

# <sup>3</sup>Part 17 – Request to Dispense with Production of Instrument

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## <sup>3</sup>Part 17 – Request to Dispense with Production of Instrument

### General Law

[17-0000]

Where a Certificate of Title has not been cancelled by the Registrar and it has been lost or destroyed and is required to be lodged with the Registrar (eg for cancellation to allow registration of an instrument), an application may be made to the Registrar, pursuant to s 164 of the *Land Title Act* 1994, to dispense with production of the instrument. The dispensation with production of the instrument will be noted in the relevant Register.

### Practice

¶[17-2000] deleted

### Advertising

[17-2010]

Section 18 of the *Land Title Act* 1994 empowers the Registrar of Titles to determine whether and how public notice is to be given in relation to specific applications.

No application made under the *Land Title Act* 1994 need be advertised in any government gazette.

All required public notices relating to applications that are first lodged for registration with the Registrar of Titles on or after 1 August 1994 will be placed by and at the expense of the lodger of the application.

However, delegates of the Registrar of Titles will prepare a written notice to the lodger:

- containing the public notice that is to appear;
- specifying the locality in which the notice is to be placed in a newspaper; and
- providing a date by which the requirement is to be satisfied, being one calendar month from the date of the written notice.

As a general rule, every application to dispense with the production of a Certificate of Title requires public notice of the Registrar's intention to comply with the application to be given **once** only by the lodger of the application in the following manner, as determined by the Registrar from the evidence deposited:

- in the *Courier-Mail* if the land is located within 50 kilometres from the Brisbane GPO; or
- in a paper that is acceptable to the Registrar and is circulated in the vicinity:
  - (a) of the land, if it is more than 50 kilometres from the Brisbane GPO; or
  - (b) of the location of the loss.

However, applications to dispense with a Certificate of Title where:

- (a) there are two or more proprietors; or
- (b) there is only one proprietor and a corroborative declaration from another person is produced,

and the parties declare that, from their own personal knowledge, they can substantiate that:

- (c) the instrument was **definitely destroyed**, no public notice is required; or
- (d) the instrument was **definitely either lost or stolen** at a particular location, public notice is required once only in a newspaper that is acceptable to the Registrar and is circulated in the vicinity where the Certificate of Title was lost or stolen.

Tear sheets of newspapers, to evidence compliance with the written notice, are to be provided prior to registration. Tear sheets must, as well as displaying the notice, show the name of the newspaper and the date of publication.

If no caveat (pursuant to s 122 of the *Land Title Act 1994*) 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.

## Supporting Declaration

[17-2020]

There are a wide variety of circumstances involved in Form 17 – Requests. The Registrar requires the best evidence available to ensure the certificate of title is not able to be located before registering the Request, but has a discretionary power to determine what is acceptable evidence for each individual case. Generally, declarations are required from:

- the registered owner; and
- every person who had custody of the certificate of title:
  - since it was last delivered from the Land Registry; or
  - until and including when it was in the custody of a reliable source (for example, a solicitor's firm or a financial institution).

The registered owner's declaration must cover the following points (as applicable):

- the date on which and to whom the instrument was last delivered from the Land Registry;
- the history of its custody since delivery from the Land Registry;
- the point at, and the circumstances through, which the instrument was lost, mislaid or destroyed;
- the efforts made by the applicant to search for the instrument if it is lost or mislaid;
- a statement that the search has been conducted in all likely and unlikely places;
- any documentary proof of such searches, such as copies of letters received from banks, solicitors, etc, confirming that the instrument is not held by them.

Each declarant other than the registered owner must set out the details within their knowledge, of the movement and custody of the certificate of title.

Supporting declarations may also be required in the following circumstances:

- if the evidence indicates that the instrument was last delivered to a registered owner who is a sole proprietor and if that person is able to, they should declare that they are familiar with the appearance of the missing instrument and that they have searched in all likely and unlikely places around their home and any other places where valuable records are kept; or
- if there is only one proprietor who is unable to declare that they are familiar with the appearance of the missing instrument, a corroborative declaration should be obtained from at least one person, such as a relative or neighbour who assisted the applicant to search their home and any other places where valuable records are kept and made enquiries on the proprietor's behalf.

