

Part 7 – Lease/Sub-lease

Table of Contents

General Law	
Preliminary.....	[7-0000]
Capacity to Grant and Accept Lease	
Lessor	[7-0010]
Lessee	[7-0020]
Term	[7-0030]
Mortgagee's Consent.....	[7-0040]
¹ Planning Body Approval	[7-0050]
Duty	[7-0060]
Covenants	[7-0070]
Concurrent Lease	[7-0080]
¹ Easement	[7-0090]
Merger of Lease.....	[7-0100]
¹ Option to Purchase	[7-0110]
Amendment of Lease.....	[7-0120]
Option for Renewal	[7-0130]
Sub-Lease	[7-0140]
¹ Lease of Common Property under the <i>Building Units and Group Titles Act 1980</i> for Specified Acts.....	[7-0150]
Legislation	[7-1000]
^{2,3} Application of the <i>Land Title Act 1994</i> to the <i>Water Act 2000</i>	
Reference to the registrar of titles in the <i>Land Title Act 1994</i> and <i>Land Act 1994</i> and reference to the registrar of water allocations in the <i>Water Act 2000</i>	
Practice	
Lease.....	[7-2000]
Execution.....	[7-2010]
Rental / Consideration	[7-2020]
Consent	[7-2030]
¹ Planning Body Approval	[7-2035]
Lease of Water Allocation – Special Requirements	[7-2036]
Water Allocation Managed under a Resource Operations Licence	
Water Allocation Not Managed under a Resource Operations Licence	
¹ Lease by Body Corporate for a Community Titles Scheme	[7-2037]
Requirements Specific to Lessee	
Co-Lessees	[7-2040]
Trustee	[7-2050]
Foreign Person or Foreign Corporation.....	[7-2060]
Mortgagee in Possession.....	[7-2070]
Merger of Lease.....	[7-2090]
Concurrent Lease	[7-2100]
Prior Registered Lease	[7-2110]
Amendment of Lease.....	[7-2120]
¹ Retirement Village Lease.....	[7-2130]
Death of Lessee.....	[7-2140]
Option for Renewal	[7-2150]
Option to Purchase	[7-2160]
Sub-Lease	[7-2170]
¹ Lease of trust land under the <i>Land Act 1994</i>	[7-2175]
Transfer of Lease.....	[7-2180]
Dealing with Expired Lease.....	[7-2190]
Cancellation of Expired Lease.....	[7-2200]
¹ Survey requirements of a lease over part of a lot	[7-2205]
¹ Sketch	[7-2210]
¹ General Comments	[7-2211]
¹ Examples of Sketches.....	[7-2212]
Description of Premises Being Leased.....	[7-2220]

Previous Leases (Leased Area Conflicts).....	[7-2230]
Lease Type (Purpose)	[7-2240]
Forms	
General Guide to Completion of Form 7 – Lease/Sublease	[7-4000]
Item 1 - Lessor	[7-4010]
Item 2 – Lot on Plan Description and Title Reference	[7-4020]
¹ Freehold Description	
Water Allocation Description	
Multiple Titles	
Item 3 - Lessee.....	[7-4030]
Item 4 – Interest being leased	[7-4040]
Item 5 – Description of premises being leased	[7-4050]
Which Fields in Item 5 need to be completed?	[7-4051]
Examples	
Example 1 - Whole of the Land:	[7-4051-1]
Example 2 - Part of the Land	[7-4051-2]
Example 3 – Whole of a Building – Only building on the Title	[7-4051-3]
Example 4 – Whole of a Building - More than one building on the Title	[7-4051-4]
Example 5 – Part of a Building – Only Building on Title – Whole level being leased	[7-4051-5]
Example 6 – Part of a Building – Only Building on Title – Part of Level being leased	[7-4051-6]
Example 7 – Part of a Building – Multiple Buildings on Title – Whole level being leased	[7-4051-7]
Example 8 – Part of a Building – Multiple Buildings on Title – Part of a Level being leased	[7-4051-8]
Land Description	[7-4052]
Lease Extent	[7-4053]
Part of Land Area Description	[7-4054]
Building Premises Designation	[7-4055]
Building Level.....	[7-4056]
Building Identifier.....	[7-4057]
Building Sketch Reference	[7-4058]
Item 6 – Term of Lease.....	[7-4060]
Item 7 – Lease Details	[7-4070]
Rental / Consideration	[7-4070-1]
Lease Type	[7-4070-2]
Area / Volume	[7-4070-3]
Item 8 – Terms and Conditions	[7-4080]
Item 9 – Previous Leases	[7-4090]
Example where a conflict exists (single statement):	[7-4090-1]
Example where a conflict exists (multiple statements):	[7-4090-2]
Example where no conflict exists:	[7-4090-3]
Item 10 – Grant/Execution	[7-4100]
General Guide to Completion of Form 20 – Lease Declaration	[7-4500]
Paragraph 1 – Details of the Declarant	[7-4510]
Paragraph 2 – Description of premises being leased	[7-4520]
Paragraph 3 – Lease Type and Area / Volume	[7-4530]
Paragraphs 4-7 – Previous Lease Statements (Leased Area Conflicts)	[7-4540]
Execution of the Declaration	[7-4550]
Case Law	
<i>Broons & Lennox Hatfield Nominees Pty Ltd v Registrar of Titles</i> (unreported, OS No 285 of 1989)	[7-7000]
<i>Cowper v Fletcher</i> (1865) 122 ER 1270	[7-7010]
<i>Sinclair v Connell</i> [1968] 1 NZLR 118	[7-7020]
<i>Daniher v Fitzgerald</i> (1919) 19 SR (NSW) 260.....	[7-7040]
<i>Mercantile Credits Ltd v Shell Co Aust Ltd</i> (1976) 136 CLR 326.....	[7-7050]
<i>Friedman v Barrett, Ex p Friedman</i> [1962] Qd R 498.....	[7-7060]
<i>Medical Benefits Fund of Australia Ltd v Fisher</i> [1984] 1 Qd R 606	[7-7070]
<i>Re Eastdoro Pty Ltd</i> [1990] 1 Qd R 424	[7-7080]
<i>Massart v Blight</i> (1951) 82 CLR 423	[7-7090]
Fees.....	[7-8000]
Cross References and Further Reading	[7-9000]
Notes in text.....	[7-9050]

