

Part 23 – Settlement Notice

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Part 23 – Settlement Notice

General Law

[23-0000]

Sections 138 to 152 of the *Land Title Act* 1994 create a procedure for lodgement in the registry of a settlement notice. A settlement notice, when recorded on the Automated Titling System, seeks to provide protection of a transferee's interest under a contract over a title and to a potential mortgagee of such a purchaser against lodgement of interests not specified in the settlement notice between the time of settlement of the contract and lodgement of the documentation in the registry.

A settlement notice, once entered, alerts all interested parties who search the Automated Titles System to the fact that an intended settlement is imminent or a settlement has occurred and lodgement of an instrument is imminent.

²Settlement notices are of primary importance in cases where a contract for the sale of a registered interest in a freehold title is imminent and there is no duplicate Certificate of Title issued from the registry.

See definition of 'transferee' in ¶[23-1000].

Legislation

[23-1000]

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

Requirements of Settlement Notice

[23-2000]

A settlement notice must be in the approved form (Form 23) and signed by or for the transferee. Items 1 to 5 and 8 of the Form must be completed. Items 6 and 7 should be either completed, marked 'N/A' or ruled through diagonally.

No information should be duplicated in a Form 23 – Settlement Notice. As such, the instrument under which the transferee claims the right to deposit a settlement notice (ie Item 2 – Transaction to which notice relates) should **not** be repeated in Item 6 – Instruments directly related to the transaction.

When Settlement Notice Can be Lodged

[23-2010]

A settlement notice may only be lodged in the circumstances set out below.

- (1) In relation to freehold land.
- (2) In relation to a water allocation.
- (3) For transactions affecting a **registered** interest, eg:

Atkins is the registered owner of a parcel of freehold land. Atkins enters into a contract to sell the interest to Brown. Brown borrows some of the purchase money from the Bullamakanka Banking Corporation. Brown, as purchaser of the registered interest of Atkins, is entitled to deposit a settlement notice as a registered interest is being acquired. By arrangement with the Bullamakanka Banking Corporation, Brown may include the proposed mortgage in Item 6 as a directly related instrument.

The Bullamakanka Banking Corporation is also entitled to deposit a separate settlement notice, instead of being mentioned in the settlement notice for the transfer, as the Bank will be acquiring a registered interest as a result of registering the mortgage. However, all transactions that are to precede it to registration (eg the transfer from Atkins to Brown) must be listed in Item 6 on the Bank's settlement notice as directly related instruments.

- (4) By a 'transferee' (as defined in s 138 of the *Land Title Act* 1994). 'Transferee' is limited to:
 - a purchaser for valuable consideration of an interest in a lot which is capable of registration by an instrument of transfer; or
 - a person who under an instrument of transfer is entitled to an interest in a lot; or
 - a person who under an instrument of mortgage is entitled to an interest in a lot.
- (5) Once per transaction. If a settlement notice in relation to a particular transaction has already been deposited, then a further settlement notice for the same transaction can never be deposited unless the leave of a court of competent jurisdiction has been granted (s 146 of the *Land Title Act* 1994).

If a second settlement notice is incorrectly deposited (this may occur where a settlement notice has lapsed and a second settlement notice is lodged), affected transferors have

recourse to have this settlement notice removed on order of the Supreme Court or cancelled by the Registrar.

Operation of Settlement Notice

[23-2020]

A settlement notice operates from the time of lodgement until the earlier of:

- The date two months after it is lodged. The two months are calculated as two calendar months, excluding the day of deposit and including the last day (s 38(1) of the *Acts Interpretation Act 1954*), eg: a notice deposited at any time on 15 March lapses at midnight on 15 May. If the last day on which the settlement notice ceases to have effect falls on a weekend or a public holiday, the settlement notice has effect until the close of business on the next business day.
- The time when all the instruments specified in the notice as directly related to the transaction (see Items 2 and 6 of Form 23) have been lodged. This may be before the two month period has expired.
- The time when the settlement notice is withdrawn by the transferee, is removed on order of the Supreme Court or is cancelled by the Registrar.

