

Part 4 – Request to Record Death

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Part 4 – Request to Record Death

General Law

Joint Tenancy and Tenancy in Common

[4-0000]

If, at the time of death, the deceased held a lot or an interest with another or others as ‘joint tenants’, his/her death effects an immediate vesting of the deceased’s lot or interest in the surviving joint tenant/s. This principle is called ‘the right of survivorship’ and it operates until there is a sole survivor who thereby acquires sole ownership of the asset notwithstanding any provision in any will.

The distinguishing features of joint tenancy are:

- the right of survivorship (as described above);
- the so called ‘four unities’ namely:
 - unity of possession (all owners are entitled to possession and no owner has a better right than another);
 - unity of interest (all owners have the same interest in the land as to extent, value and duration);
 - unity of title (all owners’ interests must be derived from the same source); and
 - unity of time (all owners’ interests must vest to them at the same time).

Another method of holding a lot or an interest is that of ‘tenancy in common’, which means simply the holding of ownership in common. It is possible to hold a tenancy in common in any shares, e.g. $\frac{1}{3}$, $\frac{2}{3}$ or $\frac{1}{78}$, $\frac{30}{78}$, $\frac{47}{78}$, etc.

The distinguishing features of tenancy in common are:

- No right of survivorship.
- The lot or interest is held in ‘undivided shares’, which means that each tenant in common has a distinct share in the property which has not yet been divided amongst the co-tenants. However, pending such division, all have a unity of possession (see above).
- Other than unity of possession, no other unity referred to above need exist.

In Queensland:

- companies may hold property as joint tenants (see s. 34 of the *Property Law Act 1974*);
- dispositions of property to more than one person will generally be considered as being distributed to them as tenants in common, subject to specific rules (see s. 35 of the *Property Law Act*);
- it is possible for one owner (whether a joint tenant or a tenant in common) to apply to the court for the sale or partition of the property (see Part 5, Division 2 of the *Property Law Act*).

Legislation

[4-1000]

^{2,3}Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, an interest or dealing may be registered in a way mentioned in the Land Title Act, subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act:

- (a) as if a reference to the freehold land register is a reference to the water allocations register; and
- (b) as if a reference to freehold land or land is a reference to a water allocation; and
- (c) as if a reference to a lot is a reference to a water allocation; and
- (d) with any other necessary changes.

Reference to the registrar of titles in the *Land Title Act 1994* and *Land Act 1994* and reference to the registrar of water allocations in the *Water Act 2000*

Refer to [0-8100] and [0-8200] and [0-8300].

Practice

Introduction

[4-2000]

As vesting occurs on death under the principle of holding property as ‘joint tenants’, such property is unrelated, in a strict sense, to the administration of the deceased joint tenant’s estate. The surviving joint tenant/s, and not the personal representative of the deceased joint tenant, apply to the Registrar to have the lot or interest vested in them on proving the death of the deceased joint tenant.

The application is commonly referred to as a ‘Record of Death Application’.

In all instances it is essentially the surviving joint tenant/s declaring that they are registered as the owners or holders of a lot or interest as joint tenants with the deceased, that the deceased has died (as appears from the copy of his/her certificate of death) and that he/she/they now claim entitlement to be registered as owner/s or holder/s of the lot or interest as the surviving joint tenant/s.

The most common form of Record of Death Application is discussed below.

Form of Application and Evidence

[4-2010]

Applications in respect of the death of a joint tenant are made to the Registrar by virtue of a person’s right to have an interest registered under s. 30 of the *Land Title Act 1994*, s. 295 of the *Land Act 1994* and s. 150 of the *Water Act 2000* and the Registrar’s power to record particulars in the Register under s. 29 of the Land Title Act, s. 299 of the Land Act and s. 151 of the Water Act.

A request is made to record the death in Item 7 of the Form 4 – Request to Record Death. Verification of the death must be deposited to support the request.

It should be noted that, if the surviving joint tenant caused or was implicated in causing the death of the deceased, the joint tenancy is not severed. A constructive trust is created to the extent that the convicted surviving joint tenant's interest would ordinarily be increased by the death of the deceased (*Re Stone* [1989] 1 Qd R 351). In such cases, it is usual for an application to be made to the Supreme Court for the appointment of a statutory trustee of the property pursuant to s. 38 of the *Property Law Act 1974*. Consequently, the Request to Record Death of the joint tenant and a Form 14 – Request to Vest (see part 14, esp. [14-2335]) in the statutory trustee (see part 51, esp. [51-0170]) will be lodged and registered simultaneously.