Part 7 – Lease/Sub-lease

General Law

Preliminary

[7-0000]

A lease is a contract between a lessor and a lessee whereby the lessor as registered proprietor grants to the lessee an estate or interest in land for a fixed term in consideration of the lessee paying rent. The lessee holds the leasehold estate during the term of the lease and the lessor holds the reversion, being the lessor's estate in the land subject to the lease. The leasehold estate is an asset of the lessee and may be assigned during the lessee's lifetime or upon his/her death.

The lessee acquires exclusive possession of:

- all or part of a lot as defined in the *Land Title Act 1994*; or
- all of a water allocation as defined in the *Water Act 2000*.

¹The building or land being leased is known as 'the leased premises' or 'the demised premises'.

Section 64 of the Land Title Act authorises registration of a lease or sub-lease over the whole or part of a lot and the Water Act authorises registration of a lease or sub-lease over the whole of a water allocation. A lease may therefore cover:

- the whole of a lot or water allocation;
- ¹part of a lot;
- ¹the whole of a building erected on a lot;
- ¹part of a building erected on a lot;
- ¹the whole of a lot in a building units plan or group titles plan;
- ¹part of a lot or the common property in a building units plan or group titles plan;
- ¹part of the common property in a community titles scheme.

A lease does not require registration to be valid (s. 71 of the Land Title Act).

¹However, if the initial term of the lease exceeds three years it must be registered to achieve indefeasibility (ss. 184 and 185(1)(b) of the Land Title Act).

The relationship of lessor and lessee is governed by a wide range of statutory controls affecting different aspects of the relationship. These substantially restrict the parties' freedom to negotiate the terms of the lease contract. Statutory controls operate by regulating:

- certain types of tenancies (e.g. *Property Law Act 1974*, *Retail Shop Leases Act 1994*, *Residential Tenancies and Rooming Accommodation Act 2008*);
- aspects of land use, resumption and planning controls;
- the recovery of possession (e.g. *Property Law Act*); and
- the relationship of the contracting parties (e.g. *Racial Discrimination Act 1975* (Cth)).

The trend is of increasing statutory controls over these aspects of leases.

Capacity to Grant and Accept Lease

Lessor

[7-0010]

The lessor must be the registered owner of the fee simple or of a water allocation or a share in the fee simple or a water allocation being leased. If a sub-lease, the sub-lessor must grant the sub-lease from its leasehold estate.

Section 78 of the *Land Title Act 1994* coupled with Part 7 of the *Property Law Act 1974* permits 'a proprietor' to grant a lease. The definition of 'proprietor' in schedule 2 of the *Land Title Act* includes a mortgagee in possession. Because of the lack of specific legislative authority in Queensland, the mortgage must give the mortgagee express authority to lease the mortgaged property.

A trustee of a bankrupt's estate or an Official Trustee in Bankruptcy, is authorised by s. 134 of the *Bankruptcy Act 1966* (Cth) to lease any property of the bankrupt.

A person, or two or more persons may lease to himself/herself/themselves (ss. 14(3), (4) and (5) of the *Property Law Act*). A person may also grant a lease over his/her fee simple estate or water allocation to himself/herself jointly with another (s. 14(2) of the *Property Law Act*).

