

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

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Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

General Law

[13-0000]

Under the provisions of the *Land Title Act* 1994, amendments to registered leases, easements, covenants, mortgages, profits a prendre and Building Management Statements may be registered. Form 13 is the appropriate form in each case. A Form 20 – Schedule setting out the amendment may be attached to the Form 13.

Amendment of Lease

[13-0010]

Section 67 of the *Land Title Act* 1994 provides that a registered lease may be amended by registering an instrument of amendment of lease. However, the instrument of amendment must not:

- increase or decrease the area leased; or
- add or remove a party to a lease; or
- be lodged after the lease's term has ended.

A lease's term includes a period of possession pursuant to an option to renew or under a previous amendment which extends the term.

If a lease is to be amended in any of these three ways, then it will be necessary to surrender the existing lease and to enter into a new lease (see part 8 – Surrender of Freehold Lease).

Section 67(4) of the *Land Title Act* 1994 provides that the procedure for amendment set out in s 67 of the *Land Title Act* 1994 is in addition to any other rights, provided they are not inconsistent with the Act.

An amendment to a lease executed after the registration of a mortgage is not valid against the mortgagee unless the mortgagee consents to the amendment before it is registered (s 66 of the *Land Title Act* 1994). The Registrar will register the amendment of lease even if the lot is mortgaged and the consent of the mortgagee is not included. However, registration will not give validity to the amended lease against the mortgagee as a matter of law.

In certain cases the Form 13 requires a notation as to the payment of duty under the provisions of the *Duties Act* 2001.

For further information see ¶[13-2000] to ¶[13-2030].

¹Amendment of Easement

[13-0020]

Section 91 of the *Land Title Act* 1994 provides that a registered easement may be amended by registering an instrument of amendment of easement. However, the instrument of amendment must not:

- change the location of the easement; or
- increase or decrease the area of land affected by the easement; or
- change a party to the easement.

The *Land Title Act* 1994 specifically provides that s 181 of the *Property Law Act* 1974 applies to registered easements (s 92 of the *Land Title Act* 1994). Section 181 of the *Property Law Act* 1974 allows a person interested in the land to apply to the Supreme Court for an order that an easement be modified or wholly or partially extinguished. The court may, amongst other things:

- direct that a survey of the land be conducted and a plan of survey be prepared;
- order any person to execute any instrument to give effect to the order; and
- order the production of any instrument relating to the land.

For further information see ¶[13-2040] to ¶[13-2050].

Amendment of Mortgage

[13-0030]

Section 76 of the *Land Title Act* 1994 provides that a registered mortgage may be amended by registering an instrument of amendment of mortgage. However, the instrument of amendment must not:

- increase or decrease the area of land or the number of water allocations charged by the mortgage; or
- add or remove a party to the mortgage.

²The Certificate of Title, if issued, must be deposited.

An amendment of mortgage is a dutiable instrument under the *Duties Act* 2001 where there is an increase in the principal sum.

For further information see ¶[13-2060] to ¶[13-2070].

¶[13-0040] deleted

¹Amendment of Covenant

[13-0041]

Section 97C of the *Land Title Act* 1994 provides that a registered covenant may be amended by registering an instrument of amendment of covenant. However the instrument of amendment must not:

- increase or decrease the area of land which is the subject of the covenant; or
- add or remove a party to the covenant.

The Certificate of Title, if issued, must be deposited.

¹Amendment of Profit a prendre

[13-0050]

Section 97K of the *Land Title Act* 1994 provides that a profit a prendre may be amended by registering an instrument of amendment of a profit a prendre. However, the amendment must not:

- increase or decrease the area of land; or
- add or remove a party to the profit a prendre.

Any dealings with a profit a prendre in gross, eg transfer, transmission, etc, will be recorded on the indefeasible title for the burdened lot.

¹Amendment of Building Management Statement

[13-0060]

Section 54E of the *Land Title Act* 1994 provides for the registration of an instrument of amendment of building management statement.

Legislation

[13-1000]

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

Amendment of Lease

[13-2000]

A registered lease may be amended by registering a Form 13 – Amendment of Lease (s 67 of the *Land Title Act* 1994). However, the amendment **cannot**:

- (a) increase or decrease the area leased; or
- (b) add or remove a party to the lease.

An amendment may increase or decrease the term of the lease. It must be lodged during the term of the lease as defined in s 67 of the *Land Title Act* 1994.

A lease may be amended more than once (see part 7 – Lease of Freehold or Water Allocation and part 8 – Surrender of Lease of Freehold or Water Allocation).

An amendment of lease can create, cancel, extend or shorten a period of a further term available under an option.