Spelling of Deceased's Name

[4-2020]

If the spelling of the deceased's name in the copy of the certificate of death differs from the spelling on the title to the lot or interest which is the subject of the application, a statutory declaration stating that they are one and the same person may be required. Minor differences are overlooked, such as 'Margot Alison Brown' in one instance and 'Margot Allison Brown' in the other. However, significant differences, e.g. in the surname, will require explanation.

Documents Deposited with Request

Certificate of Death

[4-2030]

A request to record death may be supported by a copy of the certificate of death certified by the relevant issuing authority in the appropriate jurisdiction (e.g. Registrar of Births, Deaths and Marriages). The certificate may be either a short or long extract of the certificate of death.

If the death certificate has not issued in English, a full translation of it is required.

See part 60 – Miscellaneous, esp. [60-1020] and [60-1030] for more details.

Grant of Representation

[4-2035]

On occasions a copy of a grant of representation (see [60-1030]) in the deceased's estate (i.e. probate or letters of administration) may be deposited as evidence with a record of death by the surviving joint tenant. The surviving joint tenant may or may not be the person to whom the grant is made.

As evidence of death is deposited with the Supreme Court to obtain a grant of representation, the grant is acceptable to the Registrar as evidence of death for a Record of Death.

[4-2040] deleted

[4-2050] deleted

Multiple Deaths

[4-2060]

Multiple Record of Death Applications in the one form will be acceptable in cases typified by the following examples:

- A, B and C are joint tenants and all are deceased. One Request to record the deaths of A and B, and a Transmission Application (see part 5, 5A, 6 – Transmission Applications) in respect of C's death may be lodged. The Form 4 – Request to Record Death, suitably amended, may be executed by the personal representative of the last surviving registered owner or holder of the interest. Similarly, if A and B only are deceased, one Record of Death Application, lodged by C, will suffice. Copies of the certificates of death of the deceased persons must be provided.

NOTE: In a case (such as the example above) where all joint tenants are deceased, their deaths are recorded or transmitted chronologically as they died, as shown on the death certificates. Usually this will be obvious from the respective dates of death. However, if the dates of death are the same, evidence will be required to show who survived the longest. In some circumstances, the provisions of s. 65 of the *Succession Act 1981* may apply.

Consequently, in this example, it will be necessary to show that C was younger than A and B. This will generally be apparent from the death certificates.

- A, B and C are trustees and all are deceased. There may be one Request to record all deaths, providing there is simultaneous lodgement of a Form 14 – Request to Vest by the Public Trustee or a Form 1 – Recording of New Trustees by the personal representative of the last surviving trustee or other person authorised (see part 51 – Trusts and part 1 – Transfer, esp. [1-2400] to [1-2430]).

The Registrar will not record a deceased person in a register, except where:

- the words ‘since deceased’ are included after the name on the Form 4 – Request to Record Death; and
- the lodged Form 4 – Request to Record Death is followed by either a Transmission Application or another Form 4 – Record of Death, as the case requires.

Death of a Trustee

[4-2070]

For the requirements to record the death of a trustee see part 51 – Trusts, esp. [51-2060] to [51-2090].

The requirements to record the appointment of new trustee/s after the death of the sole or last surviving trustee are dealt with by a Form 1 – Recording of New Trustees (see part 1 – Transfer, esp. [1-2400] to [1-2430]).

Forms

General Guide to Completion of Forms

[4-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

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

EILEEN VERONICA WHITE
42 GLENN STREET
ENOGGERA QLD 4051
PH: 3268 4095

Lodger Code

1. Deceased's Name

VERNON THOMAS WHITE

2. Lot on Plan Description

LOT 34 ON RP64643

Title Reference

14643034

3. Interest held by deceased

FEE SIMPLE

4. Applicant

Given Names

Surname

EILEEN VERONICA

WHITE

Address for service of notices to the applicant:
(for rates purposes, etc.)

