

**SUMMARY OF CHANGES TO LAND TITLE PRACTICE MANUAL  
PUBLISHED 22 APRIL 2024**

<b>Part</b>	<b>Para</b>	<b>Summary</b>
1	2030	Clarify wording to be used in a declaration
1	2050	Clarify requirement when the legal name of a person consists of only one name
11	5010	Update text to include reference to mandate and review references to legislation
14	2010	Clarify that one Form 14 – General Request is required to be lodged for each registered proprietor who is changing or correcting their name
14	2025	Clarify requirements for Statutory Declaration for a correction of name
14	2260	Clarify requirements for disclaimers by a company liquidator
14	2330	Update section heading and include information regarding a vesting by legislation
14	2400	Clarify requirements for supporting declaration to be deposited with a request to merge legal and beneficial interests
14	2530	Update practice in relation to duplicate scheme names
14	2540	Clarify that a request to extend a reservation of name must be lodged to allow sufficient time for processing prior to the expiry of the reservation of name
14	Various	Update text to better reflect the gender-neutral nature of the Register.
18	4070	Clarify practice in relation to electronic signatures by registered owners/lessees on a Form 18A
21	2235	Include requirement for consent by the executive director of the Wet Tropics Management Authority to certain plans
52	0170	Update text to clarify purpose of recording a Wet Tropics Notice

# Part 1 – Transfer

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## Part 1 – Transfer

### General Law

[1-0000]

A transfer is the passage of a right from one person or corporation to another by virtue of an act done by the transferor with that intention, as in the case of a conveyance or an assignment by way of sale or gift or by operation of law.

<sup>1,2</sup>The transfer of an interest in land effected under the *Land Title Act 1994* has the result that the person or corporation registered as the owner of that interest has title to it and the title has the protection of indefeasibility given under the Land Title Act.

<sup>2,3</sup>The registration of a transfer for an interest in a water allocation to the extent provided for in s. 173(1)(e) of the *Water Act 2000* has the same effect as a transfer of an interest in a lot under s. 62 of the Land Title Act. However, on registration of the transfer there are no provisions for the protection of indefeasibility of title.

<sup>1,3</sup>A lease, licence or sublease may be transferred under s. 322 of the *Land Act 1994* only to a person if the person is eligible and only if the chief executive has given written approval to the transfer. However, on registration of the transfer there are no provisions for the protection of indefeasibility of title.

<sup>1,3</sup>Under s. 322AA of the Land Act, the chief executive may grant exemption from the approval requirement.

<sup>1,3</sup>Under s. 142 of the Land Act, a minor may not apply for, buy or hold land.

### Legislation

[1-1000]

#### **<sup>2,3</sup>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

## Transfer of Fee Simple, a State Lease or Licence, or a Water Allocation

### General

[1-2000]

The following is a general guide to completing a Form 1 – Transfer under the *Land Title Act 1994*, *Land Act 1994* and *Water Act 2000* to enable the transfer of fee simple, a State lease or licence, or a water allocation. However, there are situations where this guide will not be applicable. Those situations, where some aspect of the transfer is required to be completed differently, are set out at [1-2100] to [1-2630].

**Please note:** All transfers must have a duty notation even if no transfer duty is payable

### Item 1 The Interest being Transferred

[1-2010]

Generally, the interest being transferred is the fee simple, a State lease or licence, or a water allocation. Different interests may be transferred using a single form, provided that the interests are either all of a primary nature or all of a secondary nature (see part [59-2020]). However, the details relevant to each interest (e.g. the consideration) must be clearly set out in the transfer.

### Item 2 Lot on Plan Description

[1-2020]

#### <sup>1, 2</sup>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

#### <sup>2, 3</sup>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

#### <sup>1, 3</sup>State Tenure Description

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

e.g.	Lot on Plan Description	Title reference
	Lot 27 on CP LIV1234	40567123

### Item 3 Transferor

[1-2030]

The full name of the transferor/s must be inserted.

If the transferors are two or more individuals as joint tenants or tenants in common, the tenancy should **not** be shown.

If the transferor is a body corporate constituted under the *Body Corporate and Community Management Act 1997*, then the following words are inserted ‘Body Corporate for [name of scheme] community titles scheme [scheme number] e.g. ‘Body corporate for Seaview community titles scheme 1234’.

If a transferor holds the property as trustee or personal representative, then this must be stated, e.g. ‘[name of transferor] as Trustee’ or ‘[name of transferor] as personal representative’.

If a registered owner or holder of an interest holding with another, either as joint tenants or as tenants in common, appears to transfer his/her interest to the other, it will be accepted that the transferee and the remaining tenant in common or joint tenant (as the case may be) are one and the same person. This will be assumed unless a declaration or solicitor’s letter identifies the transferee as a different person. The substance of the transferee’s statutory declaration or solicitor’s letter should be along the following lines:

#### Declaration

‘I, John Anthony Smith, of [address] ~~do~~ solemnly and sincerely declare that: as follows:

- (1) I am the transferee from Patricia Mary Smith of a half share in [full description] contained in title reference 16543002.
- (2) I am the son of John Anthony Smith, the remaining [registered owner, or holder of an interest e.g. lessee] of the above [lot or other interest e.g. State lease] and I am not one and the same person as he.’

#### Solicitor’s Letter

‘I am the solicitor for John Anthony Smith, the transferee from Patricia Mary Smith of a half share in [full description] contained in title reference 16543002. My client is the son of John Anthony Smith, the remaining [registered owner or holder of an interest e.g. lessee] of the above [lot or other interest e.g. State lease], not one and the same person as him. Please register both names on the title as [registered owners or holders of an interest e.g. lessee].’

If a transferor is registered as an owner of a lot or holder of an interest in a name that has subsequently been changed either by marriage, deed poll, change of name (e.g. change of name issued by the Registrar of Births Deaths and Marriages) or change of name of a company then the name should be shown as [changed name] formerly [registered name]. Relevant documentary evidence e.g. a copy of the marriage certificate issued from the registry of births, deaths and marriages in the relevant jurisdiction or search from Australian Securities & Investments Commission National Names Index showing the previous names must be deposited with the Form 1. See part [60-1030] for more information about depositing supporting documentation. In the case of a natural person, a statutory declaration setting out the facts of the change of name must also be deposited. However, this practice must not be used where the transfer is for the purpose of s. 358 of the Land Act. **Note:** If the transferor is only transferring part of the interest held and are to remain on title as a registered owner or holder of an interest, a Form 14 – Request to Change Name should be deposited prior to registration of the Form 1 – Transfer.

Unless prior written approval has been received from the Titles Registry, where multiple titles (not being titles for a share of the one lot) are involved in a single transaction, each of these titles must be held in the same name such that the registered proprietor is consistent as transferor for each lot. For example, if Party A owns one lot on one title and Party B owns another lot on another title and they are transferring to a mutual transferee, separate forms are required for each lot. See also [51-2115].

**Item 4 Consideration****[1-2040]**

The consideration is the full amount paid or the terms agreed by the transferee and the transferor for the transfer of the interest.

<sup>1, 2</sup>For a transfer of the fee simple (other than to the Commonwealth of Australia) an additional fee is payable if the monetary consideration exceeds the amount specified in the Schedule of Fees under the applicable legislation (Refer to the Titles Fee Calculator available online).

Monetary Consideration

Monetary consideration must be shown in Australian dollars and can be expressed in words or figures.

Monetary consideration must be shown inclusive of the amount of any Goods and Services Tax (GST) payable.

Non-Monetary Consideration

If the basis of the transfer is other than monetary, this should be fully expressed, e.g. ‘pursuant to the terms of will dated [date] deposited with instrument No [number] or document No [number]’ or ‘pursuant to deed of retirement and appointment dated [date]’.

Where a transfer is pursuant to a gift or a nominal consideration, words which express the nature of the transaction must appear in Item 4, for example:

- ‘By way of gift’; or
- ‘The natural love and affection borne by the transferor for the transferee’.

If the basis of the transfer appears to be in the nature of a gift, and the transfer is executed under an enduring power of attorney, and that power of attorney does not authorise the attorney to make a gift, the attorney may only make a gift of value and in circumstances which satisfy s. 88(1) of the *Powers of Attorney Act 1998*. For the transfer to be registered, a statutory declaration by the attorney stating the facts which satisfy s. 88(1) and appropriate evidence to support the declaration must be deposited.

Reference to the terms of an agreement

The consideration may be expressed in part as being, e.g. ‘pursuant to an agreement dated [date]’ or ‘pursuant to the terms of a contract of sale dated [date]’ however, the consideration must be fully set out by including the monetary amount or other value exchanged.

<sup>1, 2</sup>Where the consideration in a transfer of the fee simple makes reference to the terms of an agreement, deed etc., a copy of the agreement or deed must be deposited to assess any additional lodgement fees based on the consideration.

For information about options for the deposit of evidence, refer to [60-1030].

Transfers pursuant to oral agreements

In general terms, an interest in land, which is to be **effective at law, must be created in writing**. Exceptions to this requirement appear in s. 10(2) of the *Property Law Act 1974*. A transfer may be executed pursuant to an oral agreement; however, the transfer is then the contract in writing signed by the parties and is also the document that transfers the interest in the land (s. 11 of the *Property Law Act*). Such a transfer is acceptable for registration without further evidence provided the full terms of the oral agreement are set out, e.g. ‘pursuant to an

oral agreement which includes the payment of \$...’ or ‘pursuant to an oral agreement to exchange the within land for Lot 123 on Registered Plan 456789’.

### Item 5 Transferee

[1-2050]

The full name/s of the transferee/s must be inserted. While full names must be inserted, if a person’s true and correct legal name includes an initial, e.g., John J Brown, where the ‘J’ does not represent a given name, this is acceptable. Written confirmation from a solicitor acting for the person or from the person concerned should be deposited explaining that this is the true and correct legal name of the transferee. -This requirement also applies where the true and correct legal name of -a person consists of only one name, e.g. Hercules-~~does not have a surname.~~

<sup>2</sup>If the transferee is a minor their date of birth must be shown.

If there are two or more transferees, the tenancy pursuant to which those transferees hold their interest must be stated. The transferees will be either joint tenants or tenants in common or trustees. If they are tenants in common, the interests held by the transferees must be specified in fractions, e.g.,  $\frac{1}{4}$  and  $\frac{3}{4}$  if the whole of the fee simple is being transferred or  $\frac{1}{4}$  and  $\frac{1}{4}$  if a half interest in the fee simple is being transferred.

<sup>2</sup>Section 56(2) of the Land Title Act provides direction for the Registrar to register transferees as tenants in common, where a transfer to co-owners does not show whether the co-owners are to hold as tenants in common or as joint tenants. However, this provision will be relied upon only after written confirmation has been received from the transferees or the solicitor for the transferees stating the tenancy was intentionally not shown with the expectation the transferees were to be registered as tenants in common.

The Registrar will not record in a register a transferee who is deceased, except where:

- the words ‘since deceased’ are included after the name of the transferee; and
- the transfer is accompanied by either a transmission application in that deceased transferee’s estate or, if a joint tenant, a request to record death.

If the transferee is a corporation registered by the Australian Securities and Investment Commission, either the Australian Company Number or the Australian Registered Body Number must be shown in Item 5. Foreign corporations not registered as such in Australia must establish the jurisdiction of their incorporation by production of suitable evidence from the jurisdiction, e.g., copy of certificate of incorporation together with a qualified translation (if required). For information about options for the deposit of supporting documentation see [60-1030].

A corporation may hold property as joint tenants with an individual or another corporation (s. 34(1) of the Property Law Act). However, trustee/s of a trust cannot be joint tenants with another entity.

If the transferee is an incorporated association under the *Associations Incorporation Act 1981*, a certified copy of the certificate of incorporation must be deposited with the transfer. See [51-0370] for additional information relating to incorporated associations. For information about options for the deposit of supporting documentation see [60-1030].

Example of Item 5 where the transferees hold as joint tenants:

5.	Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)
		Terrence James	BROWN	as joint tenants
		Maureen Frances	BROWN	



In the example below, the first two parties are holding as tenants in common with the other parties but between themselves are holding their interest as joint tenants.

5.	Transferee	Given names	Surname/Company Name and Number	(include tenancy if more than one)
		Terrence James	BROWN and	as joint tenants inter se
		Maureen Frances	BROWN	
		Michael Andrew	BROWN	
		Peter John	BROWN	as tenants in common in the interests of 3/9, 2/9, 2/9 and 2/9 respectively
		Bernard Edward	BROWN	

If the transferee is a body corporate constituted under the Body Corporate and Community Management Act, then the following words must be inserted: ‘Body Corporate for [name of the Body Corporate] community titles scheme [scheme number]’ e.g., ‘Body corporate for Seaview community titles scheme 1234’.

A transfer to the State does not attract a lodgement fee.

#### Item 6 Execution

[1-2060]

The transferor and transferee sign the transfer at Item 6 where indicated on the Form 1. Separate executions are required for each transferor and transferee, in the presence of a qualified witness as defined under Schedule 1 of the Land Title Act or s. 73 of the Land Regulation. Form 1 requires 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. (For further information, see part 61, esp. [61-1000], [61-2000] and [61-3000]).

A Form 1 – Transfer must be signed by:

- the transferor, the transferor’s registered attorney or another suitably authorised officer or person;
- the transferee, the transferee’s registered attorney, the transferee’s lawyer or another suitably authorised officer or person.

<sup>2</sup>There is no authority for a minor (a person who has not yet reached 18 years of age) to execute a transfer as transferor. Accordingly, a transfer by a minor, either as a sole transferor or as one of several transferors is not acceptable unless a Court Order authorises a person to execute the transfer on behalf of the minor (s. 136 of the Land Title Act).

