

# Part 60 – Miscellaneous

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## Part 60 – Miscellaneous

### Legislation

#### 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.

### Requisitions

#### General Law

[60-0000]

The Registrar may, by written notice (the ‘requisition’), require a person who has lodged an instrument or other document, or another person who reasonably appears to the Registrar to be relevantly associated with the instrument or other document, to re-execute, complete or correct the instrument or to provide specific information (s 156 of the *Land Title Act 1994*).

If the requisition is not complied with within the time specified in the requisition or as extended by the Registrar, the document may be rejected with a consequent loss of priority (ss 157(1) and (2) of the *Land Title Act 1994*). It is at the Registrar’s discretion whether the time to comply with the requisition will be extended (s 156(4) of the *Land Title Act 1994*). A rejected instrument may be relodged after the requisition has been complied with (s 157(4) of the *Land Title Act 1994*).

#### Practice

[60-0030]

For each requisition, a requisition fee is imposed. All documentation is returned to the lodger of the document requisitioned. When the document is to be returned to the registry all the documentation originally lodged and any additional documentation requisitioned for must be re-lodged.

The details of a requisition will only be disclosed by the Registrar to a person to whom the requisition was issued.

Usually, the time to comply with the requisition in the first instance will be eight weeks, however, the requisition period for caveats and settlement notices will be four weeks. All requests for extension must be in writing and contain substantive reasons.

If a dealing is rejected, the fees that have already been paid are forfeited. The fee payable on re-lodgement of a form under s 157(4) of the *Land Title Act 1994* is half of the fee stated in schedule 2, item 2 of the *Land Title Regulation 2005* for lodging (s 4(2)(b) of the *Land Title Regulation 2005*), together with any fees which remain unpaid from the original lodgement (eg short fees, requisition fees). Section 63(3) of the *Water Regulation 2002* is a similar provision.

If a caveat or writ or warrant of execution is requisitioned and the requisition is not complied with, a notice of intention to reject is generally given by the Registrar, allowing seven days for the lodger to respond to the rejection (see part 11 – Caveat, esp ¶[11-2010] and part 12 – Writ or Warrant of Execution, esp ¶[12-2110]).

## Fees

[60-0040]

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

- <sup>2</sup>*Land Title Regulation 2005* – Schedule 2, item number 13; and
- *Water Regulation 2002* – Schedule 16, item number 24.

# The Registrar's Powers of Correction

## General Law

### Error in Lodged Instrument

[60-0050]

The Registrar may correct an obvious error in a lodged plan of survey or a lodged instrument (ss 155(1) and (2) of the *Land Title Act 1994*). An obvious error may only be corrected if the Registrar is satisfied that the instrument is incorrect and the rights of a person will not be prejudiced (s 155(3) of the *Land Title Act 1994*). An instrument so corrected has effect as if the error had not been made (s 155(4) of the *Land Title Act 1994*).

### Error in the Register

[60-0060]

The Registrar may correct an error in the register or an instrument forming part of the register if satisfied that the Register is incorrect and the rights of a holder of an interest recorded in the register would not be prejudiced (ss 15(1), (2) and (5) of the *Land Title Act 1994*). If the holder of an interest recorded in the register has acquired or dealt with the interest with actual or constructive knowledge that the register was incorrect, then the rights of that holder are not prejudiced (s 15(8) of the *Land Title Act 1994*).

Section 126 of the *Water Act 2000* allows the Registrar to make any necessary corrections to the name of an existing water entitlement holder if it has been recorded incorrectly when a water allocation has been created.

The Registrar may correct an error in the Register, whether or not the correction will prejudice the rights of the holder of an interest recorded in the register, only if:

- the register to be corrected is the freehold land register and the correction is to show, in relation to a lot, an easement the particulars of which have been omitted from or misdescribed in the register; or
- the Supreme Court has ordered the correction under s 26 of the *Land Title Act* 1994.

Upon making the correction, the Registrar must record the state of the Register before the correction and the time, date and circumstances of the correction (s 15(6) of the *Land Title Act* 1994). The Register so corrected has the same effect as if the error had not been made (s 15(7) of the *Land Title Act* 1994).

The Registrar only corrects errors that the registry has made. The Registrar does not use this section to correct errors made by the conveyancer.

## Practice

[60-0090]

The examiner may register an instrument that contains an error, provided the error is obvious and there is no ambiguity. An internal dealing note is entered against the instrument to indicate the error did not impede registration of the instrument. If the intent is not clear, the parties must resolve the matter after requisition.

In the case of a water allocation where an administrative error has occurred that caused the name to be recorded incorrectly when a water allocation was created the Registrar will require information to show that the correction will not prejudice the rights of the holder of an interest in the water allocation. This information may be in the form of a consent from an interest holder, such as a mortgagee, and evidence that the Resource Operations Licence (ROL) holder has been consulted where the water allocation is managed under a ROL.

The Registrar also requires a statutory declaration signed by the Director Water Allocations that includes:

- facts that caused the change to be requested;
- facts regarding consultation with registered interest holders, where appropriate; and
- facts regarding consultation with existing allocation holders, where appropriate.

If it is determined from evidence produced that an incorrect entry has been made in the register, the Registrar may prepare and lodge an internal dealing to effect a correction, provided the correction does not prejudice any party.

## Standard Terms Document

### General Law

[60-0095]

Many instruments require the inclusion of covenants, eg leases, mortgages, and easements etc which are generally incorporated in the dealing by a Form 20 – Schedule.

If a class of instrument has a standard set of covenants, a standard terms document may be lodged and registered.