If the covenants contained in the amendment of lease are clear in that the option period is being exercised, then that option period is no longer valid for the lease. If however, the amendment is clearly only extending the original term of the lease, then the option period/s remain.

An amendment of lease cannot amend the commencement date of a lease that has commenced.

Due to the nature of a lease the Registrar will not enquire whether all titles subject to the lease are included in the Form 13 – Amendment of Lease.

It is in the lessee's interest to obtain the consent of any mortgagee of the fee simple or water allocation (see ¶[13-0010]) to an amendment of lease (s 66 of the *Land Title Act* 1994), however it is not a prerequisite for registration.

An amendment of lease does not require the consents of any sub-lessees, even if the covenants in the (head) lease are being amended.

If the amendment of lease decreases the term, it must be for a term which is longer than the term, including those available under options, of any sub-lease of the lease. Conversely, any increase in the term, including those available under options in a sub-lease must not exceed the term of the head-lease.

If the amendment extends the term and the lessor is a trustee, the new term, including further terms available under options, should not exceed 21 years (s 32(1)(e) of the *Trusts Act* 1973) unless the trust deed authorises leases for a greater term.

²If a lease is over part of the land and the term is extended, the approval of the local government is required if the new term, including further terms available under options, is for a period of over ten years (s 65(3A) of the *Land Title Act* 1994 and s 1.3.5 of the *Integrated Planning Act* 1997).

An amendment of a lease must not be lodged after the lease's term (which includes any unexercised first option period) has ended (s 67(3)(c) *Land Title Act* 1994).

Duty and Fees

[13-2010]

The following reference table relating to duty requirements has been formulated in consultation with the Office of State Revenue (OSR).

Amendment of Lease	
Any Form 13 that:	Duty notation required
Increases the term (where the amendment of the lease term commenced <i>prior to 1 January 2006</i>)	Yes
* Increases the term (where the amendment of the lease term commenced <i>on or after 1 January 2006</i>)	No
Increases the rental (where the amendment of the lease rent commenced <i>prior to 1 January 2006</i>)	Yes
* Increases the rental (where the amendment of the lease rent commenced <i>on or after 1 January 2006</i>)	No
Amends the covenants only	No

* **Note** – From 1 January 2006 lease duty was abolished by the *Revenue Legislation Amendment Act 2005*.

Lodgement fees are payable.

Documents to be Deposited

[13-2020]

It is not necessary to deposit registered copies of the lease.

²The Certificate of Title, if issued, must be deposited. However, if the amendment relates to a sub lease and the registered owner is not a party to the transaction the Certificate of Title is not required to be deposited.

Options to Renew

[13-2030]

Where an amendment of lease is lodged which extends the term, all options to renew will remain valid unless specifically deleted by the amendment. Where an amendment of lease is lodged which exercises an option, that option period is deleted from the lease, but all other options to renew in the lease remain.

¹Amendment of Easement

[13-2035]

A registered easement may be amended by registering an amendment of the easement in Form 13 (s 91(1) of the *Land Title Act 1994*). However, the amendment must not:

- (a) change the location of the easement; or
- (b) increase or decrease the area of land affected by the easement; or
- (c) change a party to the easement.

An amendment instrument may replace, delete and/or insert provisions to the easement. If the covenants are inserted or replaced they should be included on a Form 20 – Schedule. The Form 20 need only refer to the particular clause(s) to be deleted, amended or inserted for the purpose of the amendment.

¹Duty and Fees

[13-2040]

The following reference table relating to duty requirements has been formulated in consultation with the Office of State Revenue (OSR).

Easements	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes
Amends the purpose	No
Amends the covenants	No

Lodgement fees are payable (see ¶[13-8000]).

¹Documents to be Deposited

[13-2050]

The Certificates of Title for both tenements, if issued, must be deposited or a request made to dispense with production.

Amendment of Mortgage

[13-2055]

A registered mortgage may be amended by registering an amendment of the mortgage in Form 13 (s 76 of the *Land Title Act 1994*). However, the amendment must not:

- (a) increase or decrease the area of land or the number of water allocations charged by the mortgage; or
- (b) add or remove a party to the mortgage.

The covenants to be amended must be included on a Form 20 – Schedule. The covenants may be amended by deleting a particular clause, amending a particular clause or inserting a new clause. The Form 20 – Schedule need only refer to the particular clause(s) to be deleted, amended or inserted for the purpose of the amendment.

If the purpose of the amendment is a variation in accordance with s 79 of the *Property Law Act 1974*, usually prepared prior to the commencement of the *Land Title Act 1994*, the terms of the variation in the appropriate form under the *Property Law Act 1974* should be deposited with a Form 13.