<sup>2</sup>The Registrar will accept execution by or for a minor as transferee in the following ways:

- by a person authorised by Court Order to execute the transfer on behalf of the minor;
- By the minor if the transfer is accompanied by a letter from a solicitor, instructed and employed independently of any other party to the transfer. The letter must state that the solicitor is satisfied the minor understands the nature and effect of the transfer and the minor is entering into the transaction freely and voluntarily;
- by a solicitor acting for the minor.

The above list does not necessarily include all methods of execution permitted by law. The normal witnessing requirements for an individual or a solicitor apply to this type of execution.

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# eConveyancing

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## Electronic Conveyancing and Electronic Conveyancing Document [11-5010]

~~Electronic Conveyancing (or eConveyancing) is the term used to refer to the electronic preparation, lodgement, processing and registration of instruments and other documents (Electronic Conveyancing Documents) in accordance with the Land Title Act 1994 (Qld) and the Electronic Conveyancing National Law (Queensland) (the ECNL). eConveyancing is the primary method of conveyancing in Queensland, and its use is mandated for a number of instruments and documents. Refer to part [11-5105 and 62-6000] for further information on the application of the eConveyancing mandate. Electronic Conveyancing (or eConveyancing) is the term used to refer to the electronic preparation, lodgement, processing and registration of instruments and other documents (Electronic Conveyancing Documents) for the purposes of the Land Title Act 1994, Land Act 1994 and other titling legislation. It is an alternative to the traditional ‘paper based’ conveyancing system which involves the manual completion, execution and lodgement of paper forms either at a Titles Registry lodgement office, by post or through eLodgement.~~

~~An Electronic Conveyancing Document is a document under the ECNL that is lodged electronically through an Electronic Lodgment Network (see s. 14B of the Land Title Act 1994 and s. 7 of the ECNL). An Electronic Conveyancing Document is a document under the Electronic Conveyancing National Law (Queensland) (the ECNL) that is lodged electronically through an Electronic Lodgment Network (see s. 14B of the Land Title Act 1994 and s. 7 of the ECNL).~~

For more information, refer to Part 62 – eConveyancing.

The terms Electronic Conveyancing and eConveyancing are used interchangeably in this Part and throughout the Land Title Practice Manual.

## Scope Restrictions

[11-5100]

Refer to the [Titles Queensland website](#) for the list of transactions currently available through eConveyancing.

## Electronic Conveyancing Mandate

[11-5105]

The eConveyancing mandate commenced on 20 February 2023 and applies to all industry professionals who are eligible to become subscribers of an Electronic Lodgment Network Operator (ELNO); as well as to Corporate Entities who are lodging a required instrument.

The mandate, introduced by the *Land Title Regulation 2022* provides that certain types of Titles instruments, known as required instruments, must be lodged through an Electronic Lodgment Network (ELN). For more information, refer to Part [62-6000] – eConveyancing Mandate.

The Form 11-Caveat and Request to Withdraw a Caveat (Form 14) are required instruments under the Regulation and are therefore required to be lodged through a ELN unless an exemption applies.

Because the Electronic Lodgment Network Operators (ELNOs) regularly update their functionality in conjunction with Titles Queensland, and the Queensland Revenue Office (QRO), a current list of required instruments and their inclusions and exemptions is maintained on the [Titles Queensland website](#) rather than in the Land Title Practice Manual to ensure the information is as current and accurate as possible.

ELN Subscribers should therefore refer to the [Titles Queensland website](#) for the list of required instruments to be lodged through eConveyancing as well as any exemptions that may apply. Specifically, ELN Subscribers should confirm that the instrument is not exempt and is included in the mandate before attempting to lodge the instrument by way of eConveyancing.

## Exemptions to Required Instruments

[11-5110]

There are two categories of exemptions that may apply to required instruments, these are general exemptions, and instrument specific exemptions.

The general exemptions to the mandate are those which are contained in the Regulation and apply to all instruments required to be lodged through eConveyancing. These general exclusions can be found in Part [62-6022] of the Manual and on the [Titles Queensland website](#).

Instrument specific exemptions are those exclusions which apply only to a specific instrument (for example a Form 11 – Caveat and a Form 14 – General Request) and a list of these exclusions can be found on the [Titles Queensland website](#) and are updated from time to time as the functionality of each instrument changes.

## When an Exemption Applies

[11-5115]

In circumstances where an exemption applies, an Exemption Request Form (ERF) should be completed. For Further information refer to Part [62-6040].

## Prescribed Requirements – Form 11 (electronic)

[11-5200]

Under the Participation Rules (Queensland) a Prescribed Requirement is a published requirement of the Registrar that Subscribers to an Electronic Lodgment Network are required to comply with.

Currently there are no prescribed requirements for a Form 11 (electronic).

## Attachments

[11-5300]

An attachment cannot be included with an Electronic Conveyancing Document unless:

- it is in the circumstances detailed in this section; and
- the attachment only includes the stated evidence required in those circumstances.

Attachments must be uploaded in portable document format (PDF). For information regarding uploading attachments, refer to the relevant Electronic Lodgment Network Operator.

## Form 11 (electronic) – Caveat

[11-5310]

Currently there is no requirement or provision for any document or evidence to be included as an attachment with a Form 11 (electronic) lodged through eConveyancing.

## Form 14 (electronic) – General Request

[11-5320]

### General Request to withdraw caveat (registered) pursuant to s. 125 of the *Land Title Act 1994*

Currently there is no requirement or provision for any document or evidence to be included as an attachment with a General Request to withdraw caveat lodged through eConveyancing.

## Execution and Certification

[11-5400]

The requirements for digitally signing and making certifications for an Electronic Conveyancing Document are contained in the Participation Rules (Queensland).

## Electronic Forms

[11-5600]

### Approved Electronic Forms

[11-5610]

#### Form 11 (electronic) – Caveat

A caveat that is an Electronic Conveyancing Document (an eConveyancing caveat) must be lodged through an Electronic Lodgment Network and be in the form approved by the Registrar under the Electronic Conveyancing National Law (Queensland). The eConveyancing caveat must be digitally signed by or for each caveator as required by the approved form and Participation Rules.

A representation of the electronic form approved by the Registrar under s. 7 of the Electronic Conveyancing National Law (Queensland) is shown on the following page.

#### Form 14 (electronic) – General Request

A General Request that is an Electronic Conveyancing Document (an eConveyancing General Request) must be lodged through an Electronic Lodgment Network and be in the form approved by the Registrar under the Electronic Conveyancing National Law (Queensland). The eConveyancing General Request must be digitally signed by or for each applicant as required by the approved form and Participation Rules.

A representation of the electronic form approved by the Registrar under s. 7 of the Electronic Conveyancing National Law (Queensland) is shown below.

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## Part 14 – General Request

### General Law

[14-0000]

A General Request is used to notify the Registrar of certain matters that impact on the registries.

Form 14 is the prescribed form for General Requests or for where no other specific form has been approved. Some of the many uses of this Form are outlined in this Part.

### <sup>1,2</sup>Body Corporate and Community Management Requests

[14-0100]

The *Body Corporate and Community Management Act 1997* provides for the establishment, operation and management of community titles schemes.

### <sup>1,2</sup>Reservation of Name

[14-0110]

On receipt of an application, the Registrar may reserve a name for a proposed community titles scheme. The proposed scheme land must be properly identified in the application. The period of reservation is two years, however, that may be extended for a further one year if the person who reserved the name applies during the initial two-year period. The reservation ends if the person withdraws the reservation or the community titles scheme is established.

### <sup>1,2</sup>Community Management Statement

[14-0120]

A First Community Management Statement (First CMS) must accompany a plan of subdivision (survey plan) to establish a community titles scheme and takes effect when it is recorded in the Titles Registry.

A First CMS may only be recorded if a properly completed Form 18C – Planning Body Community Management Statement Notation (Form 18C) signed by the planning body is deposited with the request to record the First CMS.

However, a New CMS may be recorded if either:

- A properly completed Form 18C signed by the planning body is deposited with the request to record the New CMS; or
- if Item 7 is endorsed by the body corporate as follows:
  - ‘not applicable – see s. 60(6) of the Body Corporate and Community Management Act 1997.’

A CMS cannot be amended. It can only be replaced by a New CMS that has the endorsement and consent of the body corporate. A New CMS may also only be recorded if it has been consented to by the body corporate and is lodged within three months after the **relevant event** happens (s. 65(1) and (3) of the Body Corporate and Community Management Act).

A CMS is not an instrument under the *Land Title Act 1994*. However, s. 115K(3) of the Land Title Act provides that a request to record a CMS is an instrument. Section 115L(2) of the Land Title Act also provides that the recording of a CMS in the registry does not guarantee that it is valid or enforceable. The Registrar is not obliged to, but may, examine a CMS before it is recorded.

## **<sup>1,2</sup>Change of address of Body Corporate**

[14-0130]

The *Body Corporate and Community Management Act 1997* stipulates that notices, legal processes and documents are served on the body corporate for a community titles scheme if served personally on the secretary or another member of the committee if the secretary is absent. It also stipulates that the address for service of the body corporate is the address recorded on the indefeasible title for the common property as notified to the Registrar from time to time.

The address of the original owner as shown on the First CMS for the scheme is the address for service of the body corporate if the Registrar has not been advised otherwise. Similarly, the address for service of an owner of a lot in the scheme is either the address in the records of the body corporate or the address of the lot if no address has been recorded by the body corporate.

The address of a body corporate that is recorded by the Registrar can be changed by making a formal application to have it changed.

For further information see [14-2700].

## **Legislation**

[14-1000]

### **<sup>2,3</sup>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**

### **Request to Record Correction or Change of Name**

[14-2000]

A name on a title may be recorded incorrectly, due to an error by either the lodging party or the registry. In other situations, the name of a party may have changed. Other than for departmental errors, a Form 14 – General Request is the correct form to use to change or correct names recorded on a title. Throughout this topic, this Form is also referred to as a Form 14 – Request to Change Name or a Form 14 – Request to Correct Name.

While no duty notation is required on this Form 14 – General Request, lodgement fees apply.

The Registrar allows a change or correction of the registered proprietor or holder of an interests name of multiple secondary interests (for example, a mortgage or a lease) by registration of a single Form 14, rather than a separate form for each interest, provided the parties are the same and a lodgement fee is paid for each interest.

## Natural Person

[14-2010]

To correct or change the name of a natural person, a Form 14 – General Request must be lodged with a Form 20 – Statutory Declaration -setting out the circumstances that warrant a change or correction of name.

However, where an error was made by the registry, an internal request under s. 15 of the *Land Title Act 1994* or s. 291 of the *Land Act 1994* will be used to correct the name.

When a person or persons acquire an interest in a lot or a State tenure, the Registrar assumes that the name(s) provided is/are the legal name(s) of the proprietors or holders of the interest. The Registrar makes no inquiry to ascertain whether the name supplied is the legal name.

On marriage or entering into a civil partnership a person has the choice as to whether ~~he or she~~they will:

- (a) retain ~~his or her~~their previous legal name (e.g. birth name); and/or
- (b) adopt the surname of ~~his or her~~their partner.

For example, if Mary Green marries Tom Brown:

- Mary can choose to retain the surname of Green; or
- Mary can adopt the surname of Brown;
- Tom can choose to retain the surname of Brown;
- Tom can adopt the surname of Green;
- Mary and/or Tom may adopt a surname of Green-Brown as ~~his/her~~their legal name;
- Mary and/or Tom may adopt a surname of Brown-Green as ~~his/her~~their legal name.

Conversely, when a person who adopted ~~his or her~~their partner's surname after marriage or entering into a civil partnership and had title to an interest in a lot or a State tenure registered in that name and subsequently divorces ~~his or her~~their partner or ends the civil partnership, ~~he or she~~she may revert to ~~his or her~~their previous legal name as ~~his or her~~their current legal name.

To the knowledge of the Registrar, apart from marriage, entering into a civil partnership or divorce, the only mechanisms whereby a person can change ~~his/her~~their name are by:

- (1) Deed Poll, if the name was changed prior to 1 February 2004, or
- (2) on or after 1 February 2004, a request to change name registered in the Registry of Births, Deaths and Marriages, which is the formal means by which a change of name is recorded, or
- (3) by assumption of a name and use of that name in keeping with common law.

Persons who use other than their legal names when acquiring interests in a lot or a State tenure could experience difficulty when attempting to deal with that interest as a result of the provisions of the Land Title Act or Land Act relating to ‘obligations of witnesses for individuals’.

Section 162 of the Land Title Act and s. 311 of the Land Act provide, in part, that ‘a person who witnesses an instrument or document executed by an individual must:

- (a) first take reasonable steps to ensure that the individual is the person entitled to sign the instrument or document; and
- (b) have the individual execute the document in the presence of the person...’.

Witnesses may find it impossible to fulfil their obligation of ‘ensuring that the individual is the person entitled to sign the instrument or document’ if the person is not registered as the proprietor in their legal name.

When totally different names are used as aliases, it will be extremely difficult, if not impossible, to satisfy a witness’s requirements to subsequently register an instrument or document.

On making a request to change or correct the name of a registered proprietor or holder of an interest, evidence that the new name is the registered proprietor’s legal name will be required to be deposited.

Generally, acceptable proof of legal name is:

- a copy of a birth certificate; or
- a copy of a certificate of marriage (to adopt a different surname as a result of marriage);
- a copy of a civil partnership certificate (to adopt a different surname as a result of registering a civil partnership)
- a copy of a certificate of change of name; or
- a copy of a Court issued recorded Deed Poll; or

**Note** – Where an office copy is required the copy must be certified by the issuing authority. For further information on depositing supporting evidence see part 60 – Miscellaneous, esp. [60-1030].

