

# 1Part 10 – Surrender of Easement

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# **<sup>1</sup>Part 10 – Surrender of Easement**

## **General Law**

[10-0000]

In this part, unless otherwise stated, a reference to a lot means:

- a freehold lot;
- land granted in trust under the *Land Act 1994*; or
- non freehold land (including any lease of non-freehold land or sublease of non-freehold land) other than a road;

<sup>2</sup>For surrenders of easement under the provisions of s. 90(5) of the *Land Title Act 1994*, the meaning of owner of a lot or lessee of lease means:

- the registered owner of the lot or registered lessee of the lease; or
- if the mortgagee of the registered owner of the lot or registered lessee of the lease is in possession – the mortgagee in possession.

For surrender of easements under the provisions of s. 371 of the Land Act, the State is taken to be the owner of unallocated State land and reserves (s. 371(5) of the Land Act).

<sup>3</sup>For surrenders of easement under the provisions of s. 371(6) of the Land Act, the meaning of owner of land includes:

- a registered owner; or
- a trustee of land granted in trust; or
- a lessee or licensee; or
- a mortgagee in possession.

An easement is wholly or partially extinguished by the registration of a surrender of that easement. Only the owner of the benefited lot has the power to execute a surrender of that easement. The owner of the burdened lot cannot, alone, effect the surrender of an easement. However, the owners of the benefited and burdened lots, acting together, can surrender an easement.

Lodgement fees are payable and a duty notation is required.

## **Legislation**

[10-1000]

### **Reference to the registrar of titles in the *Land Title Act 1994* and *Land Act 1994***

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

# Practice

[10-2000]

## Surrender Executed by Owner of Dominant Tenement and Servient Tenement

The owners of both the benefited (dominant tenement) and burdened (servient tenement) lots may together execute the Form 10 – Surrender of Easement.

Similarly, if either the dominant or servient tenements are a registered freehold lease, the lessee may execute the Form 10 – Surrender of Easement with the other party.

## Surrender Executed only by Owner of Dominant Tenement

A Form 10 – Surrender of Easement executed only by the owner of the lot that benefits from the easement (the dominant tenement) will be effective to surrender the easement.

Similarly, if the dominant tenement as identified at Item 3 of the Form 9 – Easement is a registered freehold lease, the lessee of the lease may alone execute the Form 10 – Surrender of Easement.

## Surrender of Public Utility Easement

In relation to public utility easements (easements in gross), the public utility provider must execute the surrender.

## Partial Surrender of Easement

If the easement is to be only partly surrendered, the surrendered portion must be capable of precise definition. If the surrendered portion is not capable of precise definition, the area to be surrendered, or the area to remain in the easement, must be defined by a plan of survey drawn in accordance with direction 6 of the Registrar of Titles Directions for the Preparation of Plans. Alternatively the easement should be fully surrendered and a new easement created.

## Consent of Mortgagee or Lessee to a Full or Partial Surrender of an Easement

The consent, in Form 18 – General Consent, of any registered mortgagees of the benefited lot (the dominant tenement) must also be lodged. Further, the consent of any lessee that receives a benefit from the easement is also required (ss. 90(3) and (4) of the *Land Title Act 1994*).

The consent of all persons who have a registered interest in the land benefited by the easement ss. 371(3) and (4) of the *Land Act 1994* is also required.

Similarly, if the dominant tenement as identified at Item 3 of the Form 9 – Easement is a registered freehold lease, the consent of any registered mortgagee or sublessee of the lease who receive the benefit of the easement must also be lodged.

## <sup>2</sup>Surrender of Easement Affecting Common Property for a Community Titles Scheme

[10-2010]

When the body corporate executes a surrender of an easement either as a grantee or as a grantor a copy of the resolution from the relevant body corporate, in accordance with the scheme's regulation module, must be deposited with the instrument of surrender. Where the surrender has

been signed by both the grantee and the grantor a resolution is required from each body corporate.

## Forms

### General Guide to Completion of Forms

[10-4000]

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

Dealing Number



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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.