If a joint tenant, the lessor may lease to a co-joint tenant or to another, without severing the joint tenancy (*Cowper v Fletcher* (1865) 122 ER 1270; *Frieze v Unger* [1960] VR 230). Such action does, however, suspend the joint tenancy (Butt, P, *Land Law*, 2nd edn, Law Book Company, 1988, p 203). A joint tenant can sever the joint tenancy by transferring his/her interest in the joint tenancy to himself/herself or to a third party if the other joint tenants are notified (refer to Part 1, esp [1-2300]).

If the lessor is a trustee or personal representative, there must be no prohibition against executing the lease in the will or trust instrument. If there is no such prohibition, but no specific power to lease, s. 32(1)(e) of the *Trusts Act 1973* gives the trustee authority to lease.

¹A trustee or personal representative or the registered proprietor may grant a lease over a lot which is the subject of a life estate with the consent of the life tenant.

There is no authority for a minor to execute a lease as lessor. Accordingly, a lease by a minor either as a sole lessor or as one of several lessors is not acceptable unless a Court Order authorises a person to execute the lease on behalf of the minor.

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 lessor 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 leasing to a mutual lessee, separate forms are required for each lot. Refer to also [51-2115].

Lessee

[7-0020]

A lease to a minor (i.e. a person less than 18 years of age) is valid unless repudiated by the minor within a reasonable time after he/she attains majority. There is nothing to prevent a lease to a minor being registered on the indefeasible title, however, the endorsement will include reference to this fact. For more information on the requirements of an execution by a minor refer to Part 61, esp [61-3090].

If more than one lessee, the lessees will hold either as joint tenants or tenants in common. In a joint tenancy, each tenant's interest devolves to the other/s on death (if a natural person) or on dissolution (if a corporation). As a tenant in common, each lessee holds separate interests in land capable of transmission by will. (For more information on joint tenancy and tenancy in common, see Part 4, esp [4-0000].)

A lessee may be a corporation. Section 34 of the *Property Law Act 1974* permits a corporation to be a lessee, or a corporation and a natural person to be joint lessees.

A foreign person or foreign corporation may be a lessee.

A lessee may be a trustee or personal representative appointed under a will. A trustee may renew a lease pursuant to s. 39 of the *Trusts Act 1973*.

Term

[7-0030]

A lease must be for a definite term so that the commencement and termination dates are capable of being fixed with certainty. A lease may commence on a date in the past or in the future. A future lease will be void and not registrable if it takes effect later than 21 years from the date of the instrument purporting to create it (s. 102(3) of the *Property Law Act 1974*). The term of a future lease to a different lessee must not be coincident with the term, including further terms under options to renew, of a current lease, unless a concurrency is intended and expressed.

Leases expressed for a duration of short periods, whether the periods are continuous or otherwise, are capable of registration. Examples include leases for:

- certain hours of the day or night;
- specified days over a number of years; or
- the life of the lessor, the lessee or a named third person.

If granted by a trustee, a lease cannot exceed 21 years (s. 32(1)(e) of the *Trusts Act 1973*) unless the trust deed authorises leases for a greater term.

The term of a lease can be extended, either by lodging a new lease or by amending the term prior to the expiration of the term (s. 67 of the *Land Title Act 1994*).

(For the term of retirement village leases refer to [7-2130].)

Note: Only the initial term and first option period of the lease are recorded on the relevant title.

Mortgagee's Consent

[7-0040]

If there is a registered mortgage of the lot (as defined in ss. 4 and 38 of the *Land Title Act 1994*), the mortgagee's consent to a subsequent lease or amendment of lease is required for the lease or amendment to be valid against the mortgagee (s. 66 of the *Land Title Act*). This does not affect the validity of the lease against third parties, but protects the rights of the lessee if the mortgagee takes possession of the lot. However, the consent is not a prerequisite for registration and the lease will be registered on the assumption that the lessee does not intend to seek the consent.

¹Planning Body Approval

[7-0050]

All approvals required under the *Land Title Act 1994* or other Acts must be in accordance with that Act.

Planning body approval is required for:

- a lease of part of land for a term exceeding ten years (inclusive of further term/s pursuant to option/s to renew); or
- a lease of any part of a building which includes **part** of the land outside the building for a term exceeding ten years (inclusive of further term/s pursuant to option/s); or
- a lease of part of a lot in a building unit plan or group title plan or part of the common property (ss. 8 and 22 of the *Building Unit and Group Titles Act 1980*). This applies to only those developments that relate to a specified Act referred to in the *Body Corporate and Community Management Act 1997* which are:
 - (a) the *Integrated Resort Development Act 1987*; or
 - (b) the *Mixed Use Development Act 1993*; or
 - (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or
 - (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
 - (e) the *Sanctuary Cove Resort Act 1985*;

(s. 65(3A) of the Land Title Act and schedules 19 and 26 of the Sustainable Planning Regulation 2009).