- comprehensive documentation to the satisfaction of the Registrar evidencing the change of name by assumption based on use of that name. The following documentation generally will be required:
  - (1) a statutory declaration by the applicant that states:
    - their previous and current names;
    - the applicant is the owner/holder of the registered interest;
    - the duration of exclusive use of the current name;
    - it is the intention of the applicant to use only the current name in all matters;



- they are aware of the potential privacy issues associated with private documentation being deposited in a publicly accessible register; and
  - they are aware that all evidence deposited in support of the application will remain a part of the public register and will be available to any interested party that searches the register.
- (2) evidence of exclusive use of a new name (e.g. driver licence, passport, etc.); and
  - (3) if relevant (i.e. hyphenated name comprising previous name and partner's surname), copy of a marriage certificate or civil partnership certificate; and
  - (4) sufficient supporting documentary evidence to satisfy that the new name is used exclusively (e.g. local government rates notice, receipts for mortgage and/or home insurance payments, etc.); and
  - (5) a statutory declaration by a reliable, independent person in a position to state that they knew the applicant prior to the adoption of their new name and are able to corroborate that the owner of the registered interest is the same person as the applicant (e.g. bank manager).

If there is more than one correction to be made on a title (e.g. where two registered owners ~~hold as joint tenants~~ wish to change or correct their names and both their names are incorrect or have changed), only one Form 14 – General Request for each registered owner is required and the relevant lodgement fee must be paid for each request.

If only one registered proprietor's or holder's name requires correction, the Request may only be made by that person.

A registered proprietor or holder of an interest whose name requires correction (e.g. due to a misspelling) and change (e.g. due to marriage/entering into a civil partnership) need only lodge one document. The Request must be to change the name and a statutory declaration, together with documentary evidence (e.g. copies of a birth certificate and certificate of marriage/civil partnership certificate certified by the Registrar-General of Births, Death and Marriages), must be provided concerning the correction and the change of name.

Example 1 — Request to correct name (Natural Person) supported by a declaration from the solicitor's firm that prepared the original instrument or document.

Example 1A — Request to correct name (Natural Person) supported by a declaration by the registered owner.

Example 2 — Request to change name.

## Corporation

[14-2020]

A Form 14 – General Request is lodged to record the change or correction of a name of a corporation. Where an incorrect name is recorded due to an error by the registry, an internal request will be used to correct the name.

Where a corporation desires to record a change of name which has already been effected under the *Corporations Act 2001* (Cth), a Form 14 – General Request should be used.

Either an office copy of the certificate of change of name certified by the Australian Securities and Investments Commission (ASIC) or a search extracted from the ASIC database through an authorised information broker must be deposited with the Form 14.

Where a corporation's name has been changed in compliance with or by legislation, no evidence is required, provided the relevant Act is cited in the Request. A lodgement fee is payable unless an exemption is included in the legislation.

When an amalgamation of companies creates a new company, a change of name is not the proper instrument to record such a transaction. A Form 1 – Transfer should be used in this case.

Where a company has had several changes of name, the Form 14 – General Request need only identify the present name as the new name and the name on the title as the former name. However, documentary evidence is required to illustrate the chain of changes of name.

See Example 3.

### Documents to be Deposited When Requesting Change or Correction of Name

[14-2025]

Documentation required to be deposited with a Form 14 – Request to Change or Correct Name is as follows:

- Where the ownership of a fee simple, a water allocation or a State tenure is concerned:
  - **For a corporation:**
    - (a) a copy of the certificate of change of name; or
    - (b) a search from the ASIC database that shows both the current name and the former name (**Note:** For an update of a registered power of attorney to record a change of a company name, the evidence provided must contain the date the change of name of the company was effective from, as this date is required to be entered into the power of attorney register (see [14-2800]));
  - **For a natural person:**
    - (a) a statutory declaration declaring the facts; and
    - (b) documentary evidence in support of the change of name, e.g. certificate of marriage certified by relevant issuing agency (see [14-2010]).

For more information about depositing supporting documentation see [60-1030].

If the statutory declaration is not made by the registered owner, the declaration can be made on behalf of the law firm that prepared the document that recorded the owner's or holder's name/s. The declarant must have actual knowledge of the error and confirm that in writing (for example a solicitor or a paralegal at the same firm would have actual, first-hand knowledge of the error because they are able to review the relevant file and determine if an error was made). They

would need to confirm in the declaration that an error was made that needs to be corrected. In these instances, no further evidence is required.

~~However, if a statutory declaration, made by a lawyer, is deposited stating that:~~

~~(1) the error was made in the document that recorded the owner's or the holder's name/s; and~~

~~(2) the document was prepared by him/her,~~

In these instances, then no further evidence is required.

- Where a lessee's interest is concerned the same evidence as shown above as well as the following requirement:
  - A request to record the correction or change of name of a lessee, which is executed after the initial term of the lease has expired, will not be registered unless a Form 13 – Amendment of Lease is lodged prior to the Form 14 – Request to Change Name of the lessee.

### **Incorporated Association**

[14-2030]

Where an incorporated association has changed its name, a Form 14 – General Request must be lodged. The Form 14 should be lodged with:

- (a) a certified copy of the certificate of incorporation in the new name of the association; or
- (b) (if applicable) a search from the Australian Government Business Register that shows both the current name and the former name (**Note:** For an update of a registered power of attorney to record a change of an incorporated association name, the evidence provided must contain the date the change of name of the associated corporation was effective from, as this date is required to be entered into the power of attorney register (see [14-2800]).

After lodgement, land held by the association will be recorded as being held by the association in its new name. For further information about depositing supporting documentation see [60-1030].

See Example 3.

For the manner of execution or the recording of vestings in incorporated associations, see [14-2360].

[14-2040] deleted

### **Transition from an Incorporated Association to a Company Registered under the Corporations Act 2001 (Cth)**

[14-2035]

Part 11A of the *Associations Incorporation Act 1981* and Part 5B.1 of the *Corporations Act* provide for an incorporated association to transition to a company registered under the *Corporations Act*.

A Form 14 – General Request to Record Change of Name, with appropriate evidence must be lodged to record the transition. Appropriate evidence will consist of:

- (a) a copy of the notice of authority to transfer incorporation provided by the chief executive under s. 106E of the *Associations Incorporations Act*; and

- (b) a copy of the certificate issued by ASIC pursuant to s. 601BD of the Corporations Act, or a search from the ASIC database that shows the current name of the corporation.

For further information about depositing supporting information see [60-1030].

Item 6 of the Form 14 – General Request to Record Change of Name should include wording similar to the following:

I hereby request that the change of name of the registered owner from XYZ Inc. to XYZ Pty Ltd A.C.N. 001 311 711 be recorded following the transition from an incorporated association to a company registered under the *Corporations Act 2001* (Cth) pursuant to Part 11A of the *Associations Incorporation Act 1981* and part 5B.1 of the *Corporations Act 2001* (Cth) be recorded.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

## Request to Remove Expired Lease from Title

[14-2045]

See part 7 – Lease, esp. [7-2200]. See Example 4.

## Request to Register Merger of Interest

[14-2050]

A merger of interest may occur in the following circumstances:

- <sup>2</sup>merger of mortgage see [14-2060];
- <sup>2</sup>merger of lease see [14-2070];
- <sup>1</sup>merger of easement see [14-2080]; and
- <sup>1,2</sup>merger of profit a prendre.

The merger of an interest with the fee simple or water allocation cannot occur where the two interests are held by the same party in different capacities. For example, a lessee of the freehold may hold the interest as a trustee for another and may then become the registered owner of the fee simple in his/her/their own right, i.e. not as trustee. In that situation, the leasehold interest cannot merge with the freehold interest.

### <sup>2</sup>Merger of Mortgage

[14-2060]

Where a mortgagee becomes the registered owner of the land over which the mortgagee holds a mortgage, s. 63(2) of the *Land Title Act 1994* requires that the Registrar register the mortgagee as the registered owner free from the mortgage. Upon registration (of the transfer to the mortgagee), the mortgage ceases to exist. In this situation a Form 14 – General Request is **not** required to merge a mortgage with the freehold or water allocation.

Where a transferee and mortgagee are **not** one and the same person (i.e. where their names are the same, but they are different people such that no merger is taking place), a statutory declaration of identity should be lodged with the Form 1 – Transfer stating that the transferee and the mortgagee are not the same person. Without such declaration, a merger will be automatically recorded.

However, the mortgagee may request, pursuant to s. 63(3) of the *Land Title Act*, that the two interests not be merged. If such a request is made, the Registrar cannot cancel the mortgage. This request is to be made when the mortgagee lodges the transfer for registration by including in Item 5 of the Form 1 the words ‘do not cancel Mortgage No. [number]’.

If the mortgagee decides to merge the mortgage after previously advising the Registrar not to merge the mortgage in accordance with s. 63(3) of the Land Title Act, a Form 14 – General Request will be required to merge the mortgage.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

## **<sup>2</sup>Merger of Lease**

[14-2070]

Where a lessee becomes the registered owner of:

- a lot; or
- <sup>1</sup>part of the lot;

the lessee may lodge a Form 14 – General Request to merge the two interests. The lease is then cancelled. The merger of the two interests does not occur automatically.

Where a lessee's interest in a lease merges with the fee simple or water allocation and there is a sub-lease registered over the land, the sub-lease remains in place and becomes the head-lease (s. 115 of the *Property Law Act 1974*). The consent of the sub-lessee is not required.

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

See Example 5.

Where the lease being merged with the fee simple or water allocation is mortgaged under a registered mortgage, the consent of the mortgagee in Form 18 is required to effect the cancellation of the mortgage or, alternatively, a Form 3 – Release of Mortgage may be lodged.

## **<sup>1</sup>Merger of Easement (Extinguishment under s. 87A of the *Land Title Act 1994* or s. 368(2) of the *Land Act 1994*)**

[14-2080]

When the dominant tenement (the land benefited by the easement) and the servient tenement (the land burdened by the easement) come into the ownership of the same party, the easement may be merged. If the registered owner or a trustee, lessee or licensee under the *Land Act 1994* requires the easement to be merged, a Form 14 – General Request requesting the merger should be deposited. Once the Request is registered, the easement is extinguished.

See Example 6.

Merger of an easement is not automatic, as the registered owner or a trustee, lessee or licensee under the Land Act may subsequently transfer their interest, either in the dominant or servient tenement. The easement would then continue to exist. However, where a plan of survey has the effect of amalgamating the dominant and servient tenements so that they are both contained in the one lot, the easement is automatically merged as there are no longer two separate titles necessary to support the easement. A merger of this type is the subject of internal documentation.

## **Withdrawal of Caveat and Discharge, Satisfaction, Cancellation and Withdrawal of Writ of Execution**

[14-2090]

A caveat that has been registered over a title may be withdrawn, whereas a registered writ of execution issued from a Court may be discharged, satisfied or cancelled. A registered writ of execution issued by the Registrar of the State Penalties Enforcement Registry may be withdrawn.

## Withdrawal, Removal and Cancellation of Caveat

[14-2100]

### Withdrawal of registered Caveat by Caveator

A caveator can withdraw a registered caveat by lodging a Form 14 – General Request to Withdraw Caveat which must be signed by the caveator or by the caveator’s current solicitor.

Lodgement fees apply to the Form 14 – General Request to Withdraw Caveat, but a duty notation is not required.

Refer to Part 11 (esp. [11-0210], [11-2060], [11-4200] and Part 11 Example 8).

### Withdrawal of unregistered Caveat by Caveator

A caveator can withdraw an unregistered caveat by way of a letter signed by the caveator or the caveator’s current solicitor.

### Removal by Supreme Court order after application by Caveatee

The caveatee may apply to the Supreme Court for an order that the caveat be removed (s. 127 of the *Land Title Act 1994* or s. 389H of the *Land Act 1994*).

If an order is obtained, the Caveatee can remove the caveat by lodging a Form 14 – General Request to Remove Caveat together with the court order.

Lodgement fees apply to the Form 14 – General Request to Remove Caveat, but a duty notation is not required.

Refer to Part 11 (esp. [11-0200], [11-2080], [11-4200] and Part 11 Example 10).

### Removal of lapsed caveat

Any person can make a request remove a lapsed caveat by lodging a Form 14 – General Request to Remove Lapsed Caveat (no fee applies). A lapsed caveat can be removed whether it is registered or unregistered.

Refer to Part 11 (esp. [11-0170], [11-2050], [11-4200] and Part 11 Example 9).

### Cancellation of Caveat

Under s. 128 of the *Land Title Act 1994* or s. 389I of the *Land Act 1994* any person can make request that a caveat be cancelled by lodging a Form 14 – General Request to Cancel Caveat. The person must be able to demonstrate that:

- the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or
- the claim of the caveator has been settled by agreement or otherwise satisfied; or
- the nature of the interest claimed does not entitle the caveator to prevent registration of an instrument that has been lodged; or
- for a caveat lodged by a person who has the benefit of an order mentioned in section 122(1)(e) of the *Land Title Act* or 389D(1)(c) of the *Land Act* – the proceeding in which the order was made has been discontinued or dismissed, or has otherwise ended.

The Registrar is obliged to notify the caveator of the intention to cancel the caveat seven days before cancelling it (s. 128(2) of the *Land Title Act* or s. 389I (3) of the *Land Act*).

Normal lodgement fees apply to the request.

Refer to Part 11 (esp. [11-0230], [11-2090], [11-4200] and Part 11 Example 11).

### **Partial Withdrawal of registered Caveat by Caveator**

[14-2110]

A partial withdrawal of a registered caveat may occur:

- where the caveat is registered over several lots, or leases or licences under the *Land Act 1994* contained in separate titles and is subsequently withdrawn in relation to one or more, but not all, of the lots, or leases or licences under the Land Act; or
- <sup>1</sup>where the caveat is registered over one title that contains more than one lot and the withdrawal is for less than all the lots in that title.