**1. Dealing number of easement being surrendered**

700001245

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

CONSTANTUS & LEE  
SOLICITORS  
200 NORTH QUAY  
BRISBANE QLD 4000  
mail@conlee.com.au  
(07) 3221 3429

**Lodger**

**Code**  
99

**2. Description of Easement/Lot on Plan**

**Title Reference**

Servient Tenement (burdened land)  
EASEMENT G ON RP176953

13894001

\*Dominant Tenement (benefited land)

\* not applicable if easement in gross

LOT 4 ON RP176953

14359147

**3. Grantor**

PETER ROSS THOMPSON

**4. Grantee**

MICHAEL ALLEN MARSDEN  
JOSEPHINE ELAINE MARSDEN

**5. Surrender/Execution**

**\*Full Surrender**

The Grantee surrenders the easement in item 1 so that the easement is extinguished.

**\*Partial Surrender**

~~The Grantee surrenders the easement in item 1 so that the easement is extinguished so far as the easement relates to:-~~

~~\*part of the Dominant Tenement; or~~

~~\*part of the Servient Tenement.~~

\* delete if not applicable

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

*G I Constantus*

.....signature

GUSTAVE IGOR CONSTANTUS

.....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)

4/12/2007

**Execution Date**

*M A Marsden*

*J E Marsden*

**Grantee's Signature**

*R E Lester*

.....signature

ROBERT EDWARD LESTER

.....full name

JUSTICE OF THE PEACE (QUALIFIED) #13445

.....qualification

**Witnessing Officer**

6/12/2007

**Execution Date**

*P R Thompson*

**Grantor's Signature**

## Guide to Completion of Form 10

### Item 1

[10-4010]

Insert the dealing number of the easement being surrendered (e.g. 602148090). If the easement is one that was registered while the land was State leasehold land, it may have two numbers:

- the dealing number given when the land was freeholded; **and**
- the original dealing number when first registered, which should be shown in brackets.

### Item 2

[10-4020]

Insert the description of the easement, for the burdened lot/s or freehold lease e.g. Easement [identifier] on [plan reference], and the Lot [number] on [plan reference] for the benefited lot or lot the freehold lease is registered over. The title reference for both tenements must also be inserted.

In the case of an easement in gross, the section of Item 2 relating to the benefited lot should be marked “Not applicable”.

### Item 3

[10-4030]

Insert the full names of the grantor/s. The current registered owner of the burdened lot or lessee of the freehold lease may not necessarily be the same as the original grantor. The relevant name to be inserted is that of the current registered owner or lessee of the freehold lease.

### Item 4

[10-4040]

Insert the full names of the grantee/s. The current registered owner of the benefited lot or lessee of the freehold lease may not necessarily be the person who was the original grantee of the easement. The relevant name to be inserted is that of the current registered owner or the lessee of the lease if the dominant tenement is a registered lease.

### Item 5

[10-4050]

Both parties, grantor and grantee, or alternatively, only the grantee alone (ss. 90(2)(b) and (c) of the *Land Title Act 1994* or ss. 371(2)(b) and (c) of the *Land Act 1994*) complete where indicated.

At Item 5, there are paragraphs applicable to a full and to a partial surrender. When completing the Form, the paragraph not applicable to the situation is to be ruled through.

The grantee alone may execute, or both the grantor and the grantee may execute, the surrender.

However, the grantor alone may not execute a surrender.

See also part 61 – Witnessing and Execution of Instruments or Documents, esp. [61-3000].

[10-6000] deleted

## Case Law

[10-7000]

Nil.

## Fees

[10-8000]

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

[10-9000]

Part 9 – Easement

Part 61 – Witnessing and Execution of Instruments or Documents, [61-3000]

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

### Notes in text

[10-9050]

Note <sup>1</sup> – This part does not apply to water allocations.

Note <sup>2</sup> – This numbered section, paragraph or statement does not apply to State land.

Note <sup>3</sup> – This numbered section, paragraph or statement does not apply to freehold land.