42 GLENN STREET, ENOGGERA QLD 4051

5. Document(s) deposited

Office copy of Death Certificate issued by the Registrar General of Births, Deaths & Marriages (Qld) or equivalent evidence from other jurisdictions

6. Authority of applicant

The applicant is:

- * the surviving joint tenant of the land
- * ~~the surviving trustee under Instrument No.~~
- * ~~the attorney (appointed under section 56 of the Trusts Act) of the surviving trustee~~
- * ~~the reversioner of the interest held by the deceased pursuant to clause of Lease/Standard Terms Document no.~~
- * ~~the last surviving joint tenant and this application is made by~~
- * ~~the personal representative of the applicant as evidenced by the original Will deposited with Transmission by Death no.~~

* delete if not applicable

7. Request

In accordance with the particulars disclosed above, it is requested that this death be recorded.

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

I I Stravinsky

.....signature

IVAN IGOR STRAVINSKY

.....full name

SOLICITOR

.....qualification

Witnessing Officer

10/9/2007

Execution Date

E V White

Applicant's or Solicitor's Signature

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

Note: A Solicitor is required to print full name if signing on behalf of the Applicant and no witness is required in this instance

Guide to Completion of Form 4

Item 1

[4-4010]

Insert the name, as recorded, of the deceased joint tenant (registered proprietor, lessee, mortgagee, etc). If the interest is held on a recorded trust or by a personal representative, then this should be identified, e.g. ‘as a trustee under Transfer to Trustees No. D76543’ or ‘as a personal representative’.

Item 2

[4-4020]

^{1,2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘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.

e.g.	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

^{2,3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

e.g.	Lot on Plan Description	Title reference
	WA 27 on AP 7900	46012345

^{1,3}State Tenure Description

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for crown plans).

e.g.	Lot on Plan Description	Title reference
	Lot 27 on CP LIV1234	46012345

Item 3

[4-4030]

Insert the interest of the deceased joint tenant as appropriate, i.e. ‘fee simple’, ‘Lease No. [number]’, ‘Water Allocation’ or the type of State tenure e.g. State lease.

Item 4

[4-4040]

Insert the applicant’s (one of the surviving joint tenant(s)) full name. In circumstances where the personal representative of the last surviving joint tenant to die is making the application, complete the item by inserting either:

- [name of the last surviving joint tenant] (since deceased); or
- [name of personal representative] personal representative of [name of last surviving joint tenant] (since deceased).

For requirements relating to the authority of the applicant see [4-4060].

Complete the postal address of the surviving joint tenant(s) for service of notice where the request is recording the death of:

- a joint registered owner of a freehold lot; or
- a joint holder of a lease or licence under the *Land Act 1994*; or
- a joint holder of a water allocation.

Item 5**[4-4050]**

Insert the documentation being deposited. For example:

- a copy of the certificate of death; or
- a copy of the grant of representation.

For further information relating to the deposit of supporting documentation (see [60-1030]).

Item 6**[4-4060]**

The authority for making the application must be stated. In practice, the applicant will most commonly be the surviving joint tenant. Other options are provided on the Form. However, in all cases the inapplicable statements must be deleted.

Item 7**[4-4070]**

Execute as required.

If the application is by ‘the attorney (appointed under s. 56 of the *Trusts Act 1973*) of the surviving trustee’, reference should be made, adjacent to the applicant’s signature, to the dealing number of the power of attorney (e.g. ‘Power of Attorney No...’). There should also be a declaration by the attorney identifying the reason for the attorney to act as defined in s. 56 of the *Trusts Act 1973*.

[4-6000] deleted

Case Law

Re Stone* [1989] 1 Qd R 351*[4-7000]**

Where a joint tenant unlawfully kills a co-joint tenant, the killer acquires that person’s interest at law as joint tenant, but holds that interest on trust for the persons entitled under the will of the deceased. That is, the incidence of survivorship inherent in a joint tenancy is not affected, but a constructive trust is imposed on the killer to the extent to which his/her interest is enlarged by the killing.

[4-7010] deleted

Fees

[4-8000]

Fees payable to the Titles Registry are subject to an annual review. Refer to the Titles Fee Calculator available online or see [60-8000].

Cross References and Further Reading

[4-9000]

Part 1 – Transfer

Part 5, 5A, 6 – Transmission Applications

Part 51 – Trusts

De Groot, J, *Wills Probate and Administration Practice (Queensland)*, Nina Psaltis Consulting (loose-leaf service)

Duncan and Vann, *Property Law and Practice in Queensland*, Thomson Legal and Regulatory (loose-leaf service)

Notes in text

[4-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.