A caveator can partially withdraw a registered caveat by lodging a Form 14 – Request to Partially Withdraw Caveat.

Refer to Part 11 (esp. [11-0210], [11-2065], [11-4200] and Part 11 Example 8A and 8B).

Lodgement fees apply to the Form 14 – General Request, but a duty notation is not required.

### **<sup>2</sup>Instalment Contract Caveat**

[14-2120]

A caveat lodged to protect a purchaser's interest under an instalment contract pursuant to s. 74 of the *Property Law Act 1974*, may be removed or withdrawn by a Form 14 – General Request. Lodgement fees are payable, however, a duty notation is not required.

### **Discharge, Satisfaction or Cancellation of Writ of Execution**

[14-2125]

#### **Discharge**

A Form 14 – General Request to Record Discharge of Writ of Execution must be used by an enforcement creditor to remove the writ where it has been satisfied by payment of the debt and appropriate costs or otherwise satisfied.

If the Form 14 is executed by:

- (a) the enforcement **creditor** personally, no evidence of satisfaction of the debt is required to be deposited; or
- (b) a solicitor on behalf of the enforcement creditor, either evidence of satisfaction of the debt or a letter from the enforcement creditor's solicitor (on the solicitor firm's letterhead) confirming that the solicitor is acting on behalf of the enforcement creditor in discharging the writ, must be deposited.

Appropriate evidence must be:

- (a) a certificate of search issued by the Court that issued the writ; or
- (b) a statutory declaration stating that the debt, costs and interest have been repaid in full together with a copy of the original receipt(s) for the repayment. The copy of the receipt must comply with one of the options in [60-1030].

All items on the Form 14 must be appropriately completed. Applicable lodgement fees must be paid. See Example 7.

**Satisfaction**

Where the enforcement creditor cannot be contacted or refuses to provide a request to record a discharge the enforcement debtor may lodge a Form 14 – General Request for Satisfaction of Writ of Execution to have the writ removed from the title. Evidence of satisfaction of the debt must be deposited with the Form 14.

Appropriate evidence must be:

- (a) a certificate of search issued by the Court that issued the writ; or
- (b) a statutory declaration stating that the debt, costs and interest have been repaid in full together with a copy of the original receipt(s) for the repayment. The copy of the receipt must comply with one of the options in [60-1030].

All items on the Form 14 must be appropriately completed. Applicable lodgement fees must be paid. See Example 9.

**Cancellation**

A writ of execution can be removed by anyone by lodgement of a Form 14 – Request to Cancel a Writ of Execution. The following criteria must be satisfied:

- Six months (and any appropriate extension time as notified to the Registrar) must have expired.
- The request must be accompanied by evidence of non-enforcement. The evidence must be:
  - (a) for the Supreme Court or District Court a certificate of search issued by the Court that issued the writ.
  - (b) for the Magistrates Court either:
    - (i) a certificate of search issued by the Court that issued the writ; or
    - (ii) if the Court refuses to issue a certificate of search, the Registrar of Titles will accept a statutory declaration stating that the Court refused to issue a certificate of search and that a search of the Court has been completed and the result of the search revealed that the time for the writ has expired or has not been executed.

All items on the Form 14 must be appropriately completed. No lodgement fees are payable.

**Withdrawal of Writ of Execution Issued by the Registrar of SPER****[14-2127]**

To withdraw a registered writ of execution issued by the Registrar of the State Penalties Enforcement Registry (SPER) a Form – 14 General Request signed by the Registrar of SPER or a delegate must be registered. The term ‘discharge’ may be used in lieu of ‘withdrawal’.

Lodgement fees are not applicable.

**Partial Discharge, Satisfaction or Cancellation of Writ of Execution****[14-2130]**

Partial discharge, satisfaction or cancellation of a writ of execution may occur:



- where a writ of execution is registered over several lots, or leases or licences under the *Land Act 1994* contained in separate titles and is subsequently discharged in relation to one or more, but not all, of the lots, or leases or licences under the *Land Act*; or
- <sup>1,2</sup>where a writ of execution is registered over a number of lots in one title and the discharge is for less than all of the lots.

<sup>2</sup>Where a writ of execution is registered over a lot which is subsequently subdivided, the writ then affects the new titles created by the:

- <sup>1</sup>plan of subdivision for freehold land; or
- <sup>3</sup>subdivision of a water allocation;

and can be discharged, satisfied or cancelled so far as relates to individual lots.

Lodgement fees are payable, however, there is no duty notation required.

See Example 7.

[14-2140] deleted

### Extension of Writ of Execution

[14-2150]

Refer to part 12, esp. [12-2010] and [12-2020]. See Example 10.

### Standard Terms Document Forming Part of Instrument/Document

[14-2160]

Section 169 of the *Land Title Act 1994* or s. 318 of the *Land Act 1994* enables standard terms documents to be registered.

A registered standard terms document sets out the provisions, covenants and conditions of other instruments or documents, such as mortgages, leases, statutory covenants and easements.

Referring to a registered standard terms document removes the need to repeat all the provisions, covenants and conditions in instruments or documents to be lodged. For example, a mortgagee may register a standard terms document setting out its common mortgage covenants. For each subsequent mortgage, it need only prepare and lodge a *National Mortgage Form* which refers to the dealing number of the standard terms document.

Section 171(1) of the *Land Title Act* or s. 320(1) of the *Land Act* provides that, in addition to incorporating the terms of a standard terms document, an instrument or document may incorporate other terms into the instrument or document.

Under s. 168A of the *Land Title Act*, references to standard terms documents in ss. 170 and 171 include a standard terms document that has been or is taken to be registered under the *Land Act*.

Under s. 317A of the *Land Act*, reference to standard terms documents in ss. 319 and 320 include a standard terms document that has been or is taken to be, registered under the *Land Title Act*.

A Form 20 is used to set out the content of a standard terms document which must include the class of instrument or document to which it applies. A completed Form 14 – General Request to Register a Standard Terms Document must be lodged accompanied by the Form 20.

Practitioners and financiers are encouraged to register standard terms documents in instances where the terms and/or conditions and/or covenants are the same or very similar for multiple instruments or documents that they will lodge.

No fees are payable for lodgement.

See Example 11.

## Request to Record Transmission by Bankruptcy

[14-2170]

Where a registered owner of a lot or the holder of an interest becomes bankrupt, that lot or interest will immediately vest in that person's trustee in bankruptcy. The person's trustee in bankruptcy will be a registered trustee where ~~he/she/they have~~ ~~has~~ consented to act as the trustee in bankruptcy or, if no registered trustee has so consented, the trustee in bankruptcy will be the Official Trustee. The trustee in bankruptcy will deal with the lot or interest in accordance with the *Bankruptcy Act 1966* (Cth) to try to satisfy the bankrupt's creditors. A bankrupt cannot hold or deal with land or an interest in land in their personal capacity. See sections 58(1)(a), 58(1)(b) and 58(6) of the Bankruptcy Act.

Note: In accordance with ss. 160 and 161 of the Bankruptcy Act, the prescribed name for a private trustee is "The Trustee (or Trustees) of the Property of [Name of Bankrupt], a Bankrupt"; or if the property vests in the Official Trustee in Bankruptcy, the prescribed name is "Official Trustee in Bankruptcy".

A Form 14 – General Request must be lodged to register a transmission by bankruptcy pursuant to s. 115 of the *Land Title Act 1994* or s. 381 of the *Land Act 1994*. An extract from the National Personal Insolvency Index that is dated less than two weeks before, or any time after, execution of the Form 14, that evidences that the trustee has been appointed must be deposited with the request (see [60-1030]). Upon the transmission occurring, it is recorded on the title that the lot or interest is vested in the trustee in bankruptcy.

Throughout this topic, this Form is also referred to as a Form 14 – Request to Record Transmission by Bankruptcy.

Under the Bankruptcy Act, a transmission may be sought by:

- a trustee in bankruptcy (whether it be a registered trustee or the Official Trustee);
- a trustee in bankruptcy of a deceased debtor.

Lodgement fees are applicable and a duty notation is required.

The address for service of notices to the applicant must be inserted in Item 5.

Where the bankruptcy of a joint tenant severs a joint tenancy, a tenancy in common is created.<sup>2</sup> However, a separate title is not created unless it is required or evidenced by payment of the relevant fee by the trustee.

Where a trustee is registered on the title in the registry and a new trustee has been appointed but not registered on title, a new Form 14 – Request to Record Transmission by Bankruptcy to the new trustee must be lodged to precede a dealing with the bankrupt's interest by the new trustee. An extract from the National Personal Insolvency Index that is dated less than two weeks before, or any time after, execution of the Form 14, that evidences that the trustee has been appointed must be deposited with the request (see [60-1030]). This is supported by s. 58(2) of the Bankruptcy Act which is taken to mean that the trustee must be registered on title before they may deal with the property. Until registered, the trustee only has an equitable interest and

therefore has no authority to deal with the property. This is also in line with s. 181 of the Land Title Act and s. 301 of the Land Act.

## Bankruptcy of Debtor or Deceased Debtor's Estate

[14-2180]

A person may become bankrupt:

- On the acceptance of their own petition (Debtor's Petition) by the Official Receiver through the Insolvency and Trustee Service Australia (s. 55; s. 56A; and s. 57 of the *Bankruptcy Act 1966* (Cth)).
- When the court makes a sequestration order on the application of a creditor (Creditor's Petition) (s. 52 of the Bankruptcy Act).
- When the court makes a sequestration order on the application of a trustee or a creditor of a Part IV Composition or Arrangement (s. 76B); Part IX Debt Agreement (s. 185Q(5)); or a Part X Personal Insolvency Agreement (ss. 221(1), 222(10) and 222C(5) (from 1 December 2004). Prior to 1 December 2004 there were three types of Part X arrangements (Compositions, Deeds of Assignment or Deeds of Arrangement). An application for a sequestration order in these cases is equivalent to filing a creditor's petition.
- An administration order may be made by the court against the estate of a deceased debtor on the application of a creditor or a person administering the estate of a deceased person (s. 244 and s. 247 of the Bankruptcy Act).

The operation of s. 58 of the Bankruptcy Act serves to transfer or 'vest' the bankrupt's or deceased person's property in the trustee of the bankrupt (subject to exceptions detailed in s. 116(2) of the Bankruptcy Act). All property acquired by or devolved on bankrupts after the date of their bankruptcy and before being discharged from bankruptcy also vests in the trustee of the bankrupt (subject to s. 116(2) of the Bankruptcy Act). The vested property is 'divisible property' and includes any interest in fee simple, a water allocation or a lease, sublease or licence under the *Land Act 1994* where the person entitled to the interest is bankrupt.

The trustee of a bankrupt may be the Official Trustee in Bankruptcy or a private bankruptcy trustee or 'registered trustee'.

The names and contact details for all registered trustees are available from the Insolvency and Trustee Service Australia internet site.

The Official Trustee in Bankruptcy (Official Trustee) is a body corporate created by s. 18 of the *Bankruptcy Act 1966* (Cth)). It has perpetual succession; may acquire, hold and dispose of real and personal property; and may sue and be sued in its corporate name. The Official Trustee has a seal.

An Official Receiver is a natural person who holds a statutory position under s. 15 of the Bankruptcy Act.

The Official Receiver for the Bankruptcy District of the State of Queensland may delegate all or any powers and functions of the Official Receiver, e.g., to a Deputy Official Receiver.

The Official Receiver or delegate exercises powers and performs functions of the Official Trustee that relate to matters originating in the District including execution of documents in the name of the Official Trustee, e.g., execution of a transfer by affixing the seal of the Official Trustee.

The National Personal Insolvency Index (NPII) is an Index of natural persons who have been subject to a proceeding or administration under the Bankruptcy Act. It is maintained by Official Receivers through the Insolvency and Trustee Service Australia (ITSA) pursuant to Part 13 of the Bankruptcy Regulations 1996 (Cth). The Index contains names, status of administration and the current trustees.

The content of an extract of the National Personal Insolvency Index includes:

- type of administration or proceeding;
- date of administration or proceeding;
- petition type (Debtor or Creditor Petition);
- identification number;
- full name of the debtor, including aliases;
- date of birth of the debtor;
- name of the trustee or controlling trustee; and
- the current status, e.g. a statement that the debtor is bankrupt or has been discharged from bankruptcy.

The types of administration or proceedings reported on an extract of the Index are:

- interim receiving orders;
- bankruptcy;
- post bankruptcy scheme or composition;
- Part X s. 188 authority;
- Part X Personal Insolvency Agreements (from 1 December 2004);
- Part X deed or composition (prior to 1 December 2004);
- Part IX debt agreement – proposal/acceptance; and
- Part XI deceased estate.

In the absence of proof to the contrary, the information extracted from the Index is evidence of the truth of the information (r 13.10 of the Bankruptcy Regulations).

A Form 14 – General Request must be lodged to register a transmission by bankruptcy based upon a debtor’s petition, sequestration order or administration order, together with the following:

- an extract from the NPII current at the time of execution of the Form 14;
- a statutory declaration by the trustee identifying the bankrupt as the registered owner or holder of the interest;
- <sup>1, 2</sup>if a trustee of a bankrupt estate seeks to enter a transmission by bankruptcy over property affected by the *Defence Service Homes Act 1918* (Cth), a certified copy of the

approval given by the Secretary of the Department of Veterans' Affairs must also be lodged (s. 45A of the Defence Service Homes Act).

See Examples 12 and 13.

[14-2190] to [14-2200] deleted

## **Trustee by Part IV Composition or Arrangement, Part IX Debt Agreement or Part X Personal Insolvency Agreement** [14-2210]

A person who desires to make non-divisible property available to a trustee to be dealt with under Part IV, Div 6 – Composition or Arrangement with Creditors may, pursuant to a composition proposal or scheme of arrangement, assign that property to a registered trustee or the Official Trustee in Bankruptcy (s. 73(1) of the *Bankruptcy Act 1966* (Cth)). Acceptance of the composition or scheme of arrangement by creditors annuls the bankruptcy.