Any subsequent instruments may then refer to the dealing number of the standard terms document in lieu of including covenants, however, a schedule may be included in the instrument to insert additional terms if required.

## Practice

[60-0097]

A standard terms document may be used to define the provisions that are treated as the terms that relate to an instrument.

A standard terms document must be lodged for registration with a Form 14 – General Request.

A standard terms document may be amended by lodging a further standard terms document, however, additional terms may be incorporated in an instrument by also including a schedule.

If there is a conflict between the provisions in the schedule to the instrument and the standard terms document, the instrument will prevail (s 171(2) of the *Land Title Act* 1994 and s 320(2) of the *Land Act* 1994).

No lodgement fees or duty are payable.

For information on withdrawal or cancellation of a registered standard terms document, see ¶[60-0110].

## Withdrawing Instrument

### General Law

#### Withdrawing Lodged Instrument Prior to Registration

[60-0100]

The Registrar may withdraw an instrument or permit an instrument to be withdrawn if satisfied that the order in which the instrument was lodged will not give effect to the instrument's intention or that of a related instrument, or if the instrument should not have been lodged (s 159(1) of the *Land Title Act* 1994). An instrument so withdrawn, unless it is of a type that should not have been lodged, remains in the registry (s 159(2) of the *Land Title Act* 1994). The Registrar may relodge an instrument that has been withdrawn by the Registrar and may, on the written application of the lodger, relodge an instrument that the Registrar has permitted to be withdrawn (ss 159(3) and (4) of the *Land Title Act* 1994).

Except in the case of plans of subdivision, an instrument that is withdrawn from registration loses its priority and is taken to have been lodged on the date and at the time endorsed on it by the Registrar at the time of its relodgment (ss 159(5) and (6) of the *Land Title Act* 1994).

#### Withdrawing or Cancelling Registered Standard Terms Document

[60-0110]

On application of the lodger, the Registrar may withdraw a registered standard terms document as defined in s 168 (s 172(1) of the *Land Title Act* 1994) and s 317 of the *Land Act* 1994 (s 321(1) of the *Land Act* 1994).

After giving one month's notice in the Gazette, the Registrar may cancel a registered standard terms document lodged by the Registrar (s 172(2) of the *Land Title Act* 1994 and s 321(1) of the *Land Act* 1994).

The Registrar must keep, and if asked produce for inspection, a copy of a standard terms document cancelled or withdrawn pursuant to s 172 of the *Land Title Act* 1994 (s 172(3) of the *Land Title Act* 1994) or s 321 of the *Land Act* 1994 (s 321(3) of the *Land Act* 1994). Withdrawal or cancellation of a standard terms document does not affect an instrument that is already registered or one that is executed within seven days after its withdrawal or cancellation (s 172(4) of the *Land Title Act* 1994 and s 321(4) of the *Land Act* 1994).

## Practice

### Withdrawing Lodged Instrument Prior to Registration

[60-0150]

A request under s 159 of the *Land Title Act* 1994 by a lodger to withdraw an unregistered instrument is made by letter and not by another document. If a lodged instrument has not been registered and is withdrawn on the request of the lodger, the fees paid, other than any additional fee under item 3 of Schedule 2 of the *Land Title Regulation* 2005 for lodging a transfer, are forfeited.

For the requirements for a Caveat see part 11 – Caveat, esp ¶[11-2070] or Warrant of Execution see part 12 – Request to Register Writ or Warrant of Execution, esp ¶[12-2100].

## Imaging Instruments

### Practice

[60-0160]

All instruments lodged in the registry since July 1998 are copied by an electronic imaging device (scanner) into a computerised image file.

Section 166 of the *Land Title Act* 1994 authorises the Registrar to destroy an original instrument, in accordance with the State Archivist's standards. However, original wills are not destroyed.

Retrieval of registered instruments not already imaged requires either a microfilm copy or the original to be imaged. This is normally processed within one working day.

## The Registrar's Power of Inquiry

### General Law

[60-0170]

The Registrar has the power to hold an inquiry to decide whether the Register should be corrected, to consider whether a person has:

- (a) fraudulently or wrongfully obtained, kept or procured an instrument affecting land in the Register; or
- (b) procured a particular in the Register or an endorsement on an instrument affecting land (s 19 of the *Land Title Act* 1994).

The Registrar also has power to hold an inquiry in circumstances prescribed by regulation under s 19(e) of the *Land Title Act* 1994. No such circumstances, nor procedural rules for such inquiries as contemplated by s 21(2) of the *Land Title Act* 1994, have been prescribed.

When conducting such inquiries, the Registrar:

- must observe natural justice;
- must act as quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues;
- is not bound by the rules of evidence;

may inform himself/herself in any way he/she considers appropriate;

- may decide the procedures to be followed at the inquiry;
- may act in the absence of a person who has been given reasonable notice;
- may receive evidence on oath or affirmation or by statutory declaration;
- may adjourn the inquiry;
- may disregard a defect, error or insufficiency in a document;
- may permit or refuse to permit a person to be represented at the inquiry; and
- may administer an oath or affirmation to a person appearing as a witness before the inquiry (ss 20, 21 and 22 of the *Land Title Act 1994*).

A person may be required, by written notice given by the Registrar, to attend an inquiry as a witness to give evidence or to produce specific documents or things (ss 23(1) and (2) of the *Land Title Act 1994*). Witnesses required to appear before an inquiry are entitled to witness fees (s 23(3) of the *Land Title Act 1994*).