During its period of operation, a settlement notice prevents registration of any instruments affecting the land or interests in the land other than:

- The instruments specified in the notice as directly related to the transaction (see Items 2 and 6 of Form 23).
- An instrument which is specified in the settlement notice as one to which the settlement notice does not apply (see Item 7 of Form 23).
- An instrument the lodgement of which the ‘transferee’ has consented to. The consent must be in a Form 18 – General Consent, deposited with the instrument.
- An instrument which transfers the interest of a mortgagee under a mortgage which was registered before lodgement of the settlement notice, provided that instrument is executed by that mortgagee.
- An instrument which relates to another interest that, if registered, will not affect the interest under the settlement notice, eg an instrument affecting the interest of one tenant in common if the settlement notice is in relation to the pending transfer of the interest of another tenant in common.
- An instrument lodged before the settlement notice was lodged.
- A caveat.

Further, a deposited settlement notice does not prevent registration of a Form 19 – Application for Certificate of Title as a Form 19 does not affect the lot or an interest in the lot.

Lodging Unauthorised Instrument

[23-2030]

If an instrument is lodged (‘A’) and it is prevented from being registered by the earlier deposit of a settlement notice, it will be requisitioned, advising that a settlement notice has been deposited.

If the instruments referred to in the settlement notice (Items 2 and 6 of Form 23) are subsequently lodged within the period of currency (ie two months from deposit), the first instrument (A) will be requisitioned for withdrawal within 14 days. If the first instrument (A) is not withdrawn within that 14 day period, it will be withdrawn by the Registrar (s 149 of the *Land Title Act 1994*). In a situation where the first instrument (A) would be capable of registration, after the instruments referred to in the settlement notice are registered, it will be re-entered to follow them.

Releases of mortgages are treated as instruments that, if registered, will not affect the interests protected by a settlement notice (s 141(2)(d) of the *Land Title Act 1994*). Releases of mortgages will be registered, even if they are not shown in Item 6 of a settlement notice.

The result is that competing instruments cannot retain their priority if the instruments specified in the notice (ie the authorised instruments) are lodged after those competing instruments whilst the notice is current.

For example:

- (1) A settlement notice is deposited on 20 February and specifies a transfer between Atkins (the registered owner) and Brown (the purchaser). It is allocated a number as an administrative advice and recorded in the Automatic Titling System.
- (2) A transfer between Atkins and Johns (competing instrument) is lodged on 3 March (ie during the two month currency of the settlement notice), allocated the dealing number of XXX099093, yet prevented from being registered by the settlement notice.
- (3) The transfer from Atkins to Brown (a specified instrument) is lodged on 14 April (ie during the two month currency of the settlement notice) and allocated dealing number XXX768952.

By virtue of the settlement notice, the transfer from Atkins to Brown must register first. The intent is that registration of the instrument/s specified in the settlement notice is not to be prevented by the competing transfer between Atkins and Johns. To achieve the appropriate outcome, the Registrar is empowered (under s 149(1) of the *Land Title Act 1994*) to withdraw the transfer from Atkins to Johns.

However, prior to that withdrawal, the Registrar is required to notify the person who lodged the transfer of the intended withdrawal 14 days prior to the action (s 149(2) of the *Land Title Act 1994*).

After withdrawal, the withdrawn instrument will be considered so as to determine whether it would be capable of registration after the instruments referred to in the settlement notice have registered. If it is, it will be re-entered to follow them and treated in priority as if its lodgement had always followed the other instruments (s 150 of the *Land Title Act 1994*).

Recording Settlement Notice

[23-2040]

The Registrar must record details of settlement notices separate from the Freehold Land Register and Water Allocations Register. The existence of a settlement notice will be entered into the Automated Titling System (ATS) as an administrative advice.

A settlement notice notation will appear on a title search from deposit with a status of 'current' for two months unless it is withdrawn, removed or cancelled. If the settlement notice has not been withdrawn, removed or cancelled within two months from deposit the notation will

continue to appear on the title search with a status of ‘current’ for a further one month following lapsing.