A person who desires that their affairs be dealt with under Part IX (debt agreement) or Part X (personal insolvency agreement) of the Bankruptcy Act may assign their property to a registered trustee, or the Official Trustee in Bankruptcy or any other person referred to as an administrator. In either case the property may be assigned to another party (s. 185C; s. 188A of the Bankruptcy Act). Agreements under Part IX and Part X avoid bankruptcy or sequestration.

On acceptance by creditors of a composition proposal or scheme of arrangement under Part IV, a debt agreement under Part IX or a personal insolvency agreement under Part X the specified property is capable of being transferred to the trustee or administrator. Alternatively the agreement with creditors under these provisions may authorise for the property to be transferred to a purchaser under direction from the trustee or the property may be transferred directly from the debtor to a creditor again under direction from the trustee.

If the property is sold to a third party under direction from the trustee/administrator the debtor may be required to execute all documents relating to property as directed by the trustee/administrator. In any transfer executed by the debtor, the consideration clause should indicate that the purchase moneys were paid to the trustee/administrator under the agreement reached with creditors, e.g.:

- for a Part X
 

‘[Amount] paid to [name] as trustee of [name] (a debtor) under a deed of personal insolvency agreement pursuant to s. 188A of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee’.
- for a Part IV Composition or Scheme
 

‘[Amount] paid to [name] as trustee of [name] (a debtor) under a composition pursuant to s. 73 of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee’.
- for a Part IX debt agreement
 

‘[Amount] paid to [name] as trustee of [name] (a debtor) under a debt agreement pursuant to s. 185C of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee’.

A copy of the composition, scheme of arrangement, debt agreement or personal insolvency agreement must be deposited.

A consent and direction by the trustee in Form 18 – General Consent is also required.

### ***Bankruptcy Legislation Amendment Act 2004 (Cth)***

[14-2220]

The Bankruptcy Legislation Amendment Act introduced significant changes to Part X of the Bankruptcy Act taking effect from 1 December 2004. From that date authorities given under s. 188 by a debtor result in just one type of matter known as a personal insolvency agreement (PIA). Unlike a bankruptcy or a Deed of Assignment under the pre-1 December 2004 provisions property does not vest automatically by operation of law in the trustee of a PIA. So there is no transmission of title, however PIAs are flexible arrangements negotiated with creditors and may involve the debtor assigning property to the trustee or third parties.

Authorities executed by debtors prior to 1 December 2004 may have resulted in one of three types of arrangements:

- A deed of assignment which resulted in the vesting of the debtor’s property in the trustee and which may require transmission.
- A composition which typically involved the periodic payments to the trustee from the debtor’s income but could also include the assignment of property.
- A deed of arrangement which could involve the assignment of property.

### **Part X arrangement entered into prior to 1 December 2004**

[14-2225]

On the execution of a deed of assignment or composition proposal under Part X of the *Bankruptcy Act 1966* (Cth), all of the debtor’s divisible property vests in the trustee of the deed of assignment.

If a trustee needs to be recorded on a title, they will be registered as ‘The trustee of the property of [name]’.

A Form 14 – General Request must be lodged with the following:

- an extract from the NPII current at the time of execution of the Form 14;
- a statutory declaration by the trustee identifying the debtor as the registered owner or holder of the interest.

If a trustee under a Part X deed of assignment or composition proposal does not seek to be registered on the title, s. 268(2)(f) of the Bankruptcy Act requires the debtor to execute all documents relating to property assigned by the deed of assignment or its disposal as directed by the trustee or by order of a court of competent jurisdiction. In any transfer executed by the debtor, the consideration clause should indicate that the purchase moneys were paid to the trustee under the deed of assignment pursuant to s. 214 of the Bankruptcy Act, e.g.:

‘[Amount] paid to [name] as trustee of [name] (a debtor) under deed of assignment executed pursuant to s. 214 of the *Bankruptcy Act 1966* (Cth) on the [day] day of [month] [year] by [name], the receipt of which sum is acknowledged by the trustee’.

The deed of assignment must be deposited.

A consent and direction by the trustee in Form 18 – General Consent is also required.

**Controlling Trustee under Part X of the *Bankruptcy Act 1966* (Cth)**

[14-2230]

A person who does not want their estate to be sequestrated may enter into a deed of assignment or arrangement or a composition under Part X of the Bankruptcy Act. The person may sign an authority in favour of a trustee or solicitor in accordance with Form 13 (Administrative Forms) of the Bankruptcy Regulations 1996 (Cth). That authority empowers the trustee, solicitor or the Official Trustee to call a meeting of their creditors and to take control of their property (s. 188 of the Bankruptcy Act). Once the authority becomes effective the trustee or solicitor becomes a controlling trustee by force of s. 188(6) of the Bankruptcy Act.

The controlling trustee may deal with the debtor's property in any way that is in the interest of the creditors (s. 190(2)(d) of the Bankruptcy Act). The controlling trustee has the same powers as a duly constituted attorney of the debtor.

Any instrument or document executed by the controlling trustee under this section will be treated as if the controlling trustee had been appointed by the debtor as their lawful attorney (s. 190(4) of the Bankruptcy Act).

<sup>2</sup>Section 189AB of the Bankruptcy Act creates a statutory charge. That charge is a caveatable interest and a caveat may be lodged by the controlling trustee (see part 11). The grounds of claim in Item 4 of the Form 11 – Caveat should make reference to s. 189AB of the Bankruptcy Act.

**Powers of a Trustee**

[14-2240]

Section 134 of the *Bankruptcy Act 1966* (Cth) authorises the trustee of a bankrupt to sell, lease or mortgage property or to execute a power of attorney. <sup>1</sup>While there are no specific provisions to grant or accept an easement, this is regarded as acceptable if it improves the value of the property. The Registrar will register these instruments or documents without enquiry.

Section 190 of the Bankruptcy Act authorises the controlling trustee of a debtor to act in the name of the debtor as if duly appointed as the debtor's attorney to deal with relevant property of the debtor in any way that will be in the interests of creditors in the opinion of the controlling trustee.

Transfers by trustees to themselves are improper without leave of the court (Schedule 2, s. 60-20 of the Bankruptcy Act).

**Annulment of Bankruptcy**

[14-2250]

Where a bankruptcy is annulled, the property which has not been sold by the trustee in bankruptcy reverts to the bankrupt, subject to any order of the court directing that the property should vest in an appropriate person.

The former bankrupt or the person in whom the property is vested by the court order must lodge a Form 14 – General Request accompanied by an extract from the NPII current at the time of execution of the Form 14.

See Example 15.

If the trustee of a bankrupt or their solicitor executes the Form 14 no further evidence is required to be deposited.

If the former bankrupt or their solicitor executes the Form 14, the following evidence must also be deposited:

- (i) A Form 18 – General Consent to the instrument or document, executed by the trustee;  
or
- (ii) A statutory declaration, by the trustee, stating that the former bankrupt is entitled to be registered as owner or holder of the property.

## Disclaimer

[14-2260]

### **Disclaimer of Freehold Land under the *Land Title Act 1994* or a Lease or Licence under the *Land Act 1994* by a Trustee of a Bankrupt**

Pursuant to s. 133 of the *Bankruptcy Act 1966* (Cth), notwithstanding the trustee of a bankrupt (trustee) has or has not become the registered owner of land or the holder of a lease or licence of a bankrupt under the Land Act, the trustee may disclaim freehold land or a lease or licence under the Land Act which is unsaleable or not readily saleable or burdened with onerous covenants.

If the trustee is disclaiming freehold land or a lease or licence under the Land Act, the trustee must notify the Registrar by lodging a Form 14 – General Request (deposited as an Administrative Noting Miscellaneous). This request must be signed by the trustee or a solicitor for the trustee and supported by a notice of the disclaimer pursuant to s. 133 of the Bankruptcy Act.

Evidence by way of a current National Personal Insolvency Index extract that is dated less than two weeks before, or any time after execution of the Form 14 – General Request to validate the trustee's right to disclaim must be deposited with the Form 14.

The administrative advice will alert interested parties that all rights, interest and liabilities of the bankrupt in the freehold land or the lease or licence under the Land Act are terminated.

Lodgement fees are not applicable. A duty notation is not required.

### **Disclaimer of a Freehold Lease or a Sub-Lease under the *Land Act 1994* by a Trustee of a Bankrupt**

A trustee of a bankrupt (trustee) may disclaim a freehold lease or a sub-lease under the Land Act, which is unsaleable or not readily saleable or burdened with onerous covenants, without the leave of the court only if:

- the trustee has given 28 days' written notice of the intention to disclaim the freehold lease or the sub-lease under the Land Act to the lessor and any sub-lessees and mortgagees of the lease or the sub-lease under the Land Act; and
- the notified persons have not, within 28 days of receipt of the notice, required the trustee to apply to the court for leave to disclaim the freehold lease or the sub-lease under the Land Act.

To give notice under s. 133(3) of the *Bankruptcy Act 1966* (Cth), a Form 14 – General Request to record the disclaimer must be lodged. The request may be made by the lessor.

The following must be deposited with the request:

- Evidence by way of a current National Personal Insolvency Index extract that is dated less than two weeks before or any time after execution of the Form 14 – General Request to validate the trustee's right to disclaim must be deposited with the Form 14.
- A statutory declaration where the trustee declares that:



- (1) the bankrupt is one and the same person as the registered lessee of the freehold lease or sub-lessee of the sub-lease under the Land Act being disclaimed;
- (2) the trustee has given notice of intention to disclaim the freehold lease or the sub-lease under the Land Act to all interested parties pursuant to s. 133(4) and regulation 6.10 of the Bankruptcy Act, and
- (3) no interested party has, within 28 days of the notice to disclaim, served notice requiring the trustee to apply to the court for leave to disclaim the freehold lease or the sub-lease under the Land Act.

Lodgement fees are applicable.

A duty notation is required if the term of the lease commenced prior to 1 January 2006.

**Disclaimer of Freehold Land under the *Land Title Act 1994* or a Lease or Licence under the *Land Act 1994* by a Company Liquidator**

If the company liquidator is disclaiming freehold land or a lease or licence under the Land Act, the liquidator may notify the Registrar by lodging a Form 14 – General Request (deposited as an Administrative Noting Miscellaneous), supported by a copy of the Notice of Disclaimer (a Form 525 under the Corporations Regulations 2001 (Cth)).

~~A statutory declaration by the liquidator as to the service of notice of the disclaimer and any response received (s. 568A(1)(b) of the *Corporations Act 2001* (Cth)) must be deposited with the Form 14.~~

The administrative advice will alert interested parties that all rights, interests and liabilities of the company in the freehold land or the lease or licence under the Land Act are terminated.

Lodgement fees are not applicable. A duty notation is not required.

**Disclaimer of a Freehold Lease under the *Land Title Act 1994* or a Sub-Lease under the *Land Act 1994* by a Company Liquidator**

If a company liquidator is disclaiming a freehold lease or a sub-lease under the Land Act, a Form 14 – General Request, supported by a copy of the Notice of Disclaimer (a Form 525 under the Corporations Regulations 2001 (Cth)) must be lodged to notify the Registrar of the disclaimer. The request may be made by the lessor.

~~A statutory declaration by the liquidator as to the service of notice of the disclaimer and any response received (s. 568A(1)(b) of the *Corporations Act 2001* (Cth)) must be deposited with the Form 14. A lessor may make this declaration if the liquidator is unwilling to do so provided the relevant lease has no affected interests e.g. mortgages and sub-leases.~~

~~Where a lease being disclaimed has an affected interest, evidence that the Notice of Disclaimer was served on that party is also required to be deposited. A period of 14 days from when the Notice of Disclaimer was served is required to have elapsed before registration of the Form 14 under s. 568C(3) of the *Corporations Act*.~~

Lodgement fees are applicable.

A duty notation is required if the term of the lease commenced prior to 1 January 2006.

Note: The Corporations Act does not provide authority for a notice under s. 443B by a person acting in the capacity of an administrator (Form 509B) or a notice under ss. 419A(3) by a controller for a company (Form 503) to disclaim a lease. Where the lessor is unable to obtain a Notice of Disclaimer (Form 525) from a person acting in the capacity of liquidator, then a copy

of the Form 509B or Form 503 may be used by the lessor as part of the basis for determining the lease instead.

**Court Order to vest Disclaimed Freehold Land under the *Land Title Act 1994* or a Lease or Licence under the *Land Act 1994***

The court may order that freehold land or a lease or licence under the Land Act disclaimed by a trustee of a bankrupt or a company liquidator (s. 568F(1) of the *Corporations Act 2001* (Cth)) is vested in a person considered to be entitled. The freehold land or a lease or licence under the Land Act is vested by lodging a Form 14 – General Request supported by a copy of the court order vesting the property (see [60-1030]). The applicant must be the person in whom the court has ordered that the property be vested.

Lodgement fees are applicable. A duty notation is required.

**Charge under s. 139ZN or 139ZR of the *Bankruptcy Act 1966* (Cth)**

[14-2270]

A request to register a charge under s. 139ZN or 139ZR of the Bankruptcy Act is required to be lodged in Form 14.

The certificate required under ss. 139ZN(4) or 139ZR(4) that identifies the property the subject of the charge and the name of the current appointed Trustee of the Bankrupt must be deposited with the request.

The applicant must be the current appointed Trustee identified in the certificate. An extract from the National Personal Insolvency Index that is dated less than two weeks before, or any time after, execution of the Form 14 that evidences that the applicant is the trustee for the bankrupt referred to in the certificate must be deposited with the request (see [60-1030]).

Lodgement fees are payable, however, a duty notation is not required.