Witnesses may commit an offence by:

- not attending without reasonable excuse;
- not continuing to attend without reasonable excuse;
- failing to take an oath or make an affirmation as required by the Registrar;
- failing, without reasonable excuse, to answer a question asked by the Registrar; and
- failing, without reasonable excuse, to produce a document or thing (ss 24(1) and (2) of the *Land Title Act 1994*).

In any of the above circumstances, the Registrar may apply to the Supreme Court for an order to compel the person to comply with the notice or requirement and the Supreme Court may make any order to assist the Registrar as the Supreme Court considers appropriate (s 25 of the *Land Title Act 1994*). A person may fail to answer a question or produce a document or thing if doing so would tend to incriminate that person (s 24(3) of the *Land Title Act 1994*).

# Declarations

## Practice

**[60-0260]**

When required, declarations under the *Land Title Act* 1994 may be made in a Form 20 – Declaration.

A declaration under the Law of another State or country must comply with the local laws and be witnessed as required by those laws. Of course, a declaration may be made pursuant to the Queensland *Oaths Act* 1867 in another State or country provided a witness as required by that Act is available. This also applies to the declarations contained in Forms 5A and 6 – Transmission Applications.

Section 13 of the *Oaths Act* 1867 sets out who may take declarations.

Except where the position of the person before whom a declaration is taken and declared is contained in Schedule 1 of the *Land Title Act* 1994, that person is not entitled to witness land registry forms.

## Form of Declaration

**[60-0280]**

The form of declarations described by each of the relevant laws of the Australian States and Territories and New Zealand are set out below.

### Queensland

**[60-0290]**

I, [*name*], do solemnly and sincerely declare that [*let the person declare the facts*] and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act* 1867.

### New South Wales

**[60-0300]**

#### Either

I, [*name*], do solemnly and sincerely declare that [*the facts being declared*] and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act* 1900.

#### Or

I, [*name*], of (*residence*), do hereby solemnly declare and affirm that [*the facts to be state according to the declarant's knowledge, belief, or information, severally*]. And I make this solemn declaration, as to the matter (*or matters*) aforesaid, according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

### Victoria

**[60-0310]**

I [*name*], of [*address*], [*occupation*] do solemnly and sincerely declare that [*facts being declared*].

I acknowledge that this declaration is true and correct and I make it with the understanding and belief that a person making a false declaration is liable to the penalties of perjury.

Declared at *[place]*  
in the State of Victoria this *[date]* day of  
*[month]* 20 *[year]*

(signature of person making this declaration)  
(to be signed in front of an authorised witness)

Before me,

(signature of authorised witness)

The authorised witness must print or stamp his or her name, address, and title under s 107A of the *Evidence Act 1958 (Vic)* (eg Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank manager, Medical Practitioner, Dentist).

## Tasmania

[60-0320]

I, *[name address and occupation]*,

do solemnly and sincerely declare that *[here state the facts]*;

I make this solemn declaration under the *Oaths Act 2001*.

Declared at *[place]*  
on *[date]* day of *[month]* 20 *[year]*

Before me, *[signature]*,

*(Justice, commissioner for declarations or authorised person).*

## South Australia

[60-0330]

I, *[name]* do solemnly and sincerely declare that *[facts being declared]*. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act, 1936*.

## Western Australia

[60-0340]

I, *[name address and occupation of person making the declaration]* sincerely declare as follows –

*[insert content of the statutory declaration; use numbered paragraphs if content is long]*

This declaration is true and I know that is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the oaths, *Affidavits and Statutory Declarations Act 2005* at *[place]* on *[date]* by –

*[Signature of person making the declaration]*

In the presence of –

*[Signature of authorised witness]*

*[Name of authorised witness and qualification as such a witness]*

## Australian Capital Territory

[60-0343]

I, (1), do solemnly and sincerely declare (2)

And I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(3)

Declared at [place] the [date] day of 20 [year]

Before me,

(4)

(5)

- (1) Here insert name, address and occupation of person making the declaration.
- (2) Here insert matter declared to. Where the matter is long, add the words ‘as follows:’ then set the matter out in numbered paragraphs.
- (3) Signature of person making the declaration.
- (4) Signature of person before whom the declaration is made.
- (5) Here insert title of person before whom the declaration is made.

## Northern Territory

[60-0346]

I, (1) do solemnly and sincerely declare

(2)

And I make this solemn declaration by virtue of the *Oaths Act* and conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at [place] the [date] day of [month] 20 [year]

(3)

Before me (4)

(5)

**NOTE:** A person wilfully making a false statement in a statutory declaration is liable to a penalty of \$2000 or imprisonment for 12 months, or both.

- (1) Name and address of person making the declaration.
- (2) Here insert the matter declared to either directly following the word ‘declare’ or, if the matter is lengthy, insert the words ‘as follows’ and thereafter set out the matter in number paragraphs.
- (3) Signature of the person making the declaration.
- (4) Signature of the person before whom the declaration is made.
- (5) Name and contact address or telephone number of person before whom the declaration is made legally written, typed or stamped.

## New Zealand

[60-0350]

I, [name], of [Insert place of abode and occupation], solemnly and sincerely declare that [Insert facts].

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths and Declarations Act 1957*.

Declared at [place] this [date] day of [month] 20 [year]

Justice of the Peace

[Or other person authorised to take a statutory declaration.]

## Witnesses to Instruments

### General Law

[60-0360]

An instrument will be validly executed by an individual only if witnessed by a person mentioned in Schedule 1 of the *Land Title Act 1994* (s 161(2) of the *Land Title Act 1994*). The persons listed in Schedule 1 who can witness the execution of an instrument, including execution in a State outside Queensland or a place outside Australia are:

- a notary public;
- a justice of the peace;
- a commissioner for declarations or for taking affidavits;
- a lawyer;
- a conveyancer; or
- another person approved by the Registrar.