This assists Land Registry staff administering provisions of Part 7A of the *Land Title Act 1994*. After three months the notation will be automatically removed from the title.

Withdrawing Settlement Notice

[23-2050]

The transferee who lodged the settlement notice may withdraw the settlement notice by depositing a request to withdraw it in the form of a Form 14 – General Request (s 142 of the *Land Title Act 1994*).

Removing Settlement Notice

[23-2060]

If the Supreme Court makes an order to remove a settlement notice under s 144 of the *Land Title Act 1994*, that order must be lodged in the Titles Office with a Form 14 – General Request that the settlement notice be removed. This Form 14 will attract normal lodgement fees. The transferee does not have to be notified of this order or of an application made to the Supreme Court for the order.

Cancelling Settlement Notice

[23-2070]

The Registrar may cancel a settlement notice if a request to cancel a notice is lodged and the Registrar is satisfied as to any of the matters specified in s 145 of the *Land Title Act 1994*. The request should be in the form of a letter addressed to the Registrar outlining the basis for cancellation.

Prior to making a decision, the Registrar may decide to hold an inquiry (pursuant to Division 4 of Part 2 of the *Land Title Act 1994*). While this facility exists, it is unlikely that requests of this type (ie for cancellation) will be commonly dealt with in this manner.

Before cancelling a settlement notice under s 145 of the *Land Title Act 1994*, the Registrar must notify the transferee (in writing) at least seven days prior to cancelling a settlement notice.

A format for written notice to a transferee of a settlement notice which is intended to be cancelled is set out below:

**Notice of Intention to Cancel a Settlement Notice in Conformity with s 145 of the
*Land Title Act 1994***

Date: [date]

Name and address: [as shown in Item 5 of the settlement notice]

Re: Settlement Notice No. [number]

Unless satisfactory evidence to support the continuation of the above settlement notice is received within seven days of this notice, it will be cancelled under s 145 of the *Land Title Act 1994*.

Supporting evidence should substantiate that:

- (a) the transferee's interest in the transaction specified in the notice has not ceased, been abandoned or withdrawn; and
- (b) the transferee's interest has not been settled by agreement or otherwise satisfied; and
- (c) the nature of the transferee's interest entitles the transferee to prevent registration of other instruments for the balance of the two months from deposit of the settlement notice.

[Name]
Registrar of Titles and Registrar of Water Allocations

Minor Corrections

[23-2080]

The Registrar may, on the written request of the transferee specified in a settlement notice, make minor corrections to a settlement notice (s 152 of the *Land Title Act 1994*). This request should be in the form of a letter addressed to the Registrar.

Minor corrections would include incorrect spelling of names, addresses or other obvious typographical errors. However, changes of names, transaction types, interests or lots are not minor corrections.

Notice by Registrar

[23-2090]

Notices required to be given by the Registrar will be properly served if left at or sent to the address specified in Item 5 of the Form 23 – Settlement Notice.

Forms

General Guide to Completion of Forms

[23-4000]

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

Example 1 – Notice lodged by Purchaser or Person Acquiring a Freehold Interest

QUEENSLAND LAND REGISTRY
Land Title Act 1994 and Water Act 2000

SETTLEMENT NOTICE

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Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title 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)

SMITH & HAYES
SOLICITORS
10 MARY STREET
BRISBANE QLD 4000
info@smithhayes.com.au
(07) 3227 5055

Lodger Code
111

1. Lot on Plan Description	County	Parish	Title Reference
LOT 2 ON RP3467	CHURCHILL	PURGA	16172222

2. Type of transaction to which notice relates TRANSFER	3. Registered Interest affected by this notice FEE SIMPLE
---	---

4. First party / transferor *
JULIUS AUGUSTUS ROMAN

* the party disposing of or giving the interest

5. Second party / transferee and address for service of notice
JOHN THOMAS CLARE of 29 Albert Street, Camp Hill Qld 4152

Note: A Transferee means -
(a) a purchaser for valuable consideration of an interest in a lot that is capable of registration by an instrument of transfer; or
(b) a person who is entitled to an interest in a lot under an instrument of transfer or an instrument of mortgage.