Given the nature of a mortgage, when an amendment of mortgage is lodged the Registrar will not inquire as to whether all the lots in the mortgage are included in the amendment.

Duty and Fees

[13-2060]

The following reference table relating to duty requirements has been formulated in consultation with the Office of State Revenue (OSR).

Mortgages	
Any Form 13 that:	Duty notation required
Increases the principal sum	Yes
Amends the interest	No

Amends the term	No
Amends the covenants	No

Lodgement fees are payable (see ¶[13-8000]).

¹Documents to be Deposited

[13-2070]

The Certificate of Title, if issued, must be deposited or a request made to dispense with production.

¶[13-2080] to ¶[13-2100] deleted

¹Amendment of Instrument of Covenant

[13-2110]

A covenant may be amended by registering an instrument amending the covenant provided the instrument is validly executed by all parties to the covenant (ie the current registered owner or lessee and the State, a statutory body representing the State or a local government). If non-freehold is involved, written approval of the amendment by the Minister is required.

An instrument of amendment of covenant must not:

- (a) increase or decrease the area of land contained in the covenant; or
- (b) add or remove a party to the covenant.

An amendment of covenant must amend all of the lots to which the covenant relates.

¹Duty and Fees

[13-2120]

There is no duty payable on a Form 13 that amends an instrument of covenant.

However, lodgement fees are payable and the Certificate of Title, if issued, must be deposited or a request made to dispense with production.

¹Amendment of Profit a prendre

[13-2130]

An instrument of amendment of profit a prendre must not:

- (a) increase or decrease the area of land contained in the profit a prendre; or
- (b) add or remove a party to the profit a prendre.

¹Duty and Fees

[13-2140]

The following reference table relating to duty requirements has been formulated in consultation with the Office of State Revenue (OSR).

Profit a prendre	
Any Form 13 that:	Duty notation required
Increases or provides for additional consideration	Yes

Amends the covenants	No
----------------------	----

Lodgement fees are payable (see ¶[13-8000]).

¹Amendment of a Building Management Statement

[13-2150]

A Form 13 that amends a building management statement must be signed by the registered owners of all lots to which it applies. However, where lots affected by the BMS form part of a community titles scheme the instrument of amendment may be signed by the body corporate. A certified copy of the resolution agreeing to the amendment of the BMS must be deposited with the instrument of amendment.

Lots may not be added or removed from a building management statement by an amendment.

There is no duty payable, but normal lodgement fees apply.

Certificates of Title, if issued, for lots that are within a community titles scheme are not required to be deposited provided evidence the Registrar reasonably requires to allow registration, for example, a certified copy of the notice of a meeting and a certified copy of the minutes of the meeting, including a record of a resolution agreed to at the meeting.

Certificates of, if issued, for lots that are not within a community titles scheme must be deposited.

Forms

General Guide to Completion of Forms

[13-4000]

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

Example 1 – Amendment of Easement

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

AMENDMENT

Duty Imprint

FORM 13 Version 6
Page 1 of 2

Dealing Number



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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. Type/Dealing No of Instrument/Document being amended	Lodger (Name, address, E-mail & phone number)	Lodger Code
Type of Instrument/Document EASEMENT	D A McCALLUM	
Dealing Number 700004070.....	1 OCEAN DRIVE	
	SURFERS PARADISE QLD 4217	
	(07) 5202 1495	

2. Lot on Plan Description	County	Parish	Title Reference
SERVIENT TENEMENT	STANLEY	WARNER	11462065
DOMINANT TENEMENT	STANLEY	WARNER	12356047

3. Grantor/Mortgagor/Lessor
ANDREW DOUGLAS BARTON

4. Grantee/Mortgagee/Lessee
DOUGLAS ANGUS McCALLUM

5. Amendment of Lease Details (Only to be completed for an amendment of the term and/or option of lease)
Expiry date: / / AND/OR Event:
Option/s[#]:
Insert *nil* if no option or insert option period (eg 3 years or 2 x 3 years etc)

6. Request/Execution

The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:-
~~*item 5; *item 5 and attached schedule; *attached schedule.~~

* delete if not applicable

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

A D Lein
.....signature
ARNOLD DOUGLAS LEIN
.....full name
JUSTICE OF THE PEACE (C.DEC) #27345
.....qualification

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

11/11/2007
Execution Date

A D Barton
.....
Grantor's/Mortgagor's/Lessor's Signature

P J Writ
.....signature
PETER JOHN WRIT
.....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)