Additional persons who can witness the execution of an instrument outside Australia may be prescribed by regulation, for example, under the provisions of reg 16 of the *Defence Force Regulation 1952* (Cth) a *competent officer* defined in reg 15 of the Regulation may attest the

execution of a document by a member of the Defence Force (or a person who accompanies a part of the Defence Force) while on service outside Australia. However, in this instance the Registrar requires:

- the witnessing officer to print their full name and rank adjacent to their signature; and
- the deposit of supporting documentation to verify the execution was made while the member of the Defence Force was serving overseas, for example a letter from the lodging solicitor.

The place of execution need not be stated in the letter.

The general rule in s 161(2) of the *Land Title Act 1994* that an instrument executed by an individual must be witnessed by a qualified witness, is subject to:

- the Registrar's discretion, in exceptional circumstances, to register an instrument even though the execution is not witnessed or was witnessed by a person other than mentioned in Schedule 1 (s 161(3) of the *Land Title Act 1994*);
- there being no requirement for the execution to be witnessed if executed by a solicitor authorised by a transferee or a person in whose favour an interest is created (s 161(3A) of the *Land Title Act 1994*);
- the fact that a document witnessed by an Australian Consular Officer is as effectual as if witnessed by a justice of the peace.

Section 3(2) of the *Australian Consular Officers' Notarial Powers and Evidence Act 1946*, when read with Schedule 1 of the *Land Title Act 1994*, has the effect that an 'Australian Consular Officer' or an 'authorised employee' is an acceptable witness in any country or place outside the Commonwealth of Australia.

Section 3(2A) has the effect that a document witnessed by an Australian Consular Officer or an 'authorised employee' is as effectual as if witnessed by a justice of the peace. Australian Consular Officers are persons appointed to hold or act in any of the following offices in a country or place outside Australia:

- ambassador;
- high commissioner;
- minister;
- head of mission;
- commissioner;
- charge d'affaires;
- counsellor or secretary at an embassy, high commissioner's office, legation or other post;
- consul general;
- consul;
- vice-consul;

- trade commissioner; or
- consular agent.

An ‘authorised employee’ means an employee of:

- (a) the Commonwealth authorised under s 3(c) of the *Consular Fees Act 1955* (Cth); or
- (b) the Australian Trade Commission authorised under s 3(d) of the *Consular Fees Act 1955* (Cth).

Witnesses are required to:

- take reasonable steps to ensure that the individual executing an instrument is the person entitled to sign the instrument (s 162(a) of the *Land Title Act 1994*);
- have the individual execute the document in their presence (s 162(b) of the *Land Title Act 1994*); and
- not be a party to the instrument (s 162(c) of the *Land Title Act 1994*).

## <sup>1</sup>Practice

[60-0390]

The Registrar requires the full name and qualification of a witness to be shown. When witnessing the execution of instruments, justices of the peace must write, type, print or clearly stamp the words ‘Justice of the Peace’ or the abbreviation ‘JP’ after or under their signature. This is not required if ‘Justice of the Peace’ or ‘JP’ is printed on the form and the signature is placed in that vicinity.

Similarly, commissioners for declarations need only place the words ‘Commissioner for Declaration’, ‘Com Dec’ or even ‘CDec’ adjacent to their signatures. Full stops between or after abbreviations of ‘commissioner’ and ‘declarations’ are optional. Each commissioner for declarations is allocated a number on registration. It is not compulsory for that number to be included as part of their witnessing.

A justice of the peace appointed prior to 1 November 1991 who has not applied to be appointed as a commissioner for declarations by 30 June 2000 ceases to hold that office and instead holds the office of a justice of the peace (commissioner for declarations). When witnessing the execution of instruments a justice of the peace (commissioner for declarations) may repeat their full title or use the abbreviation ‘JP (C.Dec)’.

Section 161(3A) of the *Land Title Act 1994* provides that for an instrument that transfers or creates an interest in a lot, the transferee’s solicitor’s execution need not be witnessed. Where the transferee’s solicitor executes an instrument in this capacity, his/her full name and occupation or qualification ‘solicitor’ must be shown. However, the jurisdiction of practice is not required. Executions signed personally or by an attorney for an individual are required to be witnessed.

Form 1 – Transfer, Form 2 – Mortgage and Form 3 – Release of Mortgage require the completion of a separate witnessing provision for each signature which is required to be witnessed, even though signatures were made in front of the same witness.

The requirement that a witness must not be a party to the instrument is not infringed by an employee of a bank or other institution, who is a qualified witness by virtue of Schedule 1 (eg as a justice of the peace), witnessing the execution of an instrument that their employer is a party

to. For example, a bank officer who is a justice of the peace is not a party to a mortgage to the bank.

## Freehold Land Register and Indefeasible Title

### <sup>1</sup>Practice

[60-0710]

For further information:

- on Certificates of Title refer to:
  - part 19 – Application for Title; and
  - part 22 – Certificate of Title;
- as to compensation for deprivation of an interest in a lot or loss or damage, see ¶[60-0720].

A Certificate of Title must be deposited with a dealing relating to that lot, for the purpose of cancellation (s 154(1) of the *Land Title Act* 1994). If lost or destroyed, an application may be made for production to be dispensed with (s 164(1) of the *Land Title Act* 1994). See part 17 – Request to Dispense with Production of Instrument.