If all the persons who have had custody of the instrument since it was last delivered from the Land Registry are not available or able to provide declarations, declarations should be obtained from those who are available and a further declaration made by someone appropriate in the specific circumstances stating who the others are and why declarations cannot be obtained from them.

Declarations prepared on forms purchased from stationers or prepared by word-processor, as well as on Form 20, are acceptable.

## Loss by a Third Party

[17-2030]

If a registered owner deposits a Certificate of Title with another party (eg bank, solicitor, etc) as or for security and the Title is lost, destroyed or stolen while in the possession of that party, the following documentation is required:

- a Form 17 – Request to Dispense with Production of Instrument, together with:
  - a declaration by the registered owner regarding the deposit of the Title with the third party (amend Item 5(b)); and
  - a supporting declaration by the party with whom the Title was deposited detailing the circumstances of the loss, destruction or theft.

## Original Instrument Located

[17-2040]

If an instrument is found after production has been dispensed with, it should be produced to the Land Registry for cancellation and destruction.

# Forms

## General Guide to Completion of Forms

[17-4000]

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

**REQUEST TO DISPENSE WITH PRODUCTION  
OF INSTRUMENT / DOCUMENT**

Dealing Number



**OFFICE USE ONLY**

**Privacy Statement**

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 and the water register. For more information about privacy see the department's website.

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

NELSON & EVANS  
SOLICITORS  
10 WHARF STREET  
BRIBANE QLD 4000  
mail@nelsevans.com.au  
(07) 3227 1212

**Lodger  
Code**  
300

**1. Type of missing document** (certificate of title or tenure document)

CERTIFICATE OF TITLE 16999033

2. Lot on Plan Description	County	Parish	Title Reference
LOT 34 ON RP64731	STANLEY	KEDRON	16999033

**3. Registered Owner/Lessee**

BERTRAM JAMES DUCAL and ELEANOR ELIZABETH DUCAL

**4. Applicant**

BERTRAM JAMES DUCAL and ELEANOR ELIZABETH DUCAL

**5. Request by Applicant**

- a) The applicant makes this request as REGISTERED OWNER.....  
(eg registered owner etc)
- b) The missing certificate of title/tenure document is not deposited with any person as security for any purpose or for safe custody.
- c) The facts and circumstances of the loss or destruction of the missing certificate of title/tenure document and efforts to locate it are set out in the attached declaration.
- d) It is requested that:  
the production of the missing certificate of title/tenure document be dispensed with for the purpose of  
\*cancellation  
\*registering transfer 711145698.....  
(insert type of instrument to be registered)  
\*delete if not applicable

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

*H Nelson*

.....signature

HORATIO LAWD NELSON

.....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)

*B J Ducal*

*E E Ducal*

20/9/2007  
**Execution Date**

.....  
**Applicant's Signature**

## DECLARATION

**Title Reference [16999033]**

(The facts as to the missing instrument are declared here)

## Guide to Completion of Form 17

### Item 1

[17-4010]

Insert the nature of and the reference to missing instrument, lease or licence.

### Item 2

[17-4020]

Description of lot should be ‘Lot... on Plan...’.

### Item 3

[17-4030]

Insert full name (as registered) of proprietor or lessee of State tenure.

### Item 4

[17-4040]

Insert full name of applicant.

### Item 5

[17-4050]

Complete the appropriate request at Item 5(d) and delete the other.

In the first alternative in Item 5(d), insert the type of instrument to be registered and the dealing number if already lodged.

In the second alternative in Item 5(d), describe what happened to the missing instrument (eg misplaced, lost or destroyed).

Execute as required.

### Duty

[17-4060]

There is no duty payable on a Form 17 – Request to dispense with production of instrument.

¶[17-6000] deleted

## Case Law

### *Wilde & Harris v Byrne* [1987] 2 Qd R 822

[17-7000]

In this case it was held by the Full Court of Queensland that under ss 94, 95 and 117 of the *Real Property Act* 1861 (equivalent to ss 163 and 164 of the *Land Title Act* 1994), the court does not have power to take away the Registrar’s power to exercise the discretion conferred upon him/her by statute.

## Fees

[17-8000]

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

[17-9000]

See also s 154(1) of the *Land Title Act 1994* – Return of Cancelled Instrument

## Notes in text

[17-9050]

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