17/11/2007
Execution Date

D A McCallum
.....
Grantee's/Mortgagee's/Lessee's Signature

Example 1 (cont'd)

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

SCHEDULE

Form 20 Version 2
Page 2 of 2

Title Reference [11462065]

(Changes to clauses of the easement being set out here)

Example 2 – Amendment of Lease

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

AMENDMENT

Duty Imprint

Dealing Number



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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. Type/Dealing No of Instrument/Document being amended	Lodger (Name, address, E-mail & phone number)	Lodger Code
Type of Instrument/Document LEASE	SACHS & CO. SOLICITORS	102
Dealing Number 601447298.....	5 ALBERT STREET BRISBANE QLD 4000 mail@sachs.com.au (07) 3227 4149	

2. Lot on Plan Description	County	Parish	Title Reference
LOT 42 ON RP99332	MARCH	WEYBA	13131166

3. Grantor/Mortgagor/Lessor
SUBURBAN SHOPPING CO PTY LTD ABN 20 685 742 321

4. Grantee/Mortgagee/Lessee
PARKER JAMES SCHRIVNER and AQUILLA NEIL SCHRIVNER

5. Amendment of Lease Details (Only to be completed for an amendment of the term and/or option of lease)
Expiry date: 31/12/2013 AND/OR Event: ON THE DEATH OF THE LESSEE
Option/s#: NIL
Insert nil if no option or insert option period (eg 3 years or 2 x 3 years etc)

6. Request/Execution

The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:-
*item 5; *~~item 5 and attached schedule~~; *~~attached schedule~~.

* delete if not applicable

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

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

J Thomas, Director
JOHN PETER THOMAS

P Dean, Secretary
PAUL IAN DEAN

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

4/9/2007
Execution Date

.....
Grantor's/Mortgagor's/Lessor's Signature

E E Shield
.....signature
EGERTON ELI SHIELD
.....full name
JUSTICE OF THE PEACE (QUALIFIED) #39145
.....qualification

P J Schrivner

A N Schrivner

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

5/9/2007
Execution Date

.....
Grantee's/Mortgagee's/Lessee's Signature

Example 2 (cont'd)

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

SCHEDULE

Form 20 Version 2
Page 2 of 2

Title Reference [13131166]

(Changes to clauses of the lease being set out here)

Guide to Completion of Form 13

Item 1

[13-4010]

Insert the dealing number of the document being amended.

¶[13-4020] deleted

Item 2

[13-4021]

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.

For an amendment of an easement both the dominant and servient descriptions must be shown.

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

For an amendment of an easement both the dominant and servient descriptions must be shown.

Water Allocation Description

A water allocation should be identified as “Water Allocation”, “Allocation” or “WA”. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are Administrative Plans. Administrative Plan is abbreviated to AP as the prefix of the plan identifier.

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

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

Item 3

[13-4030]

Insert the full name of the grantor.

Item 4

[13-4040]

Insert the full name of the grantee.

Item 5

[13-4050]

This item is to be completed only where the term and/or the option in a lease is being amended. Insert the date or event on which the amended term is to expire. The details of all relevant option/s must be completed. Where option/s do not apply, insert Nil.

This item is not to be completed for an amendment of a mortgage, easement, profit a prendre, building management statement, covenant or a lease where the term and/or option is not being amended.

Item 6

[13-4055]

Complete where indicated. The amendment document or a completed Form 20 that sets out the amendments must be attached.

Execute as required.

¶[13-4060] deleted

Duty

[13-4070]

The circumstances in which duty is imposed on an instrument of amendment are set out in ¶[13-2010], ¶[13-2040], ¶[13-2060], ¶[13-2140] and ¶[13-2150].

¶[13-6000] deleted

Case Law

[13-7000]

Nil.

Fees

[13-8000]

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

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

Cross References and Further Reading

[13-9000]

Part 2 – Mortgage

Part 3 – Release of Mortgage

Part 7 – Lease of Freehold or Water Allocation

Part 8 – Surrender of Lease of Freehold or Water Allocation

Part 9 – Easement

Part 10 – Surrender of Easement

Part 14 – General Requests (Removal of Profit a prendre)

Part 29 – Profit a prendre

Part 31 – Covenants

Part 32 – Building Management Statements

Part 33 – Release of Covenant/Profit a prendre

Part 34 – Extinguishment of Building Management Statement

Queensland Conveyancing Law and Practice, CCH Australia Limited (loose-leaf service)

Property Law and Practice, Duncan and Vann, Law Book Company Limited (loose-leaf service)

Notes in text

[13-9050]

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.