A Certificate of Title is not required to be deposited for any dealing to which the person entitled to hold the Certificate of Title is not a party. This includes the grantor's Certificate of Title when a dealing is a surrender of an easement which is executed only by the grantee.

When a Certificate of Title is in the possession of a mortgagee and that mortgagee deposits the Certificate of Title for cancellation on lodgement of a transaction, the mortgagee is taken to be aware of and agreeable to registration of the transaction. Accordingly, in such cases, there is no necessity for mortgagees to consent in Form 18 and no requisition is issued seeking the mortgagee's consent (see part 2 – Mortgages for further information).

## Compensation

### <sup>1</sup>General Law

[60-0720]

In certain circumstances a person is entitled to be indemnified by the State if that person is deprived of an interest in a lot or suffers loss. The circumstances are set out in ss 188, 188A and 189A of the *Land Title Act* 1994.

Circumstances in which there is no entitlement to compensation are set out in ss 188AA and 189 of the *Land Title Act* 1994.

Pursuant to s 190 of the *Land Title Act* 1994, the State has a right of subrogation against any other person in relation to the deprivation or loss. However, if the State receives an amount greater than that paid to the claimant, the difference must be paid to the claimant less the State's costs.

# Public Notice – Advertising

## General Law

[60-0760]

The Registrar under the *Land Title Act 1994* and the Chief Executive under the *Land Act 1994* have a discretion to require a person (the applicant) to give public notice of a request to:

- register a transmission by death;
- <sup>2</sup>dispense with production of an instrument (ss 18(1) and (2) of the *Land Title Act 1994* and s 294 of the *Land Act 1994*).

The Chief Executive delegates powers about the registry to the Registrar (s 393(5)(b) of the *Land Act 1994*).

The Registrar must require an applicant to give public notice of a request to register the person as an adverse possessor (ss 18(1) and (3) of the *Land Title Act 1994*).

There is no stipulation in the Act as to the manner or vehicle for publication. If the Registrar determines that public notice is warranted, the content, time and place of advertisements will be specified in the notice given (s 18(4) of the *Land Title Act 1994*).

The applicant must satisfy the Registrar that the Registrar's requirements as to public notice have been met (s 18(5) of the *Land Title Act 1994*). A person claiming an interest in a lot may lodge a caveat pursuant to s 122(1)(a) of the *Land Title Act 1994*.

In addition to the Registrar requiring public notice to be given in the above circumstances, the court may order that a person advertise in a specified form, content or way where an application is made that a named person be registered as a proprietor of a lot (s 114 of the *Land Title Act 1994*).

## Practice

### General

[60-0830]

By s 393(5) of the *Land Act 1994*, the chief executive delegates all responsibilities relating to the administration under Chapter 6 of the *Land Act 1994* to the Registrar.

All advertising is done by and at the expense of the applicant. Registry staff prepare a written notice to the lodger containing the public notice that is to appear and specifying the time and place in which the advertisement is to appear.

The lodger must produce a tear sheet of a newspaper as evidence of compliance with the Registrar's advertising requirements prior to registration. A tear sheet must, as well as displaying the advertisement, show the name of the newspaper and the date of publication. Where the newspaper provides a tear sheet by e-mail to the lodger, the email may be attached to an email by the lodger and forwarded to the relevant registration office. The dealing number and the position of the notice on the tear sheet (eg column 2 notice 6) should be included in the e-mail.

## Transmission Advertising Requirements

[60-0840]

For transmission advertising requirements see part 5 – Transmission Application, esp ¶[5-2200].

¶[60-0850] to ¶[60-0880] deleted

## <sup>1</sup>Dispense with Production Advertising Requirements

[60-0890]

Generally, the Registrar will require public notice to be given for applications to issue a substitute Certificate of Title or to dispense with production of a Certificate of Title. However, where there are two or more applicants and they declare that from personal knowledge the instrument was definitely destroyed, then no public notice is required. If two or more applicants declare that from personal knowledge the instrument was either lost or stolen at a particular location, then public notice may only be required in a newspaper nominated by the Registrar that is circulated in the vicinity where the Certificate of Title was lost or stolen.

The usual requirement of the Registrar is that advertisements must be placed either in the *Courier-Mail* or in a paper nominated by the Registrar.

If no caveat has been lodged within seven days of the advertisement appearing in the newspapers as required by the Registrar's notice, registration proceeds promptly.

For further information, see part 17 – Request to Dispense with Production of Instrument.

## Overpayment of Fees

[60-0895]

When a person lodges dealings in the registry they are expected to pay the correct regulated fee at the time of lodgement. Where a previously prepared cheque is presented for an amount which is not the same as the assessed fee, the Registrar may refuse to accept the dealing/s for lodgement.

However, where due to extenuating circumstances, a lodger wishes to complete the lodgement by presenting a previously prepared cheque that exceeds the assessed fee and the Registrar agrees to accept the incorrect amount, an administrative charge will be deducted from the overpaid amount. The lodger must complete and sign a form acknowledging payment of the administrative charge. A refund of the remaining amount overpaid will only be given, if requested in writing by the lodger.

Where a paid fee is subsequently found to be in excess of the sum of the regulated fees (overcharge by the department), the refund of the full amount in excess of the regulated fees will be made on request by the lodger.

Where an Electronic Lodger pays an amount for lodgement of a document that exceeds the regulated fees, a refund will only be given if requested in writing. An administrative fee may be deducted from the overpaid amount.

# Execution of Instruments

[60-0900]

## General

Section 11(1) of the *Land Title Act* 1994 requires that an instrument to transfer or create an interest in a lot must be executed by:

- the transferor or the person creating the interest; and
- the transferee or the person in whose favour the interest is to be created or a solicitor authorised by the transferee or the person.