However, planning body approval is not required for a lease of part of a lot in a lower plan under the Registration of Plans (H.S.P. (Nominees) Pty Limited) Enabling Act or the Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty Limited) Enabling Act.

An approval is current for six months from the date it was given (s. 50(4) of the Land Title Act).

Duty

[7-0060]

Under the provisions of s. 11 of the Revenue Legislation Amendment Act 2005 lease duty was abolished from 1 January 2006. This makes lease duty inapplicable in some circumstances. For an instrument of lease where the term commences on or after 1 January 2006 lease duty does not apply and is not required to be stamped. For a lease where the term commenced prior to 1 January 2006, lease duty will apply and the instrument will need to be stamped.

Under s. 426 of the *Duties Act 2001* the State is not liable to pay duty. However, when a lease to the State commenced before 1 January 2006 it still must be properly stamped. In effect the lease must bear a notation by either the Queensland Revenue Office or an authorised registered self assessor.

Covenants

[7-0070]

Sections 105, 106 and 107 of the *Property Law Act 1974* imply obligations on the lessor and lessee and powers on the lessor. These will have the same force and effect as if set out in the lease unless negated or modified by express covenant contained in the lease or another instrument (s. 49 of the Property Law Act).

In practice, covenants and conditions are contained in the lease itself or incorporated in either a Form 20 – Schedule or by reference to a registered ‘standard terms document’ in terms of ss. 169 and 170 of the *Land Title Act 1994*, or both.

Concurrent Lease

[7-0080]

A concurrent lease occurs when there are existing leases over some, or all, of the property recorded on title, and the registered owner/proprietor grants a lease encompassing the existing leased areas to a third party who then becomes the head lessor (they step into the shoes of the lessor). This lease is concurrent or simultaneous with the other leases on title. A concurrent lease should not be confused with a sub-lease. For information on sub-leases refer to [7-0140].

The concurrent lessee (the third party) takes on the responsibility of lessor and does not take exclusive possession of the existing leased areas. The lessees of the existing leases on title would pay rent to and negotiate terms with the concurrent lessee instead of the registered owner/proprietor.

A concurrent lease is valid if unregistered.² However such a lease for a period greater than three years should be registered to be indefeasible.

If A (registered owner/proprietor) leases to B and then grants a concurrent lease to C, for the duration of the concurrency of the two leases:

- C is B's lessor;
- B's rent is payable to C; and
- C may recover possession of B's lease (not A).

¹Easement

[7-0090]

Where the land being leased has the benefit of an easement, the lessee takes the benefit of such easement, whether or not this entitlement is recited in the lease. If the lessee is granted an easement over another part of the lessor's land in terms of covenants contained in the lease, the lessee can be granted a separate instrument documenting that easement for registration. Ancillary rights contained in lease covenants may refer to the use of lifts, passageways, toilets etc, but these are not capable of being registered as easements.

Merger of Lease

[7-0100]

If a lessee acquires the reversion (i.e. the fee simple or water allocation) or if the registered owner acquires an assignment of a lessee's interest, a merger of the lease occurs. Such a merger is not, however, automatic, as a merger by operation of law will only occur if the beneficial interest of the lessee's estate merges or is extinguished in equity (s. 17 of the *Property Law Act 1974*). A merger will not occur in equity unless it is intended by the parties. A sub-lease is not terminated on the merger of the head-lease in the fee simple or water allocation (s. 115 of the *Property Law Act*). To effect a merger, a Form 14 – Request to Record a Merger on the title is required (refer to Part 14, esp [14-2070]).

¹Option to Purchase

[7-0110]

An option to acquire the fee simple or other reversionary interest on or after the expiry of a lease (whether or not contained in a 'short lease' as defined in s. 4 of the *Land Title Act 1994*), must be registered to achieve indefeasibility (ss. 184 and 185(2) of the *Land Title Act*).

Amendment of Lease

[7-0120]

A registered lease may be amended by registering an instrument of amendment of lease (s. 67 of the *Land Title Act 1994*) (refer to Part 13, esp [13-2000]).

Option for Renewal

[7-0130]

If a lease contains an option for renewal, the option may be for a period longer than the initial term of the lease. There is no limit to the number of options a lease can contain.

¹Options to renew contained in:

- a registered lease with an initial term of more than three years; or
- a ‘short lease’ (as defined in s. 4 of the *Land Title Act 1994*) having an initial term which, together with further term/s pursuant to option/s, exceeds three years,

are indefeasible by registration (ss. 184 and 185(2) of the *Land Title Act*).

¹An option contained in an unregistered short lease is not indefeasible (s. 185(1)(b) of the *Land Title Act*).

¹A right to exercise an option for renewal is indefeasible by registration of the lease. If extensions of the lease term are unregistered (i.e. they are not made the subject of a new lease), the lessee loses the protection of indefeasibility in respect of any further options for renewal (refer to [7-0120] and [7-2150]).

