrar of SPER. The term ‘discharge’ may be used in lieu of ‘withdrawal’.

For further information see part 14 – General Request, esp ¶[14-2127].

¶[12-2060] to ¶[12-2080] and ¶[12-2090] deleted

Withdrawal of Unregistered Writ of Execution

[12-2100]

An unregistered writ of execution may be withdrawn by a letter from the enforcement creditor or their solicitor to the Registrar (s 159 of the *Land Title Act 1994*).

Rejection

[12-2110]

If a writ of execution is requisitioned pursuant to s 156(1) of the *Land Title Act 1994* and the requisition is not complied with within the rejection period specified in the requisition notice, the writ of execution may be rejected (s 157(1) of the *Land Title Act 1994*). Generally a notice of intention to reject is given by the Registrar allowing seven days for the lodger to respond prior to rejection. However, the failure to give a seven-day courtesy notice does not give the enforcement creditor protection against rejection.

Overriding a Writ of Execution

[12-2120]

The following will be operative, notwithstanding the lodgement of a writ of execution:

- ²A certificate of sale or an application by a local government under Chapter 14 Part 7 Division 3 or 4 of the *Local Government Act 1993* overrides a writ of execution.
- ²A resumption by the State or a State instrumentality overrides a writ of execution.
- A caveat with a notice of action prevents registration of a transfer under a writ of execution.
- Statutory charges by the Commonwealth or State may take precedence over a writ of execution.
- A transfer by mortgagee exercising power of sale, executed on or after 7 June 2001, overrides a writ of execution provided the mortgage under which the power is exercised was registered prior to the registration of the writ of execution.

Transfer under a Writ of Execution

[12-2130]

See part 1, esp ¶[1-2530] and ¶[1-2540].

Forms

General Guide to Completion of Forms

[12-4000]

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

**REQUEST TO REGISTER WRIT/
WARRANT OF EXECUTION**

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)

ACE LEGAL SERVICES
89 EDWARD STREET
BRISBANE QLD 4000
info@acelegalservices.com.au
(07) 3227 9947

Lodger

Code
858

1. Lot on Plan Description	County	Parish	Title Reference
LOT 77 ON RP94912	MARCH	GYMPIE	10946033

2. Registered Proprietor/Lessee	3. Interest being bound or affected
LEONARD LLEWELLYN JONES	FEE SIMPLE

4. Applicant	5. Particulars of Writ/Warrant
FRASER'S WELDING WORKS	Writ/Warrant of Execution No. 106 of 2007 Court – SUPREME COURT, BRISBANE Enforcement Debtor – L L JONES

6. Request

- a) ~~The applicant makes this application as~~ I, WILLIAM MALCOLM FRASER, being a partner in the firm of Fraser's Welding Works, am authorised to make this application on behalf of the enforcement creditor
- b) The Writ/Warrant has not been wholly satisfied. An office copy of the Writ/Warrant is attached.
- c) The registered Owner/Lessee of the interest is identical with the enforcement debtor in the Writ/Warrant.
- d) It is requested that the particulars of the Writ/Warrant be registered.

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

I M Larcony

.....signature

IAN MATTHEW LARCONY

.....full name

COMMISSIONER FOR DECLARATIONS #18345

.....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

W M Fraser

Applicant's Signature

Note: A Solicitor cannot execute on behalf of an applicant

Guide to Completion of Form 12

Item 1

[12-4010]

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 2

[12-4020]

Insert the full name of the registered proprietor/lessee. If the title or lease is in the name of more than one registered proprietor, but the writ was issued against only one of them, then only the name of the registered proprietor against whom the writ of execution was issued should be shown. If there is a discrepancy between the name on the writ of execution and the name on the title, identification should be provided in Item 6(c).

Item 3

[12-4030]

Insert ‘Fee simple’, ‘Water Allocation’ or ‘Lease No. [number]’.

Item 4

[12-4040]

Insert the name of the enforcement creditor as shown in the writ of execution.

Item 5

[12-4050]

Insert the particulars from the writ of execution.

Item 6

[12-4060]

Where the enforcement creditor is a natural person the request must be made by the enforcement creditor personally and Item 6(a) is to be completed as follows ‘The applicant makes this application as the Enforcement Creditor’.

Where the Enforcement Creditor is an entity that has the capacity to hold an interest in land (eg a corporation), the Form 12 should be executed and witnessed in the manner set out in ¶[60-0900]. Item 6(a) must state ‘The applicant makes this application as a duly authorised officer of the Enforcement Creditor’.

Where the Enforcement Creditor is an entity that does not have the capacity to hold an interest in land (eg a firm), the Form 12 should be executed by a suitably authorised officer of the Enforcement Creditor and show the officer’s designation for example ‘Partner’. The execution must be witnessed by a qualified witness. Item 6(a) must state ‘The applicant makes this application as a duly authorised officer of the Enforcement Creditor’.

Duty

[12-4070]

There is no duty payable on a Form 12 – Request to register writ of execution of execution.

¶[12-6000] deleted

Case Law

***Hoy and Anor v AAA Home Loans Pty Ltd and Others* [1985] VR 281**

[12-7000]

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

***Hymas v Ogden* [1905] KB 246**

[12-7010]

As the remedies under the rules of execution are cumulative, the issue of one form of a writ of execution does not preclude the use of other forms of execution.

***Bissicks v The Bath Colliery Company Limited Ex Parte Bissicks* (1878) 3 ExD 174**

[12-7020]

The endorsement of a writ of execution commands the Sheriff to levy Sheriff’s poundage, officers’ fees, costs of recovery and all other legal expenses.

***Re Crump, Ex parte Crump* (1891) 64 LT 799**

[12-7030]

Execution for costs cannot issue on a judgment for costs to be taxed until the certificate of costs has been filed and the costs duly entered upon the judgment. The rules allow for separate writs of execution for recovery of sums of money and for costs. The general rule is that an

enforcement creditor cannot issue separate writs of execution for separate parts of his/her judgment.

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

[12-7040]

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

Fees

[12-8000]

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

- ²*Land Title Regulation* 2005 – Schedule 2, item numbers 2(g), 2(h) and 2(m); and
- *Water Regulation* 2002 – Schedule 16, item numbers 10, 11 and 15.

Cross References and Further Reading

[12-9000]

Part 1 – Transfer, esp ¶[1-2530] to ¶[1-2540]

Cairns, C, *Australian Civil Procedure*, 3rd edn, Law Book Company Limited, 1992, esp Chapter 19

Ryan Weld & Lee, *Queensland Supreme Court Practice*, Volume 1, Butterworths (loose-leaf service)

Wiley, *District Court Practice and Procedure*, Butterworths (loose-leaf service)

Tronc & Gribbin, *Civil Procedure Magistrates Court Queensland*, Law Book Company Limited (loose-leaf service)

Robertson, *Australian High Court and Federal Court Practice*, CCH Australia Limited (loose-leaf service)

Judiciary Act 1903 (Cth)

Rules of the Federal Court of Australia (Cth)

Rules of the Supreme Court of Queensland, esp Order 47 – Execution

Rules of the District Court of Queensland, esp Part 28 – Execution

Magistrates Court Rules 1960, esp Part 27, ss 238-247

Notes in text

[12-9050]

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.