**<sup>1,2</sup>Interest for Life**

[14-2280]

To record that the holder of an interest for life has died or relinquished all rights, a completed Form 14 - General Request must be registered. On registration of the Request, the trust created for the life of the beneficiary ends and the title reverts to the registered owner.

**Death of life tenant**

Where the holder has died, the request must be completed to advise of the death and a copy of the death certificate deposited (see [60-1030] for information about depositing supporting documentation).

Lodgement fees are payable.

See Example 16.

**Relinquishment**

Where the holder relinquishes all rights, the request must be completed to advise the details of the relinquishment and a copy of the executed document of relinquishment deposited (see [60-1030] for information about depositing supporting documentation).

Lodgement fees are applicable and a duty notation is required.

## 1,<sup>2</sup>Application for Title by Adverse Possession

[14-2290]

In certain circumstances, a party may claim title to land, although that party is not the registered owner.

The authority to make an application for title by adverse possession and the provisions governing it are to be found in ss. 98 to 108B (Division 5 of Part 6) of the *Land Title Act 1994*.

An application must comply with the Land Title Act and demonstrate, in accordance with common law principles, that the applicant is an adverse possessor. Reference material regarding the common law requirements for adverse possession include the following texts (or later editions of these texts):

- (1) Megarry & Wade *The Law of Real Property*, 9th edn, Sweet & Maxwell, 2019.
- (2) Butt, P, *Land Law*, 7th edn, Lawbook Co, 2017.
- (3) Moore, A, Grattan, S and Griggs, L, *Australian Real Property Law*, 7th edn, Lawbook Co, 2020.
- (4) Wallace et al, *Real Property Law in Queensland*, 5th edn, Lawbook Co, 2020.

The time for bringing an action to recover a lot is 12 years from the accrual of the right of action where the person entitled to recover possession is *sui juris* (s. 13 of the *Limitation of Actions Act 1974*) and where such person is not *sui juris*, six years from his or her ceasing to be under a disability, up to a maximum of 30 years from the accrual of the right of action (s. 29 of the *Limitation of Actions Act*). If the true owner's identity is not established it will not expire until 30 years after the adverse possessor went into possession.

In this regard s. 29 of the *Limitation of Actions Act* simply extends the limitation period until any possible claim to true ownership has been barred. See *Re Johnson* [2000] Qd R 502.

Therefore, in most cases, due to the operation of s. 29 of the *Limitation of Actions Act* an applicant for title by adverse possession will have to establish that ~~he or she has~~they have been in adverse possession of the lot for 30 years.

An applicant must demonstrate that the common law requirements for adverse possession are satisfied.

In general it is possible to determine if possession is adverse from the circumstances under which possession was taken, the acts of user relied upon by the applicant and the intention of the adverse possessor. This latter consideration is important, especially where the acts relied upon as constituting adverse possession are equivocal. A person claiming to have taken adverse possession must be more than a persistent trespasser.

The control exercised over the land must be continuous and uninterrupted for the whole of the limitation period. If this is not the case, the limitation period ceases to run against the person to whom it accrues (s. 19(2) of the *Limitation of Actions Act*).

Acts of control include the payment of rates, the construction of improvements, the erection of fencing and the carrying out of maintenance.

The applicant's statutory declaration in support of the Form 14 – General Request should declare to the following facts, giving sufficient detail to allow an assessment to be made as to whether the common law requirements for adverse possession are met:

- (1) The particulars of the possession upon which the application is based.

- (2) The manner and extent to which the land has been used and occupied.
- (3) The nature of all improvements of the land.
- (4) The extent and manner in which the land is enclosed.
- (5) The acts of ownership upon which the adverse possession is based.
- (6) The time when the improvements and fencing were erected and by whom and the persons who maintained such improvements, fencing etc.
- (7) Whether the applicant has been assessed as owner and/or paid the rates on the land.
- (8) Whether there are any documents or evidence of title affecting the said land under the control or possession of the applicant other than those listed in an attached schedule.
- (9) That no person other than the registered owner has any claim, estate or interest at law or in equity in the said land, save and except those mentioned in an attached schedule.
- (10) The names and addresses of the owners and occupiers of all lands contiguous to the subject land in an attached schedule.

The application should be supported by:

- (1) A statutory declaration by at least two disinterested persons who are familiar with the history of the land for the required period setting out, from their own knowledge and observation, the actual use and occupation of the land by the applicant and ~~his/her~~ their predecessors in title during the period.
- (2) A letter from the local authority stating in whose name the rates were assessed and by whom the rates were paid for the period in question, or other documentary evidence of payment of rates for that period. If the documentary evidence consists of rates notices and/or receipts, the information should also be summarised in the form of a table showing rating periods, amounts and payment dates in chronological order.

Lodgement fees apply to the Request and any **successful application** will require a notation of the payment of transfer duty before it can be registered. To facilitate this requirement a notification will be forwarded to the lodger of the application during the advertising period to allow for a transfer duty notation to be endorsed.

Before registering the applicant as an adverse possessor, the Registrar requires the applicant to give public notice of their request. For information about advertising see [60-0830].

A successful application requires the creation of an indefeasible title in the applicant's name and the prescribed fee for the creation of the new title is payable.

A person claiming an interest in a lot which is the subject of an application by adverse possessor may lodge a caveat pursuant to s. 104 of the Land Title Act.

See Example 17.

## Deregistered Company

[14-2300]

### <sup>1,2</sup>Company Deregistered Prior to the *Companies Act 1961*

Pursuant to s. 300 of the Companies Act, when a company was dissolved, all property and rights whatsoever vested in the company immediately before its dissolution shall be ‘deemed to be *bona vacantia*, and shall accordingly belong to the Crown’.

However, during this period the Crown could not hold freehold land or an interest in freehold land. It was not until the *Queensland Government Land Holding Amendment Act 1992*, which inserted s. 15A into the *Real Property Act 1861*, that “The Crown in right of the State may, under this Act, acquire, hold and deal with land under the name ‘Queensland Government’.”

When dealing with the property of a company that was deregistered prior to 1 July 1962, a Form 14 – General Request executed by a person authorised to sign on behalf of the Crown, together with evidence of the dissolution, may be lodged to vest the property in the name of the State of Queensland (represented by the Department of Justice and Attorney General).

Upon registration the title is fully cancelled and the property becomes unallocated State Land under the *Land Act 1994*.

Lodgement fees are not applicable.

When dealing with the lease of a company that was deregistered prior to 1 July 1962, see part 8, esp. [8-2040].

### Company Deregistered under the Australian Securities and Investments Commission (ASIC)

The property of a deregistered company vests in ASIC pursuant to s. 601AD of the *Corporations Act 2001* (Cth). If it is intended that the vesting be recorded on the title, a Form 14 – General Request is lodged to notify the Registrar. The property is then registered in the name of the ASIC. Upon registration, ASIC has power to deal with the property in any way (s. 601AE of the Corporations Act).

When dealing with the property of a deregistered company that has vested in ASIC, an instrument may be lodged which disposes of the property of the company, executed by ASIC, together with evidence that the company is deregistered, without the necessity of vesting the property in the name of ASIC on the title. Lodgement fees are payable.

## <sup>2</sup>Foreclosure and Vesting

[14-2310]

A mortgagee, upon default by the mortgagor under the mortgage, may, subject to the terms of the mortgage, seek a foreclosure order under s. 78(2)(c)(ii) of the *Land Title Act 1994*. If the Court grants a foreclosure order, the mortgagor is no longer able to exercise its right of redemption and the title vests in the mortgagee.

Usually, such orders stipulate a time by which the mortgagor must repay the total amount owing under the mortgage and if the mortgagor defaults, foreclosure occurs and the title vests in the mortgagee.

The mortgagee then lodges a Form 14 – General Request to Register Order of Foreclosure and Vesting (also called a Request to Vest).

The following practice requirements apply:

- the applicant in Item 5 must be the mortgagee in whom the title will vest;

- a copy of the order certified by the Court must be deposited with the Form 14;
- if the court order stipulates conditions for foreclosure and vesting to occur – a statutory declaration from the mortgagee or their solicitor declaring that the conditions have been met must be deposited; and
- the Form 14 must have a duty notation.
- the address for service of notices to the applicant must be inserted in Item 5

Registry lodgement fees are payable.

See Example 18.

## **<sup>1,2</sup>Dedication of Road by Notice**

[14-2315]

Section 54(1) of the *Land Title Act 1994* allows for the dedication of the whole of a lot as a road for public use, by registration of a dedication notice. The form of a dedication notice is by way of a Form 14 – General Request.

Part of a lot may **not** be dedicated as a road for public use under s. 54 of the Land Title Act.

Item 6 of the Form 14 must request that ‘the within land be dedicated as road pursuant to s. 54(1) of the Land Title Act. The form must be executed by registered owner or their solicitor.

A dedication notice (Form 14) must be accompanied by the approval of the relevant planning body, and typically this will be by way of a Form 18 – General Consent. Alternatively a letter on the appropriate letterhead from the relevant planning body may be deposited with the Form 14.

If the land to be dedicated is subject to any interests e.g. easements, leases, profits, etc., consent by way of a Form 18 – General Consent of the grantee/lessee of that interest is also required to be deposited with the Form 14.

The dedication of the lot as road takes effect from the day the dedication notice is registered.

Lodgement fees apply. A duty notation is not required.

A constructing authority having acquired fee simple land for road purpose under s. 12B of the *Acquisition of Land Act 1967* may dedicate a lot as road by registering a dedication notice. A dedication notice must be made on a Form 14 –General Request and be for the whole of a lot.

Item 6 of the form must request that ‘the within land be dedicated as road pursuant to s. 12B of the *Acquisition of Land Act 1967*’. The form must be executed by the constructing authority or their solicitor.

Lodgement fees do not apply. A duty notation is not required.

## **<sup>1</sup>Resumption**

[14-2320]

### **Generally**

A constructing authority, within the meaning of the *Acquisition of Land Act 1967* has power to take land or an interest in land (for example, an easement) for a purpose stated in the schedule of the Act.

If a resumption relates to only part of a lot or the interest being taken cannot be described by reference to an existing description, a plan identifying the land or interest is required to be registered.

Registration of the Form 14 – General Request records the resumption of land or interest in the freehold land register or the relevant State land register.

The consent of any registered proprietor e.g. mortgagee whose interest is affected by a resumption is not required.

Lodgement fees apply except where the constructing authority is the State. The form must have a duty notation.

### **Resumption of an Easement**

A Form 14 – General Request to record the resumption and a copy of the taking of easement notice are required to be lodged.

Where an interest in land, being an easement is resumed and the resumed easement intersects or follows an existing easement registered under the *Land Title Act 1994* or *Land Act 1994*, the prior registered easement continues to exist and the resumed easement is subject to the former's covenants.

### **<sup>2</sup>Resumption of Freehold Land by a Constructing Authority**

A Form 14 – General Request to record a resumption of freehold land and a copy of the taking of land notice (gazette notice) are required to be lodged.

Once land has been resumed, there may be a following action to dedicate the land as road.

The publishing in the gazette of the taking of land notice cancels all registered interests in the land including mortgages, leases and easements and identifies the land taken and the manner in which the land is to be held by the constructing authority.

If, for example the wording of the taking of land notice states:

‘the land is taken by [Name of Department] as constructing authority for the State of Queensland for [a public purpose] as from [Date] and vests in the State of Queensland’

the lot becomes unallocated State land and is no longer recorded in the Freehold Land Register. Or, if for example the wording of the taking of land notice states:

‘the land is taken by [Name of Department] as constructing authority for the State of Queensland for [a public purpose] as from [Date] and vests in the State of Queensland’ for an estate in fee simple’

the lot taken will be recorded in the Freehold Land Register in the name of the State with reference to the representative department.

### **<sup>3</sup>Resumption of a Lease under the *Land Act 1994***

A Form 14 – General Request to record the resumption of a lease under Chapter 5 Part 3 Division 1 of the *Land Act* and a copy of the taking of leasehold interests in land notice (gazette notice) are required to be lodged.

Once the lease has been resumed the land becomes unallocated State land.

The publishing in the gazette of the taking of leasehold interests in land notice cancels all registered interests in the land including mortgages, leases and easements.

### Revocation of Resumption

A revocation can only be considered if compensation has not been determined or paid.

A resumption may be revoked by publishing a revocation proclamation in the government gazette. To give effect to the revocation in the register, a Form 14 – General Request by the constructing authority to request revocation of resumption must be registered. A copy of the revocation notice must be deposited with the request.

See Example 19.

## Vesting Order

### By Proclamation or Legislation (including a regulation)

[14-2330]

A proclamation or legislation may vest interests in land in the State, a statutory body representing the State, or a local government, or another entity.

A Form 14 – General Request to Vest must be lodged to vest the interest in the name identified in the proclamation/legislation.

The following practice requirements apply:

- the applicant in Item 5 must be the person in whom the interest is vested by the proclamation/legislation;
- either
  - a copy of the proclamation must be deposited with the Form 14, and
  - in the case of a vesting by legislation, reference to the relevant provision of the vesting legislation must be included in item 6 of the Form 14, and if the land is identified by way of transfer schedule, a certified copy of the transfer schedule (or an extract of it) must be deposited; and
- the Form 14 must have a duty notation.

The address for service of notices to the applicant must be inserted in Item 5.

Registry lodgement fees are payable unless exempted by the legislation that authorises the vesting legislation.

### By Order of the Court

[14-2332]

A Court may order that a lot or an interest be vested in a person other than the registered owner or holder.

To record such an order on the register a Form 14 – General Request to Register Order of the Court (also called a Request to Vest) must be lodged.

The following practice requirements apply:

- the applicant in Item 5 must be the person in whom the lot or interest is vested;



- a copy of the order certified by the Court must be deposited with the Form 14; and
- the Form 14 must have a duty notation.