Sub-Lease

[7-0140]

A sub-lease is a lease granted by the lessee from its leasehold estate. The term of the sub-lease must be less than the duration of the head lease. The termination date for the sub-lease must be at least one day before the termination date for the head lease. If the period is equal to or greater than the duration of the head lease, it will constitute an assignment and will not operate as a sub-lease, as there is no reversion to the head lease.

If a head lease is surrendered and renewed it is not necessary to surrender and renew any sub-lease as it is determined that the new lease would be as good and valid to all intents and purposes as if all the sub-leases had likewise been surrendered at or before the taking of such new lease (s. 113 of the *Property Law Act 1974*).

A sub-lease is not surrendered if the head lease is surrendered or merged in the fee simple or water allocation (s. 115 of the *Property Law Act*), but the sub-lease will take the reversion of the surrendered head-lease.

An option for renewal contained in a sub-lease cannot extend the term of the sub-lease beyond the duration of the head lease. In practice, an option contained in a sub-lease is exercised subsequent to and conditional upon the exercise of any option contained in the head lease.

¹Lease of Common Property under the *Building Units and Group Titles Act 1980* for Specified Acts

[7-0150]

The introduction of the *Body Corporate and Community Management Act 1997* limits the application of the *Building Units and Groups Titles Act 1980* to those developments under the provisions of the specified acts referred to in the *Body Corporate and Community Management Act*. The specified acts are:

- (a) the *Integrated Resort Development Act 1987*; or
- (b) the *Mixed Use Development Act 1993*; or
- (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or

- (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
- (e) the *Sanctuary Cove Resort Act 1985*.

Subject to the approval of the relevant planning body (refer to [7-0050]) and pursuant to a resolution without dissent, the body corporate may:

- grant a lease over part of the common property not leased to it for the purpose of creating additional common property; and
- grant a sub-lease over part of the common property leased to it as additional common property.

There is no provision in the Building Units and Group Titles Act which allows for the grant of a lease over the entire common property in a building units or group titles plan.

Legislation

[7-1000]

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

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

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

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

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

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

Practice

Lease

[7-2000]

To be registered, a lease is prepared on a Form 7 (version 7), together with covenants and conditions contained in a Form 20 – Annexure or a registered standard terms document identified by dealing number, or a combination of these.

Any lease prepared on a Form 7 (version 6 or earlier), can still be registered if current, however it will need to be accompanied by a properly completed and executed Form 20 – Lease Declaration. For more information on the use and completion of the Form 20 – Lease Declaration refer to [7-4500].

A lease is current if it is within the initial term of the lease.

Only one copy of the lease is to be presented for registration.

If there is a prior registered mortgage, the mortgagee's consent will not be a prerequisite to registration.

Lodgement fees are payable.

Execution

[7-2010]

The lessor and lessee must execute Item 10 of the Form 7.

For executions refer to Part 50 – Companies and Corporations, esp [50-0130] [50-0140] and [50-2000] and Part 61 – Witnessing and Execution of Instruments or Documents, esp [61-3000].

Rental / Consideration

[7-2020]

Item 7 of the Form 7 provides for rental / consideration to be stated. If there is insufficient space, Item 7 may show 'See Schedule'. Failure to insert rental details will prevent registration of the lease.

Consent

[7-2030]

Consents should be prepared on Form 18. All consents to a lease should be bound into the lease. Consents to a lease or amendment of lease are required by:

- any mortgagee of the fee simple or water allocation if the lease is to be valid against the mortgagee (s. 66 of the *Land Title Act 1994*). However, consents of mortgagees are not a prerequisite to registration.
- ¹a life tenant, if a lease is granted by a trustee, personal representative or registered proprietor and a charge for a life estate is registered.

¹Planning Body Approval

[7-2035]

Approval of the relevant planning body is required for leases and some instruments that affect leases of any part of a lot external to a building. Approval is required to a lease of:

- part of a lot;
- part of the common property in a community titles scheme;
- part of a lot or part of the common property, in a building units or group titles plan for those developments that relate to a specified Act referred to in the *Body Corporate and Community Management Act 1997* (refer to [7-0050]);

if the term of the lease (including option/s to renew) is more than ten years.

Approval is required to any amendment of a lease that extends the term (including option/s to renew) beyond ten years if the lease has not been approved.

The instrument of lease or amendment must be lodged within six months of the planning body approval.

Note: Leases of the whole or part of a building, irrespective of the number of the floors, or the term of the lease, do not require planning body approval unless part of the land outside the building is also included.

Lease of Water Allocation – Special Requirements

[7-2036]

Water Allocation Managed under a Resource Operations Licence

In addition to other relevant requirements for a lease, a lease of a water allocation managed under a resource operations licence must be accompanied by a Form W2F152 — Notice to registrar of water allocations of existence of water supply contract.

