

³Part 29 – Profit a prendre

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³Part 29 – Profit a prendre

General Law

[29-0000]

A profit a prendre is an interest that arises by agreement between two parties and relates to the right of one party to enter upon the land of the other and to extract or remove part of the land's substance (eg sand, gravel, trees, etc).

Profits a prendre were not recorded in the Land Registry until amendments to the *Land Title Act* 1994, that commenced on 13 July 1997, made specific provision for their registration. This situation has existed even though relevant Torrens legislation envisaged the registration of profits a prendre and the repealed *Real Property Act* 1861 provided for registration of easements and incorporeal rights.

The following types of profit a prendre are recognised:

- appurtenant profits which relate to or fulfil a need of a dominant parcel of land;
- profits in gross that benefit the grantee personally and are not attached to other land;
- profits in common in which the proprietors of both a dominant and a servient parcel share the enjoyment of a right to some substance of the encumbered land, however, these are not common in Australia.

Both an appurtenant profit and profit in gross may be mortgaged. However, only a profit in gross may be sold, the subject of a gift, or pass to a beneficiary by will or intestacy.

Every profit a prendre must be granted for a specific period that can be based on either a date or the occurrence of an event.

Practice

Requirements of Profits a prendre

[29-2000]

For a profit a prendre to be registered in the Land Registry it must be prepared in a Form 29 – Profit a prendre. Full particulars of the lot that is burdened must be shown in Item 2 and if a lot is benefited, its particulars are to be shown below those of the burdened lot. Both the purpose and the term or event on which the profit a prendre profit ceases must be stated. The specific rights that relate to the stated purpose(s) may be fully defined either by an attached Form 20 – Schedule, a prior registered standard terms document or a combination of them.

The instrument must be validly executed by both the grantor and grantee and witnessed.

An instrument of profit a prendre is registrable even if the lot(s) burdened and the lot(s) benefited have, or will have, the same registered owner or if the registered owner of the benefited lot has an interest in the burdened lot.

Transactions involving registered profits a prendre (eg transfers, transmissions, etc) will be recorded on the indefeasible title(s) for the burdened land and the benefited land, if applicable.

Survey requirements of Profit a prendre over part of a lot

[29-2050]

A plan of survey or explanatory format plan is required to precede a profit a prendre if the interest affects part of the lot. If the profit a prendre is for the whole of the lot, no plan is required.

Plans for profits a prendre purposes must comply with directions 4.8.2 and 19 of the Registrar of Titles Directions for the Preparation of Plans. A plan must not describe a profit a prendre as proposed as at least one instrument of profit a prendre must be lodged immediately after the plan. See also part 21 – Plans and Associated Documents, esp ¶[21-0020] and ¶[21-2066]).

Transfer Duty

[29-2100]

A profit a prendre is a dutiable instrument under the *Duties Act 2001*. When a profit a prendre is presented for registration, evidence of the payment of transfer duty is required either:

- by impressed duty by the Office of State Revenue; or
- stamped as duty paid by an authorised self assessor.

Removing Profits a prendre from Indefeasible Titles

[29-2200]

A profit a prendre may be released or removed from the indefeasible title.

A profit a prendre is released from an indefeasible title under the provisions of ss 97L (1) and (2) of the *Land Title Act 1994*. The grantee of a profit a prendre may release a profit a prendre from the indefeasible title by surrendering it to the extent shown in the instrument of release (see part 33 – Release of Covenant/Profit a prendre, esp ¶[33-2200]).

A profit a prendre may be removed from an indefeasible title under the provision of s 97L(3) of the *Land Title Act 1994*. A profit may be removed from the indefeasible title by any interested party, if the specified period of time has expired or the event upon which it is based has occurred (see part 14 – General Request, esp ¶[14-2425]).

Profits a prendre are not extinguished merely because the same person becomes the owner of the benefited and burdened lots, acquires an interest or a greater interest. Extinguishment can only occur if:

- the owner of the benefited lot or grantee of the profit a prendre asks the Registrar to extinguish it; or
- the Registrar creates a single indefeasible title for the benefited and burdened lots.

Amending Profits a prendre

[29-2300]

A profit a prendre may be amended by lodgement of a Form 13 – Amendment of Profit a prendre. An amendment of profit a prendre that attempts to increase or decrease the area affected or to add or remove a party is not registrable (see part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement, esp ¶[13-2130]).

Forms

General Guide to Completion of Forms

[29-4000]

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

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

1. Grantor KRISTINA MARIA JOHNSON	Lodger (Name, address, E-mail & phone number) SMYTHE & CO. SOLICITORS 45 ADELAIDE STREET BRISBANE QLD 4000 mail@smytheco.com.au (07) 3227 9850	Lodger Code 490
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2. Description of Profit A Prendre/Lot on Plan burdened	County	Parish	Title Reference
LOT 33 ON RP587601	STANLEY	MITCHELL	11567215
Description of Lot on Plan benefited (if applicable)			
LOT 34 ON RP587601	STANLEY	MITCHELL	11567216

3. Grantee Given names IVAN GEORGE	Surname/Company name and number JOHNSON	(include tenancy if more than one and interest if not fee simple)
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4. Purpose TO REMOVE FLOODED GUM AND SPOTTED GUM TREES	5. Termination date or Occurrence 30 JUNE 2010
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6. Consideration \$55,000.00
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7. Grant/Execution

The Grantor grants to the Grantee for the above consideration a profit a prendre for the purpose stated in item 4 and the Grantor and Grantee covenant with each other in terms of:- *the attached schedule; *~~the attached schedule and document no. _____~~; * ~~document no. _____~~

* delete if not applicable

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

P L Fish

.....signature

PETA LAUREL FISH

.....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)

21/11/2007

Execution Date

K M Johnson

Grantor's Signature

P L Fish

.....signature

PETA LAUREL FISH

.....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)

22/11/2007

Execution Date

I G Johnson

Grantee's Signature

Title Reference [11567215]

(The terms and conditions of the agreement are to be set out here)

Guide for Completion of Form 29

Item 1

[29-4010]

Insert the full name(s) of the registered owner as grantor.

Item 2

[29-4020]

Insert the 'Lot on Plan' descriptions of all burdened and if applicable benefited lots comprised in the profit a prendre.

Item 3

[29-4030]

Insert the full name(s) of the grantee(s) and tenancy (if applicable).

Item 4

[29-4040]

Insert the purpose of the profit a prendre.

Item 5

[29-4050]

Insert the termination date or a reference to the event that terminates the profit a prendre.

Item 6

[29-4060]

Insert monetary or other consideration.

Item 7

[29-4070]

Complete where indicated and execute as required.

¶[29-6000] deleted

Case Law

[29-7000]

Nil.

Fees

[29-8000]

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), 2(k) and 2(m).

Cross References and Further Reading

[29-9000]

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

Part 14 – General Request

Part 33 – Release of Covenant/Profit a prendre

Megarry and Wade, *The Law of Real Property*, 5th edn, London, Stevens, 1984

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

Bradbrook, MacCallum and Moore, *Australian Real Property Law*, LBC Information Services, 1991

Notes in text

[29-9050]

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