The address for service of notices to the applicant must be inserted in Item 5.

Registry lodgement fees are payable.

## Vesting in a Trustee

[14-2335]

A Form 14 – General Request to Register Order of the Court (also called a Request to Vest) must be lodged to give effect to a vesting order made under the *Trusts Act 1973* or another Act.

The following practice requirements apply:

- the applicant(s) in Item 5 must be the trustee(s) in whom the land is vested by the vesting order;
- a copy of the vesting order certified by the Court must be deposited with the Form 14; and
- either:
  - an original Form 20 – Trust Details Form (see [51-4100]); or
  - all documents that create the trust upon which the interest is vested;

must be deposited with the Request. For information about depositing supporting documentation see [60-1030].

The Form 14 must have a duty notation and lodgement fees are payable.

The address for service of notices to the applicant must be inserted in Item 5.

[14-2340] deleted

## Request for Determination of Lease

[14-2350]

In this numbered section a reference to a lease is taken to include a reference to a lease or sublease under the *Land Title Act 1994* or a sublease or sub sublease under the *Land Act 1994*.

### Under s. 124 of the *Property Law Act 1974*

Usually, a lessor has an express power granted in the lease to re-enter and take possession of the premises where the lessee has defaulted under the terms of the lease. Section 107 of the *Property Law Act* implies into the lease a provision that the lessor may re-enter. Section 68 of the *Land Title Act* or s. 339 of the *Land Act* may also be invoked for this purpose. A Form 14 – General Request for Determination of the lease is required to be lodged to remove the lease from the title.

Proof of the re-entry and taking of possession by the lessor must be provided to the Registrar.

If a court order for re-entry and possession has been issued, a copy of the order must be deposited with the Form 14. If court action has not been taken, a declaration by the lessor or a person authorised by the lessor is required, together with evidence of the lessee's default under the lease and the demand for remedy of that default. Appropriate evidence is a photocopy of the completed Form 7 under the *Property Law Act – Notice to Remedy Breach of Covenant*. The

declaration must set out the circumstances of repudiation by the lessee or the facts and circumstances of the re-entry and possession.

The Request must have a duty notation if the lease commenced before 1 January 2006. Lodgement fees are applicable.

The interests of existing sub-lessees or sub-sub lessees may also be determined by being included in the same Request, providing the relevant evidence is deposited.

#### **Company Deregistered under the Australian Securities and Investments Commission (ASIC)**

If the lessor re-enters and takes possession of premises leased to a company that has been deregistered, a Form 14 – General Request should be lodged to record the re-entry, supported by a Form 20 – Declaration detailing the facts and circumstances of the default; including:

- the lessee has defaulted;
- the lessor has re-entered and taken possession;
- the lessee company is deregistered; and
- notices have been served on the ASIC.

Copies of notices served on ASIC and a search from ASIC evidencing the defunct status of the lessee company are also required to be deposited.

Note – The unreported decision of Dowsett J in the matter of the *Corporations (Queensland) Act 1990 and Hassell Holdings Pty Ltd* (Supreme Court of Queensland, No 20 of 1994) held that a mortgagee exercising a power of sale could serve notice of default on ASIC.

Lodgement fees are payable. The Request must have duty notation if the lease commenced before 1 January 2006.

#### **Re-entry by Lessor by Repudiation**

A request to record the re-entry by the lessor for repudiation is made in Form 14 – General Request. Item 6 of the Form 14 should state the lease is determined for common law repudiation. The request must be supported by statutory declaration/s, which must clearly:

- (1) State that the lease was determined for common law repudiation and not pursuant to a right of re-entry in the lease.
- (2) Provide evidence of the conduct of the lessee that amounted to a repudiation (for example, the lessee left the premises (in the case of land) or abandoned the water allocation on a particular date without consent and has not returned. The lessee may have also removed or abandoned some or all of its fixtures, fittings and stock).
- (3) Provide evidence of the conduct of the landlord that amounted to an acceptance of the repudiation (for example the lessor re-took possession of the premises or water allocation on a particular date after the lessee abandoned. The lessor may have also relet premises or water allocation/s to a new lessee etc.).

Lodgement fees are payable. The Request must have duty notation if the lease commenced before 1 January 2006.

There is no requirement to provide a copy of a notice of default under s. 124 of the Property Law Act to the Registrar where the lease is determined for repudiation at common law.

## Vesting under the *Associations Incorporation Act 1981*

[14-2360]

A Form 14 – General Request is lodged in relation to incorporated associations in the following situations:

- Where land or an interest formerly held by trustees is to be vested in the name of an incorporated association under the *Associations Incorporation Act 1981* (as amended) a Form 14 – General Request is required.

The address for service of notices to the applicant must be inserted in Item 5.

Lodgement fees are payable.

See Example 24 and notations.

- Where two or more incorporated associations amalgamate, a Form 14 – General Request is lodged by the secretary of the new association requesting that the land or interest held by the previous associations be vested in the name of the new association. The Form 14 – General Request is executed by the secretary of the new association and is lodged, together with a certified copy of the certificate of incorporation of the new, amalgamated association. Land or interests previously held by the prior associations will now be recorded as being in the name of the new association. A duty notation is not required.
- Where a body which holds letters patent under the (now repealed) *Religious Educational and Charitable Institutions Act 1861* (repealed by No 74 of 1981, s. 4, sch 1) incorporates, a request to vest the land or interest so held in the association is lodged. The Form 14 – General Request is executed by the secretary of the association and is lodged with a certified copy of the certificate of incorporation of that body. A duty notation is not required.
- Where an incorporated association is cancelled, a Form 14 – General Request may be lodged requesting the property of the cancelled association to be vested in the Public Trustee of Queensland pursuant to s94 of the *Associations Incorporation Act 1981*. The Form 14 – General Request is lodged with a copy of the gazette notice vesting the property in the Public Trustee. Alternatively, the chief executive of the department that administers the Associations Incorporation Act may, by a gazette notice, vary the trusts and vest the property in another body or party. In this case, a Form 14 – General Request is lodged, together with a copy of the gazette notice. A duty notation is required in either case.
- Pursuant to section 92 of the Associations Incorporation Act, where an incorporated association is wound up under section 90, the chief executive of the department that administers the Associations Incorporation Act may, by a gazette notice, vest all or any of the surplus assets of the incorporated association in the Public Trustee. A Form 14 – General Request is lodged, together with a copy of the gazette notice. A duty notation is required.
- Where a receiver and manager appointed by a mortgagee executes an instrument or document for an association under the Associations Incorporation Act, a copy of the deed of appointment certified by a solicitor is required as evidence of the appointment.

## Recording Vesting under the Returned & Services League of Australia (Queensland) Branch) Act 1956

[14-2365]

The Returned & Services League of Australia (Queensland Branch) Act provides that upon the passing of a resolution by any district branch or sub-branch adopting the Act, any land held by that district branch or sub-branch or by any person/s on behalf of the district branch or sub-branch becomes vested in the branch or sub-branch in the name of ‘Trustees of the Returned & Services League of Australia, (Queensland Branch) [name of sub-branch/district branch, as the case may be] Sub-Branch/District Branch [as the case may be]’. To record such a vesting, a Form 14 – Request to Vest must be lodged, together with a certificate that a resolution adopting the Act has been passed by the district branch or sub-branch, showing the **date of adoption** of the Act and signed by the president and secretary of the district branch or sub-branch (s. 3 of the Returned & Services League of Australia (Queensland Branch) Act).

No lodgement fees are payable and a duty notation is not required.

The address for service of notices to the applicant must be inserted in Item 5.

[14-2370] and [14-2380] deleted

## Trustee

[14-2390]

A lot or an interest can be held by a registered owner or holder as trustee for one or more other parties. If no appointment of a new trustee is involved, the instruments or documents required to be lodged for registration in the registry in certain circumstances are as follows:

- where a trustee dies: a Form 4 – Record of Death (see part 51 – Trusts, esp. [51-2060] to [51-2090]); and
- where a trustee retires or is discharged: a Form 14 – General Request to record retirement or discharge, together with an original Form 20 – Trust Details Form (see [51-4100]) or documentary evidence, see Example 22.

Lodgement fees apply.

A duty notation is required on a retirement or discharge.

If the appointment of a new trustee is to be simultaneously recorded, the appropriate instrument or document is a Form 1 – Transfer (see part 1 – Transfer, esp. [1-2400] to [1-2420]).

## Legal and Beneficial Interests Merge

[14-2400]

From time to time the situation will arise where a person (A), being registered on the title as [the sole](#) ‘devisee in trust’ or ‘personal representative’, is also the sole beneficiary under the will of the deceased or is the only person entitled to the deceased’s estate under the rules of intestacy.

Where A has discharged all required executorial duties, other than having effected the transfer, then the property is held by A as trustee. The law is well settled that one cannot be a trustee for oneself, and so the doctrine of merger operates to merge the beneficial and legal estates.

Where A is registered as ‘devisee in trust’ or ‘personal representative’ and is alive, but is the sole beneficiary under the will and is entitled to be registered as ‘devisee’, the property may be dealt with in the following manner:

A Form 14 – Request to Record a Merger of estates should be lodged, supported by a declaration by A to the effect that ~~he/shethey~~ (as ‘personal representative’) ~~has~~have

~~completed~~~~effected~~ all executorial duties in respect of the administration of the estate of the deceased proprietor, and that they are the sole beneficiary of the estate of the deceased. ~~but has not effected a transfer to himself/herself~~

See Example 23.

A duty notation is ~~required~~required, and lodgement fees apply.

When A is registered as ‘devisee in trust’ or ‘personal representative’ and is deceased, but is the sole beneficiary under the will and is entitled to be registered as ‘devisee’ a Transmission Application must be lodged (see Part 5 [5-2030]).

## **<sup>1</sup>Application by Local Government under Chapter 4 Part 12 Division 3 of the Local Government Regulation 2012**

[14-2410]

Where land, or a lease under the *Land Act 1994* with overdue rates is:

- submitted for sale by auction but the land is not sold, the land is taken to have been sold to the local government; or
- valueless or not worth selling;

a local government can apply to be registered as owner of the land, or holder of the lease under the Land Act.

An application to register land, or a lease under the Land Act in the name of a local government must be in a Form 14 – General Request.

Lodgement fees are payable and a duty notation is required.

<sup>2</sup>If the application is over the whole of the land, a new indefeasible title will not be created. However, if the land is held in separate titles by tenants in common, or is part of an existing indefeasible title, a new indefeasible title must be requested and applicable fees paid.

See Example 25.

## **<sup>1</sup>Change of Department Representing the State of Queensland**

[14-2420]

A change of a title from one representative department to another, within the State of Queensland, is **not** a transfer of title. As no interest is passing, a Form 1 – Transfer is **not** appropriate.

A Form 14 – General Request to record a change of the department representing the State is the appropriate form even where there is a shift of responsibilities to a different department.

The address for service of notices to the applicant must be inserted in Item 5.

Item 6 of the Request must provide the full circumstances of the change and include where applicable:

- a reference to the relevant legislative authority, if the change is by way of a statutory vesting; or
- details of relevant Administrative Arrangements Order(s), if the change is by way of a machinery of government change; or

- details of any agreement, the payment of money or other arrangement, if there is a shift of responsibilities to a different department.

Lodgement fees are not applicable. A duty notation is required for only a statutory vesting.

## **<sup>1</sup>Removal of a Profit a prendre**

[14-2425]

If the specified period of time has expired or the event upon which it is based has happened, then a profit a prendre may be removed under the provision of s. 97L(3) of the *Land Title Act 1994* or s. 373O(3) of the *Land Act 1994*.

The removal is lodged in a Form 14 – General Request. Any interested party can apply. If the removal is based upon the happening of an event then evidence that clearly establishes the occurrence of that event must be deposited.

Lodgement fees are not applicable. A duty notation is not required.

See Example 26.

## **<sup>1</sup>Order of the Court Modifying or Extinguishing an Easement**

[14-2430]

If the court makes a direct order for the extinguishment of an easement or modification of the covenants to an easement, without requiring the participation of the parties to the court application to execute appropriate documentation to give effect to the order (pursuant to s. 181 of the *Property Law Act 1974*), the appropriate instrument or document to be lodged is a Form 14 – Request to Record an Order of the Court, made by either the grantor or the grantee of the easement.

## **<sup>1, 2</sup>Request to Record Reservation of Name for a Community Titles Scheme**

### **<sup>1, 2</sup>Reservation of Name for Community Titles Scheme**

[14-2500]

A plan for a community titles scheme may not be accepted for lodgement if the name has been reserved or used for another community titles scheme.

An application to reserve, extend or withdraw a reservation of name for a proposed community titles scheme must be made by lodging a Form 14 – General Request. Only one name is to be reserved over any one parcel of land unless the Registrar is satisfied that an appropriate reason is given for example, the names being reserved are for a layered scheme. However, a name may be recorded over more than one parcel if all the parcels are to be included in the same scheme.

The Request may be made by the registered owner of the land or by another party on behalf of the proposed development. It must specify the name to be reserved for the proposed scheme and should also clearly identify the parcels to be included in the scheme land.

Prior to applying for reservation of a name for a community titles scheme, a search of previously reserved and registered names should be undertaken to ensure the envisaged name is available for reservation.

The reservation period is initially two years from the date of lodgement, however, it may be extended by a further one year if an application for extension is lodged during the initial two year period. A reservation ends if the applicant withdraws the reservation or a community titles scheme is established on the scheme land using the reserved name.

See Example 27.