Water Allocation Not Managed under a Resource Operations Licence

In addition to other relevant requirements for a lease, a lease of a water allocation not managed under a resource operations licence must be accompanied by a Water Allocation Dealing Certificate.

¹Lease by Body Corporate for a Community Titles Scheme

[7-2037]

When the body corporate of a community titles scheme executes a lease of all or part of the common property, the execution must be completed in accordance with the relevant regulation module for the scheme. For further information refer to Part [45-2060].

Planning body approval is only required where the term of the lease (including option/s to renew) is more than ten years.

For leases by a body corporate of a lot included in the scheme, refer to Part [45-2020] for further information.

Requirements Specific to Lessee

Co-Lessees

[7-2040]

If there is more than one lessee, Item 3 of the Form 7 must show how the lessees intend to hold the lease between them. Where the lease does not show whether the co-lessees are to hold as tenants in common or as joint tenants, the lease will be requisitioned for the item to be completed. If holding as tenants in common, the share each lessee intends to hold must also be shown.

Trustee

[7-2050]

If the lessee is to be recorded as a trustee, the words ‘as trustee’ must be inserted after the lessee/s name/s in Item 3 refer to [7-4030].

There is no longer a requirement to provide details of the trust instrument when lodging a lease to a trustee lessee (e.g. by depositing a certified copy of the trust deed or referring to a previous dealing where the trust deed was deposited).

For the specific requirements in relation to the transfer of a lease interest to a trustee lessee using a Form 1 – Transfer, refer to Part 1, esp [1-2390].

Where a lessee holds as trustee and wishes to appoint a new trustee, this should be done by using a Form 1 – Transfer, refer to Part 1, esp [1-2400] to [1-2430].

Foreign Person or Foreign Corporation

[7-2060]

If a lessee is a company incorporated outside of Australia that is not registered in Australia under the *Corporations Act 2001* (Cth) (with an ARBN), evidence of incorporation from that country must be lodged, together with a translation by an acceptable interpreter if the evidence of incorporation is in a language other than English.

¹If the term of a freehold lease or sub-lease of State leasehold to a foreign person (foreign individual, foreign corporation or trustee of a foreign trust as defined in the *Duties Act 2001*) exceeds 25 years (inclusive of further term/s available under any option/s), a Form 25 – Foreign Ownership Information must be lodged with the Form 7 for noting on the Foreign Ownership of Land Register (refer to Part 25 and the *Foreign Ownership of Land Register Act 1988*). Please note that a foreign individual does not include a permanent resident of Australia.

Mortgagee in Possession

[7-2070]

A mortgagee in possession may only grant a lease if there is express authority to do so in the mortgage instrument as there is no specific legislative authority in Queensland. Before a mortgagee in possession may lease the mortgaged property, evidence by way of a declaration of the mortgagor's default and of service of a notice of demand must be produced. The mortgagee's lease in Form 7 must be accompanied by a declaration as to the default and service of the notice on the mortgagor (preferably in Form 20), with a copy of the notice attached. Where a mortgagee enters into subsequent leases, evidence of any continuing default by the mortgagor must be produced.

One of the effects of the mortgagee acting in this manner is to encumber the mortgagor's right to redemption. Accordingly, if the mortgage is redeemed, the registered lease (granted by the mortgagee) remains as an encumbrance over the property affected. Similarly, where the property is sold or the mortgagee exercises its power of sale, any registered lease granted by the mortgagee remains as an encumbrance on the title of the purchaser.

Where a mortgagee in possession has granted a lease:

- the mortgagee in possession may deal with, or execute a surrender of, the lease as lessor; or
- a person other than the mortgagee in possession may obtain an order of the court to remove the lease.

Where the mortgage is no longer registered on title, the current lessor may deal with the lease.

[7-2080] deleted

Merger of Lease

[7-2090]

Where there is a merger of lease, the lessee may make application in Form 14 – Request to Record Merger to record the merger of lease. This is a purely voluntary application and will not be requested by requisition.

The consent of any mortgagee of the lease must also be deposited. A duty notation is not required. However, lodgement fees are payable.

Concurrent Lease

[7-2100]

To register a concurrent lease on the indefeasible title, the Registrar will examine the lease to ensure that the appropriate statement at item 9 of the Form 7 has been completed.

Both the original and concurrent leases will remain on the title.

Prior Registered Lease

[7-2110]

The following table determines the requirements for surrender, cancellation or removal of registered leases, in cases where a lease is lodged ('New Lease') and there is a prior registered lease on the indefeasible title or water allocation title ('Existing Lease').

- 'Extensions' refers to any period for which the initial term of the lease has been extended pursuant to a Form 13 – Amendment of Lease;
- 'Option Period' refers to the period of a further term pursuant to an option to renew.