6. Other instruments directly related to the transaction*
RELEASE OF MORTGAGE NO. 601762485
MORTGAGE J T CLARE to SUNPAC FINANCE PTY LTD ACN 204 745 692

* eg. release of mortgage no., transfer A Smith to B Brown, mortgage B Brown to XYZ Bank

Note: Do not repeat in item 6 the instrument mentioned in item 2

7. Instruments not affected by this notice or to which consent to registration is given
N/A

8. Request

It is requested that this notice be recorded in the Register.

J T Clare

20/10/07

Execution Date

.....
Transferee's or Solicitor's Signature

Note: A solicitor is required to print full name if signing on behalf of the Transferee.

Example 2 – Notice lodged by Mortgagee

QUEENSLAND LAND REGISTRY
Land Title Act 1994 and Water Act 2000

SETTLEMENT NOTICE

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Dealing Number



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

SMITH & HAYES
SOLICITORS
10 MARY STREET
BRISBANE QLD 4000
info@smithhayes.com.au
(07) 3227 5055

Lodger Code
111

1. Lot on Plan Description	County	Parish	Title Reference
LOT 2 ON RP3467	CHURCHILL	PURGA	16172222

2. Type of transaction to which notice relates MORTGAGE	3. Registered Interest affected by this notice FEE SIMPLE
---	---

4. First party / transferor *
JOHN THOMAS CLARE

* the party disposing of or giving the interest

5. Second party / transferee and address for service of notice
SUNPAC FINANCE PTY LTD ACN 204 745 692, 12 MARY STREET, BRISBANE QLD 4000

Note: A Transferee means -
(a) a purchaser for valuable consideration of an interest in a lot that is capable of registration by an instrument of transfer; or
(b) a person who is entitled to an interest in a lot under an instrument of transfer or an instrument of mortgage.

6. Other instruments directly related to the transaction*
RELEASE OF MORTGAGE NO. 601762485
TRANSFER FROM JULIUS AUGUSTUS ROMAN TO JOHN THOMAS CLARE

* eg. release of mortgage no., transfer A Smith to B Brown, mortgage B Brown to XYZ Bank

Note: Do not repeat in item 6 the instrument mentioned in item 2

7. Instruments not affected by this notice or to which consent to registration is given
N/A

8. Request

It is requested that this notice be recorded in the Register.

J Hayes

JOHN FRED HAYES

10/10/2007

Execution Date

.....
Transferee's or Solicitor's Signature

Note: A solicitor is required to print full name if signing on behalf of the Transferee.

Guide to Completion of Form 23

Item 1

[23-4010]

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

[23-4020]

Insert nature of instrument that will be lodged.

Item 3

[23-4030]

Insert nature of interest affected (eg ‘fee simple’ or ‘water allocation’).

Item 4

[23-4040]

Insert full name (as registered) of transferor/s of interest.

Item 5

[23-4050]

Insert full name of transferee/s of interest and address for service of notices. A transferee’s interest includes the ‘Capacity’ in which the interest is to be held.

Where the interest acquired is to be held as ‘Trustee’ for a trust, both the capacity of Trustee and reference to the trust are to be shown in item 5 of the form.

Item 6

[23-4060]

Insert only instruments that are related to the settlement. Do not repeat the instrument in Item 2.

Item 7

[23-4070]

Insert any other instruments not related to the settlement to which the transferee consents. Do not repeat instruments in Items 2 and 6.

Item 8

[23-4080]

Execute as required.

Duty

[23-4090]

There is no duty payable on a Form 23 – Settlement notice.

¶[23-6000] deleted

Case Law

[23-7000]

Nil.

Fees

[23-8000]

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

Cross References and Further Reading

[23-9000]

Part 1 – Transfer

Part 2 – Mortgage

Notes in text

[23-9050]

Note ² – This paragraph or statement is not applicable to water allocations or the Water Allocations Register.