## Execution Where Different Estates in Same Instrument

A registered proprietor or registered owner of different estates [eg fee simple and as lessee] may deal with those interests in the one instrument. One execution in an instrument is acceptable where the same party is dealing with different shares or estates. In both of these scenarios they are dealing with their own asset in their personal capacity.

## Execution Where Different Capacities in Same Instrument

Where a party has entered into a transaction in two different capacities, as a trustee and in their own right, and it is acceptable to use one Land Registry form (see further [51-2115]), the form must be executed separately in each capacity. Alternatively, a single execution is acceptable provided a statement appears in the appropriate item of the form that the party was executing in both capacities.

## Execution by Corporation

A corporation may execute an instrument in accordance with s 46 of the *Property Law Act* 1974. Where the corporation is in liquidation or is under official management, only the liquidator or the official manager may execute on behalf of the corporation with or without the company seal. The signatory must state their qualification as liquidator or the official manager. A certified copy of the evidence of their appointment must be deposited with the instrument (see further part 50, esp ¶[50-2000] and ¶[50-2030] to ¶[50-2050]).

## Execution with Marksman Clause

A person who is illiterate, blind, infirm or too ill to sign may affix a mark, instead of a signature. The witness to the signature then writes the words '[name in full], his or her mark', around the mark, and places their signature at the witness signature position on the form.

A Form 20 – Declaration is required to include the following statements by the witness:

- (a) that the witness is the attesting witness to the mark of the person executing the instrument in respect of the property being transferred (the property must be fully described);
- (b) that the witness certifies that the mark was made in their presence; and
- (c) that prior to the mark being made, the witness read the instrument to that person, who appeared to understand the nature and effect of the document.

## Execution by Attorney

The signature of an attorney who signs an instrument for an individual must be witnessed. Acceptable witnesses to executions, whether inside or outside Australia, are listed in Schedule 1 to the *Land Title Act* 1994. If the execution is made outside Australia, an Australian Consular Officer is also acceptable.

The signature of an attorney for a corporation who executes a transfer, mortgage, lease, etc as transferor, mortgagor, lessor etc must be witnessed in the same manner as for individuals above. However, an execution by an attorney for a corporation as transferee, mortgagee, etc in a transfer, mortgage, lease, etc need not be witnessed as no conveyance is involved (s 46 of the *Property Law Act* 1974). The signature of an attorney for a corporation who executes a release of mortgage or a surrender of lease or easement as mortgagee, lessee or grantee must be witnessed.

A conveyance executed by a Corporation as an attorney (with or without a common seal) is not required to be witnessed in accordance with Schedule 1 of the *Land Title Act* 1994 (see also part 50 – Corporations and Companies, esp ¶[50-2000]).

Where an instrument is executed by a person as attorney for another person, or for a corporation, the execution clause must read:

‘John Smith [or John Smith & Co Ltd ACN 001 002 003] by his [its] duly constituted attorney William Smith [name in full] under power of attorney No X999999Y’

The Registrar does not require proof that the attorney has not received notice of the death of the principal or revocation of the power of attorney.

Where two or more persons have jointly appointed a common attorney under a power of attorney or have a common attorney under separate powers of attorney, one execution of the instrument by the attorney suffices. That is, ‘A and B by their attorney C’. However, reference to the relevant power(s) of attorney must be shown.

Where there are two or more attorneys for a single principal under a power of attorney, only one witnessing provision need be completed for attorneys signing at the same time before a witness.

Where an attorney is executing on behalf of a custodian, appointed by a responsible entity incorporated under the *Corporations Act* 2001 (Cth), a statutory declaration by the attorney is required stating the interest being dealt with is held in the capacity of custodian. The declaration must also identify the trust/scheme referred to in the registered power of attorney. Alternatively, a letter from the solicitor acting on behalf of the custodian may be deposited, stating the interest being dealt with is held in the capacity of custodian and identifying the trust or scheme referred to in the registered power of attorney.

## Signing by Lawyer

If a lawyer, where permitted by the land registry form, executes on behalf of a party to an instrument, the lawyer’s signature need not be witnessed, but his/ her full name must be printed underneath the signature. Only lawyers under the *Legal Profession Act* 2007 are authorised to execute on behalf of a party to an instrument.

## Witness to Execution

Section 162(c) of the *Land Title Act* 1994 provides that the person who witnesses execution of an instrument must not be a party to the instrument. The Registrar is of the view that an employee of a bank or other financial institution, otherwise qualified under Schedule 1 of the

*Land Title Act 1994* (eg as a justice of the peace), is qualified to witness an instrument to which their employer is a party.

Form 1 – Transfer, Form 2 – Mortgage and Form 3 – Release of Mortgage require the completion of a separate witnessing provision for each signature which is required to be witnessed, even though signatures were made in front of the same witness. On forms other than Form 1, 2 and 3 only one witnessing provision need be completed for parties signing at the same time before a witness.

On forms that do not require separate witness provisions and where multiple executions are needed due to signatories signing before different witnesses, separate witnessing provisions must be completed by each witness. In cases where there is insufficient room on the form, a Form 20 – Enlarged Panel is required. It is permissible for the item to appear partially on the form and a Form 20 – Enlarged Panel. However, the full execution for each party (signature, date and completed witnessing provision) must appear on the same form. The item number and heading (ie ‘**Item 6 Execution**’) must be included on the Form 20 – Enlarged Panel and otherwise comply with requirements for completing a Form 20.