This table only applies when the New Lease is over the same premises or interest (being a lot, a water allocation, or part of a lot) as the Existing Lease. ¹It does not apply to a lease of a different part of a lot (e.g. a different shop in a shopping centre, or a different Lease area on a Survey Plan).

Where an Existing Lease is being surrendered by operation of law – a letter from the lessee or the lessee's solicitor should be deposited confirming that written notice of the surrender by operation of law has been given to each registered mortgagee or sub-lessee of the Existing Lease including the date and method by which each notice was given (s. 69(3) of the *Land Title Act 1994* and s. 328(4) of the *Land Act 1994*). If a Form 18 – Consent from a registered mortgagee or registered sub-lessee of the Existing Lease is deposited this will be accepted as evidence that the required notice has been given to the consenting party.

For further information regarding prior leases, refer to Part [7-2230].

Requirements for Lodgement			
New Lease Scenario	Lodged during initial term (including extensions)	Lodged during first option period	Lodged when initial term (including extensions) and option period have expired
New Lease to Same Lessee	<p>New Lease for residual, longer or shorter period than term or term plus Extensions:</p> <ul style="list-style-type: none"> A letter from the lessee or the lessee's solicitor confirming that written notice of the surrender by operation of law has been given to each registered mortgagee or registered sub-lessee of the Existing Lease (including the date and method by which each notice was given). Appropriate statement at Item 9 of Form 7 or on Form 20—Lease Declaration must be completed. <p>(If a Form 18 – Consent from a registered mortgagee or registered sub-lessee is deposited this will be accepted as evidence that the required notice has been given to the consenting party)</p> <p><u>Existing Lease surrendered by operation of law.</u> Existing Lease and associated dealings (except sub-leases) removed from title.</p>	<p>New Lease for residual, longer or shorter period than the Option Period:</p> <ul style="list-style-type: none"> A letter from the lessee or the lessee's solicitor confirming that written notice of the surrender by operation of law has been given to each registered mortgagee or registered sub-lessee of the Existing Lease (including the date and method by which each notice was given). Appropriate statement at Item 9 of the Form 7 or on Form 20 – Lease Declaration must be completed. <p>(If a Form 18 – Consent from a registered mortgagee or registered sub-lessee is deposited this will be accepted as evidence that the required notice has been given to the consenting party)</p> <p>Existing Lease and associated dealings (except sub-leases where surrendered by operation of law) removed from title.</p>	<p>Appropriate statement at Item 9 of Form 7 or on Form 20 – Lease Declaration must be completed.</p> <p><u>Existing Lease expired.</u> Existing Lease removed from title.</p>
New Lease to Different Lessee	<p>New Lease for residual, longer or shorter period than term or term plus Extensions:</p> <ul style="list-style-type: none"> Concurrent lease if indicated by completion of the appropriate statement at Item 9 of the Form 7 or on Form 20 – Lease Declaration. <p>Both leases remain on title.</p> <ul style="list-style-type: none"> If not concurrent lease, either: <ul style="list-style-type: none"> complete the appropriate statement at Item 9 of the form 7 or on Form 20 – Lease Declaration or surrender (Form 8*) or determination (Form 14**) of Existing Lease required. <p>Existing Lease removed from title by surrender or determination.</p>	<p>New Lease for residual, longer or shorter period than the Option Period:</p> <ul style="list-style-type: none"> Concurrent lease if indicated by completion of the appropriate statement at Item 9 of the Form 7 or on Form 20 – Lease Declaration. <p>Both leases remain on title.</p> <ul style="list-style-type: none"> If not concurrent lease, either: <ul style="list-style-type: none"> complete the appropriate statement at item 9 on the Form 7 or on Form 20 – Lease Declaration or surrender of Existing Lease (Form 8*); or determination of Existing Lease (Form 14**) required. <p>Existing Lease removed from title.</p>	<p>Appropriate statement at Item 9 of Form 7 or on Form 20 – Lease Declaration must be completed.</p> <p><u>Existing lease expired.</u> Existing Lease removed from title.</p>
No New Lease – Lessor wants Existing Lease Removed from Title	<p>Surrender (Form 8*) or determination (Form 14**) of Existing Lease required.</p> <p>Existing Lease removed from title by surrender or determination.</p>	<p>Surrender (Form 8*) or determination (Form 14**) of Existing Lease or Request to Remove Lease from title with declaration by lessor that option not exercised (Form 14**).</p> <p>Existing Lease removed from title by surrender, determination or Request to Remove Lease.</p>	<p>Request to Remove Lease from title (Form 14 – no lodgement fee is payable and no duty notation is required).</p> <p>Existing Lease removed from title.</p>

* A lodgement fee is payable (see the Titles Fee Calculator available online) and a duty notation is required.

** A lodgement fee is payable (see the Titles Fee Calculator available online) and a duty notation is required if the lease commenced before 1 January 2006.