[14-2510] to [14-2520] deleted

**1,2 Duplication of Names**

[14-2530]

Names may be duplicated or similar only ~~when; with the prior written approval of the Registrar. Depending on the circumstances, approval may be given subject to either:~~

- ~~the written consent of the body corporate of the existing scheme the name for the scheme being reserved is not in the same Local Government Area; or~~
- ~~a declaration stating that where the name for the scheme being reserved is in the same Local Government Area, not in the same Locality/Suburb:÷~~
  - ~~the name for the scheme being reserved is not in the same locality as the existing scheme, i.e. not in the same town or city or is not within 100 kilometres of the existing scheme; and~~
  - ~~the existing scheme has been established for some time and is not currently being marketed.~~

~~The prior written approval of the Registrar will be required in all other circumstances, which could be subject to the consent of the body corporate of the existing scheme or compliance with other special conditions. The circumstances may also require other special conditions to be complied with before approval is given.~~

**1,2 Extension of Reservation of Name**

[14-2540]

The period of reservation of name for a proposed scheme may be extended for a further period of one year provided the request to extend the reservation of name is lodged before the expiry of the term of the original reservation of name. The request to extend the reservation of name should be lodged to allow sufficient time for processing prior to the expiry of the original reservation of name.

The request to extend reservation of a name must be made by the person who originally requested reservation of that name.

If the period of time for the original reservation of a name has expired a new request for reservation of the name may be lodged using the name previously reserved, providing a scheme has not been established using that name.

**1,2 Withdrawal of Reservation of Name**

[14-2550]

A name that has been reserved for a proposed community titles scheme may be withdrawn. The person who originally requested that the name be reserved must be the applicant for the request to withdraw the reservation of that name.

**Request to Record Community Management Statement****1,2 Community Management Statements**

[14-2600]

The following items are required to be lodged to record a CMS:

- Form 14 – General Request with:
  - the CMS in the appropriate form;

- Schedules A to E that have been completed as they apply to the community titles scheme; and
- if planning body notation to the CMS is required (i.e. if an exemption does not apply) – a properly completed Form 18C – Planning body community management statement notation signed by the planning body; and
- the related plan of subdivision (if applicable).

A Request to Record a First CMS must show the name of the community titles scheme in the following style: 'Brighton Villa community titles scheme'. A Request to Record a New CMS must show the name of the community titles scheme including the community titles scheme number in the following style: 'Brighton Villa community titles scheme 1246'.

It is very important that each CMS is accurate, complete and reliable for the benefit of the owners and other interested parties. As community management statements are important, the Registrar will examine them diligently to ensure they comply with the *Body Corporate and Community Management Act 1997* and the regulations that apply under the Act. The schedules comprise an integral part of the CMS and their compliance will also be examined thoroughly.

There are a number of variations in the appropriate information to be provided in a Form 14 – Request to Record a First or New CMS explained below.

When completing Item 2 in the Request to Record First CMS, the 'Lot [number] on [Plan reference]' and 'Title Reference(s)' of the lots being surveyed to create the scheme and any other lot/s intended to become scheme land must be inserted. However, for a New CMS, the Request to Record New CMS is recorded only on the title for the common property for the scheme land which should be referred to in Item 2 as follows: 'Common property of Brighton Villa community titles scheme 1246' followed by the title reference only. However, if additional lots are being added to the existing scheme land, the full description and title reference of the additional lots must also be shown.

Both the registered owner(s) and the applicant in a request to register a First CMS are the owner(s) shown on the titles for the scheme land shown in Item 2 of the Request. However, in a New CMS, the body corporate for the community titles scheme is the registered owner and the applicant and should be shown as follows: 'Body corporate for Brighton Villa community titles scheme 1246'.

The request to record a First CMS must also include the address for service of notices on the body corporate. This is not required in a New CMS unless the address is also being changed. The wording of the request in a First CMS should be as follows:

'I hereby request that the first community management statement deposited herewith be recorded as the community management statement for (for example) Brighton Villa community titles scheme and that... (insert full address and postcode)... be recorded as the address for service on the body corporate for the scheme.'

For a request to record a New CMS, the request should be stated as follows:

'I hereby request that the new community management statement deposited herewith which amends schedule(s)... and/or Item 2 regulation module of the existing community management statement be recorded as the community management statement for (for example) Brighton Villa community titles scheme 1246.'

Where a request to record a change of address is included in a request to record a New CMS an additional current prescribed fee is also payable.



# Part 18 – General Consent

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## **<sup>1</sup>Guide to Completion of Form 18A**

### **Item 1**

[18-4060]

#### **Survey Plan being consented to**

##### Survey Plan Number

Insert the number of the survey plan being consented to.

##### Registered Owners/Lessees

Insert the full name and trust capacity (if applicable) of each registered owner/lessee. For a corporation the name and ACN or ARBN must be shown (see [21-2220]).

### **Item 2**

[18-4070]

#### **Consent by Registered Owner/Lessee**

The clause that is not applicable should be ruled through or otherwise deleted.

All registered owners/lessees must execute as required. An electronic signature is acceptable provided the signature is an electronic representation of the signatory's actual signature.

## **<sup>1</sup>Guide to Completion of Form 18B**

### **Item 1**

[18-4080]

#### **Survey Plan being approved**

##### Survey Plan Number

Insert the number of the survey plan being approved.

##### Name of Planning Body

Insert the name of the Planning Body giving approval to the survey plan.

### **Item 2**

[18-4090]

#### **Approval by Planning Body**

Where an approval to a plan of subdivision is required to be given by a planning body, Item 2 must be completed by:

- Stating the name of the relevant planning body and the legislative authority relevant to the approval; and
- Being signed and dated by an appropriately authorised person with their authority stated. An electronic signature by the planning body is acceptable.

Completion of the Planning Body Reference Number is optional. It can be completed if required by the Planning Body.

### **Item 3**

[18-4100]

#### **Planning Body Approval Exemption**

Where a plan is exempt from Planning Body approval this item must be completed. It must be signed by an appropriately authorised person, citing the relevant statutory authority for the exemption (See [21-2130]).

## 1, 2 **Guide to Completion of Form 18C**

### **Item 1**

[18-4200]

Insert the name of the community titles scheme for the CMS being noted.

### **Item 2**

[18-4210]

If there is a related survey plan to be lodged with the CMS – insert the survey plan number.

Alternatively, insert ‘N/A’ or ‘not applicable’.

### **Item 3**

[18-4220]

This item must be signed by an authorised officer/delegate of the planning body.

The officer’s/delegate’s full name and designation must be included.

Insert the name of the planning body where indicated.

Completion of the Planning Body Reference Number is optional. It can be completed if required by the Planning Body.

## **Case Law**

Nil

[18-7000] to [18-7020] deleted

## **Fees**

[18-8000]

No fees are payable for the lodgement of a Form 18 – General Consent.

## **Cross References and Further Reading**

[18-9000]

Part 2 – Mortgage (National Mortgage Form)

Part 7 – Lease

Part 9 – Easement

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

Part 21 – Plans and Associated Documents

Part 49 – Water Allocations

### **Notes in text**

[18-9050]

Note<sup>1</sup> – This numbered section, paragraph or statement 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.

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affixed on the Form 18A (see Part 50 – Corporations and Companies and Part 61 – Witnessing and Execution of Instruments or Documents for more details).

A mortgagee in possession can execute a Form 18A on behalf of the registered owner(s)/lessee(s). Evidence of default and service of the notice of demand is required to be deposited. The appropriate manner to recite in Item 2 on the Form 18A is ‘XY as mortgagee in possession under Mortgage No [number]’. No reference to the registered owner’s name appears on the Form 18A, however, the new indefeasible titles will be created in the name of the registered owner, subject to the registered mortgage.

## Consents

### Consent of Mortgagee, Lessee, Covenantee or Grantee of an Easement, Carbon Abatement Interest or of a Profit a Prendre

[21-2230]

Section 50(1)(j) of the *Land Title Act 1994* requires that a plan of subdivision (see definition of *plan of subdivision* in s. 49 of Land Title Act) must be consented to by:

- all registered mortgagees of each lot the subject of the plan; and
- all other registered proprietors (for example a lessee, covenantee or the grantee of an easement or of a profit a prendre), whose interests are affected by a plan.

The term ‘affected’ in this context means, the spatial extent of a registered interest is intersected by the spatial extent of new road or a new lot (including a lot for public use) depicted on a plan. The registered interest is partly or wholly extinguished to the extent intersected.

The consent must be on a Form 18 – General Consent unless otherwise stated below.

The following matrix shows where a consent is required by a registered proprietor whose interest is affected (see the definition above) by a plan of subdivision. The table does not apply to plans prepared under the *Acquisition of Land Act 1967*.

Consent of registered proprietor of affected interest required			
Affected interest	Plan depicts new lots but no public use land shown	Plan depicts new lots and shows public use land other than road	Plan depicts new road
Mortgage	Yes*	Yes*	Yes*
Lease	No	Yes	Yes
Easement (including a high-density development easement) – other than public utility easement	No	Yes	Yes No – if easement only for right of way
Easement – public utility	No	Yes No – if Minister’s approval granted (by way of Statement of Intent, letter or Form 18)	Yes No – if grantee is the local government that approves the plan No – if easement only for public thoroughfare
Profit a prendre	No	Yes	Yes

Affected interest	Plan depicts new lots but no public use land shown	Plan depicts new lots and shows public use land other than road	Plan depicts new road
<b>Covenant – preservation or use of land</b>	No	Yes  No – if the grantee is the local government approving the plan	Yes
<b>Covenant – binding ownership of lots</b>	Release of covenant required	Release of covenant required	Release of covenant required
<b>Carbon Abatement Interest</b>	No	Yes	Yes

\*A chargee of a recorded statutory charge is not required to consent to the registration of a plan unless there are specific provisions in the relevant legislation identifying the right of possession or redemption under the charge.

## Consent of other parties

[21-2235]

### [Nature Conservation Act 1992](#)

Section 50(1)(k) of the *Land Title Act 1994* and Section 290J(1)(l)(iv) of the *Land Act 1994* require that a plan of subdivision (see definition of plan of subdivision in s. 49 of Land Title Act and s. 290E of Land Act) that affects land the subject of a conservation agreement under the Nature Conservation Act 1992 must be consented to by the chief executive of the department in which that Act is administered. Conservation agreement is defined in the schedule to the Nature Conservation Act. The consent must be on a Form 18 – General Consent.

### [Wet Tropics World Heritage Protection and Management Act 1993](#)

[Section 50\(1\)\(l\) of the Land Title Act 1994 requires that a plan of subdivision \(see definition of plan of subdivision in s. 49 of Land Title Act\) that affects fee simple land in the wet tropics area under the Wet Tropics World Heritage Protection and Management Act, must be consented to by the executive director of the Wet Tropics Management Authority. Land that falls within the wet tropics area is identified by the recording of an administrative advice, Wet Tropics Notice, on the relevant title/s. The consent must be on a Form 18 – General Consent. See \[52-0170\] for further information about a Wet Tropics Notice.](#)

[21-2240] and [21-2250] deleted

## Fees

[21-2260]

Lodgement fees and fees for the creation of new indefeasible titles must be paid unless there is a statutory exemption (see [60-0892]).

The assessment of fees is based on a lodgement fee with a fee for each additional lot. The number of lots is determined by identifying all the new lots on the plan and all new secondary interests on the plan. However, areas of new road or common property are not included in this assessment.

A new title fee is charged for any lots on the plan for which an indefeasible title is to be created. Indefeasible titles are not created for public use lots. The new indefeasible titles are created on registration of the plan but in some instances additional documentation may be required to complete this process for example, transfers to resolve ownership or collateral mortgages.

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Alternatively, the grantee may lodge a properly completed Form 14—General Request to record an administrative advice; stating that an easement has been granted, identifying the parties to the easement and the land affected by the easement (by way of sketch). A grantee who has notified the Registrar of the granting of a cane railway easement in this manner may subsequently lodge a Form 9 – Easement.

### **<sup>1</sup>Notice of Relinquishment or Cancellation of Sugar Access Right**

[52-0165]

#### **Relinquishment**

Where an access right is relinquished by the grantee, a request to remove the administrative advice may be lodged in the land registry. A copy of the relinquishment document must be deposited with the request (s. 70(2) or s. 71(2) of *Sugar Industry Act 1999*).

#### **Cancellation by Agreement**

Where a land-holder whose land is affected by an access right and the holder of the access right has cancelled the right by agreement under s. 72(1) of the *Sugar Industry Act*, a request to cancel the administrative advice may be lodged in the land registry. Evidence of the agreement must be deposited with the request.

#### **Cancellation by Order of the Land Court**

Where the Land Court makes an order to cancel a sugar access right under s. 72(2) of the *Sugar Industry Act*, a request to cancel the right may be lodged in the land registry. A copy of the order must be deposited with the request.

### **<sup>1</sup>Notice under the *Wet Tropics World Heritage Protection and Management Act 1993*** [52-0170]

Entered on title – WET TROPICS.

Under the provisions of the *Wet Tropics World Heritage Protection and Management Act* (the Act) the Wet Tropics Management Authority (the Authority) can request that the Registrar record an administrative advice over land that is within the Wet Tropics of Queensland World Heritage Area (the Wet Tropics Area). Land in the Wet Tropics Area is subject to prohibitions under section 56 of the Act and is also subject to other prohibitions and requirements under the Wet Tropics Management Plan 1998. ~~prepares management plans for the wet tropics area and notifies the Registrar that a management plan has been approved.~~

~~Under the Act, a management plan may be noted against private land. Private land is defined as freehold land, or land held under a lease or licence under any Act.~~

#### **Removal**

On notification by the Authority, the Registrar must will remove the particulars of the land from the registrar's records on:

- (a) the repeal of a management plan over private land, or
- (b) the removal of private land from the operation of a management plan (s. 66(4) of the Act).

### **<sup>1</sup>Notices under the *Coastal Protection and Management Act 1995***

#### **<sup>1</sup>Compliance Notice**

[52-0180]

Entered on title – COAST PROT.