For further information, see:

- part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney, esp ¶[16-2170];
- part 50 – Corporations and Companies, esp ¶[50-0110] to ¶[50-0130], ¶[50-2000] and ¶[50-2020] to ¶[50-2050]; and
- part 1 – Transfer, esp ¶[1-2060].

## Execution by Public Trustee

[60-0910]

The Public Trustee of Queensland is authorised by the *Public Trustee Act 1978* and various other Acts to execute instruments for individuals in certain circumstances, such as incapacitation or imprisonment.

All instruments must be executed in a way showing the appointment or authority under which the public trustee acts (s 13 of the *Public Trustee Regulation 2001*). For example, where the Public Trustee executes an instrument for an incapacitated person, a statement to the following effect should be added:

‘Signed in the name of and on behalf of the said [name] by [name and position], Public Trust Office, the Public Trustee being authorised to manage the estate of the said [name] pursuant to Part 6 of the *Public Trustee Act 1978*’.

### Seal of the public trustee

The seal of the Public Trustee may be used in the execution of an instrument. However this is not essential and an instrument not under seal is still effective at law (s 11C of the *Public Trustee Act 1978* and s 227 of the *Property Law Act 1974*).

### Execution by delegates of the Public Trustee

Where such authorisation exists, the execution may be by a delegate of the Public Trustee. The delegate should add after the delegate’s signature a statement to the following effect ‘Signed as delegate for the Public Trustee under section 11A of the *Public Trustee Act 1978*’.

## Execution for prisoners

The Public Trustee is the manager of estates of prisoners who are undergoing sentences of imprisonment for over three years and is therefore the proper person to execute instruments dealing with the prisoner's property, unless the Public Trustee has discontinued management (s 92 of the *Public Trustee Act 1978*) or has given consent for the prisoner to execute the instrument dealing with the property themselves (s 95 of the *Public Trustee Act 1978*).

## Witnessing requirements

The normal witnessing requirements apply to the execution.

# Execution by Local Government

## General Law

[60-0920]

Pursuant to s 161 of the *Land Title Act 1994*, for a corporation, an instrument is validly executed if it is executed in a way permitted by law. Section 38 of the *Local Government Act 1993* provides that a local government may execute a document by:

- the mayor of the local government signing the document on behalf of the local government; or
- an authorised councillor of the local government signing the document on behalf of the local government.

In addition to the manner of execution provided for in s 38 of the *Local Government Act 1993* and mentioned above, a local government may under s 472 of the *Local Government Act 1993*, delegate its powers to, among others, the mayor and the chief executive officer. Under s 1132 of the *Local Government Act 1993*, the chief executive officer may delegate the chief executive officer's powers (including powers delegated to the chief executive officer by the local government) to an employee of the local government.

## Practice

[60-0970]

A document made by a local government on or after 13 March 2008 must be signed by either:

- the mayor;
- an authorised councillor;
- the chief executive officer; or
- an authorised employee of the council (i.e. delegate or authorised officer).

The name of the local government and designation of the signatory must be shown adjacent to the signature. The execution by a local government must be witnessed by a person with a qualification mentioned in Schedule 1 of the *Land Title Act 1994* where a Land Registry form has a witnessing provision. The signing of an approval to a plan of subdivision does not require witnessing. The Registrar makes no inquiry as to whether the delegation has been made by a particular local government. There is no requirement for the names of the signatories to be shown.

## Style of Local Government Name

[60-0980]

Under the provisions of s 33 of the *Local Government Act 1993* a local government may be called either –

- (a) ‘Council of the... (*insert Region/City/Town/Shire*) of... (*insert name of local government area*)’; or
- (b) ‘... (*insert name of local government area*)... (*insert Regional/City/Town/Shire*) Council’.

The Registrar is not concerned with which of the two name styles is used. However, which ever of the two name styles is stated in the relevant item of a document that creates an interest in the local government will be the name style recorded in the register. Where there is ambiguity in the name style when recoding a local government in the register for example, where a new lot is being created from two lots in different name style, clarification will be required from the lodger.

¶[60-0990] deleted

## Local Government Reform

[60-1000]

The following requirements apply to local governments affected by local government reform brought about by amendments to the *Local Government Act 1993*.

Where an interest is recorded in a previous council's name and it is not being dealt with, the new council does not need to take any action with regard to that interest.

However, action will be required in instances where an interest is being dealt with and the council will subsequently retain the interest. In such cases, the new council must first vest the interest in the new council by registering a Form 14 – General Request. Item 6 of the form must state ‘... the interest in item 4 be vested in [*name of new/adjusted council*] pursuant to the *Local Government Act 1993*’.

Where an interest in land is held in the name of a previous council and the new council is disposing of the interest, the new name does not need to first be recorded in the land registry. However, the document lodged to record the disposing of the interest must contain in the appropriate item on the prescribed form, a statement showing both the new name and the previous council name; and be executed by the new council.

For example, a lot held in the name of the Caboolture Shire Council that is being transferred to another party, the land registry Form 1 – Transfer must state at item 3 – Transferor –

‘Moreton Bay Regional Council (formerly Caboolture Shire Council) pursuant to the *Local Government Act 1993*’

¶[60-1010] deleted

## Translation of Instrument or Document in Foreign Language

[60-1020]

Translations of parts of instruments (including any details relating to witnessing) or supporting documentation from another language to English will be considered on the merits of a declaration by the person who made the translation.

As an example, a person of ethnic origin who was educated in their country of origin, migrated to Australia and continued to study in the English language may well be competent to translate from their native language to English.

The requirements for a translation are:

- (a) that it be an interpretation of the original document and not merely an extraction of some relevant details. The declaration of the translator should state ‘I have translated the document appearing as attachment ‘A’ into the English language, which translation appears as attachment ‘B’; and
- (b) that the translator declare as to the basis of his/her competency or qualification claimed, the circumstances under which his/her competency or qualification was acquired and identify in the declaration the document being translated.

## Deposit of Supporting Documentation

[60-1030]

### Options for Deposit

In many instances it is necessary to deposit supporting documentary evidence to obtain registration of an instrument, for example:

- an office copy certificate of death with a Form 4 – Request to Record Death;
- an original trust deed with a Form 1 – Transfer to Trustees;
- a grant of representation with a Form 5 or 6 – Transmission Application;
- a court order with a Form 1 – Transfer or a Form 14 – General Request.

The following options for depositing the documentation, other than an original will, a power of attorney, or a revocation of a power of attorney, are available:

1. a good quality photocopy of the original office copy or other original documentation may be submitted with the original documentation for comparison with the photocopy by a land registry officer. The original documentation will be returned immediately to the lodger; or
2. a good quality photocopy of the original office copy or other original documentation that has been properly certified as a true copy of the original may be deposited; or
3. provide in an appropriate item of the form or by supplementary letter a reference to the dealing(s) (other than a dealing rejected under s 157 of the *Land Title Act 1994*) with which the documentation was deposited; or

4. the original office copy or other original documentation may be deposited. However, this option is not available for a document creating or amending a trust (eg deed of trust).

**Note:** The original evidence deposited will not be returned.

A good quality photocopy produced from the original, must meet the following criteria:

- it must be sufficiently dense to allow for subsequent reproduction or imaging;
- it must be on only one side of A4 paper; and
- it must not have black marks along the top, bottom or sides as a result of the photocopying process, etc.

For registration, each instrument must be complete regarding its supporting documentation. The following options are available to meet this requirement:

- documentary evidence may be produced in accordance with the above options in conjunction with each lodgement; or
- a reference may be provided to the dealing number of a prior lodged instrument which includes the relevant evidence.

### **Certification by Qualified Witness**

For a copy mentioned in item (2) above to be properly certified, a qualified witness mentioned in Schedule 1 of the *Land Title Act 1994*, who is not a party to the lodged document, must sign a certification clause to the effect that the document is an identical copy of the original, which has been sighted by them. The clause must contain information necessary to clearly identify the signatory; for example, a Justice of the Peace (Qualified) must legibly print their full name or registration number while a solicitor must legibly print their full name. The completed clause must be on the face of the copy and comply with regulatory requirements that provide for forms to be able to be reproduced by photocopy.

The following certifications are published as a guide.

#### **Endorsement on a copy of single-page document is as follows:**

This is to certify that this is a true copy of the original, which I have sighted.

Date  
Signed  
Full name (or registration number, if applicable)  
Title/Qualification

#### **Endorsement on a copy of a multi-page document is as follows:**

If the original document has more than one page the witness must either; (a) certify each page or (b) sign or initial each page, number the page as 1 of 40, 2 of 40 and so on and amend the certification on the last page to read:

This is to certify that this [number of pages]-page document (each page of which I have numbered and signed) is a true copy of the original [number of pages]-page document that I have sighted.

Date  
Signed

Full name (or registration number, if applicable)  
Title/Qualification

## Privacy

Lodgers must consider privacy issues when depositing supporting documentation in the land registry as all documentation becomes searchable public information. Where personal information (for example financial information) is disclosed in supporting documentation the Registrar will requisition for these details to be removed. However, all involved parties may consent by way of letter for such information to be kept in the land register.

## Dealing with or Disposing of an Interest Held by the State

[60-1040]

### Disposing of freehold land

Where government controlled land or interest in land is being disposed of, the following will be acceptable:

- the form shows, in the relevant item, The State of Queensland in the same style name recorded on title; or
- the form shows, in the relevant item, ‘The State of Queensland (represented by [current name of department] formerly [previous name of department])’. Because of a Machinery of Government change, a former department name shown on title is not current; or
- the form shows, in the relevant item, ‘The State of Queensland (represented by [current name of department] and the title shows the style name as ‘The State of Queensland’ without the name of the representing department.

However, it is not acceptable where the title shows ‘The State of Queensland (represented by [name of department])’ and the form shows another style or departmental name but without the words ‘formerly [previous name of department]’. This may indicate there has been a transfer of administrative responsibility without being recorded on title. The style name shown on title must first be changed by lodging and registering a Form 14 – General request to change the administrative details (department representing the State).

### Dealing with freehold land

Where government controlled land or interest in land is being dealt with (e.g. plan of subdivision, lease or easement) and the interest is remaining in the control of the government, the style name of The State of Queensland shown on title must be the same as that shown in a lodged dealing. In these instances, a Form 14 – General request to change the administrative details shown on title (department representing the State or Act) must be lodged prior to registration of the lodged dealings.

### Unallocated State land

Where USL is recorded in the style name of:

- ‘The State of Queensland’; or
- ‘The State of Queensland (represented by [name of department])’;

the style name may be changed to:

- ‘The State of Queensland (represented by [name of new or different department])’; or
- ‘The State of Queensland (represented by [name of department] – [name of Act])’

by lodging and registering a Form 14 – General request to change the administrative details shown on title.

## Cross References and Further Reading

[60-9000]

Nil.

### Notes in text

[60-9050]

Note <sup>1</sup> – This numbered section is not applicable to water allocations or the Water Allocations Register.

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