Amendment of Lease

[7-2120]

A registered lease is amended by lodging a Form 13 – Amendment of Lease (refer to Part 13, esp. [13-2000]).

¹Retirement Village Lease

[7-2130]

Retirement village leases are usually granted for a term of years or the life of a lessee (or the surviving joint lessee). The latter leases terminate upon the death of the lessee (or surviving lessee). In leases with this term, the words relating to the termination date in Item 6 of the Form 7 may be deleted and the words ‘or on the death of the lessee’ as appropriate, inserted together with or in place of the termination date. Item 6 must not state words such as ‘refer to clause [number] in the lease’.

Retirement village leases often contain a power of attorney clause, where the lessee grants power to the lessor to surrender the lease if an event occurs that would end the lease. Such powers of attorney cannot be used to execute documents in cases of death or mental incapacity of the lessee unless they are irrevocable in terms of s. 10 of the *Powers of Attorney Act 1998* (see further Part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney).

Death of Lessee

[7-2140]

On the death of a joint lessee, a Form 4 – Request to Record Death should be lodged. On the death of a sole lessee or a lessee tenant in common, a Form 5, 5A or 6 – Transmission by Death Application should be lodged. In either case, no copy of the lease will be required to accompany the application.

If a sole or surviving lessee of a lease for the life of a lessee dies during the currency of the lease, the death of the lessee must be recorded, by lodging a Form 4 – Record of Death, to extinguish the lease from the register. This request must be made either by the personal representative or the registered owner if authority to do so is contained in the lease. Such request must be supported by evidence of the death of the lessee and the applicant’s authority to act in that capacity (e.g. the original probate).

For more information refer to Part 4, esp [4-4060] or Part 5.

Option for Renewal

[7-2150]

Registering the exercise of an option to renew a lease may be done by registering a new lease for the term specified in the options field in Item 6 of the original lease. Duty must be noted, if applicable (refer to [7-0060]). Lodgement fees are payable.

The Registrar may remove expired leases from the title in certain circumstances.

(For more information on the removal of leases from the register, refer to [7-2110] and [7-2200].)

Option to Purchase

[7-2160]

No reference is made to options to purchase in lease endorsements on the indefeasible title, nor is an enquiry made by the Registrar whenever a subsequent transfer is lodged to ensure that the option has not been disregarded.

Sub-Lease

[7-2170]

The formalities required for the creation and registration of a sub-lease are similar to those for a lease. Leases may contain covenants prohibiting or restricting sub-letting, but the Registrar will not review the head-lease to ensure that such prohibitions or restrictions are observed. If a sub-lease is presented in registrable form, it will be registered without investigation. The sub-lease must be in Form 7 with the covenants contained in an annexed Form 20 – Schedule or incorporated by reference to a registered ‘standard terms document’, or a combination of both.

Duty must be noted, if applicable refer to [7-0060]. Lodgement fees are payable.

A Form 18 – General Consent from any mortgagee of the lot may be obtained and lodged but this is not a prerequisite to registration.

¹It was previous practice, when a lot was subject to a number of leases (e.g. shopping centres), to record all transactions relating to a lease on the original copy of the registered lease held in the register and not on the indefeasible title. To ensure that all recordings for leases registered prior to April 1994 are identified, it is prudent to search both the indefeasible title and the registered original lease.

¹Lease of trust land under the *Land Act 1994*

[7-2175]

A trustee may lease all or part of trust land (a reserve or deed of grant in trust) pursuant to section 57 of the Land Act.

The Minister’s written approval to a trustee lease is required under section 57 of the Land Act other than in the following circumstances:

- the trustee lease is a trustee lease (construction), i.e. a lease of trust land to the State for the construction of transport infrastructure and the provision of transport services on the trust land or;
- the trustee is not the State or a statutory body as defined in the Land Act and a copy of a written authority for the lease under section 64 of the Land Act is deposited with the trustee lease or;
- the trustee is the State and a letter signed by the Minister for the relevant State department as trustee, or the Minister’s delegate appointed under section 53A of the Land Act, is deposited with the trustee lease. The letter must state:
 - (a) that the trustee of the trust land is the State; and that
 - i. the purpose of the trustee lease is consistent with the purpose for which the trust land was reserved or granted in trust; OR
 - ii. the purpose of the trustee lease is inconsistent with the purpose for which the trust land was reserved or granted in trust and the trustee has a management plan for the trust land that satisfies the requirements of section 57(6) of the Land Act, and
 - (b) in granting the trustee lease, the trustee has complied with the requirements of section 28 of the Land Act.
- the trustee is a statutory body and a letter from the statutory body, signed by a suitably authorised officer, is deposited with the trustee lease. The letter must state:

- (a) that the trustee is a statutory body as defined under the Land Act (please see definition below) and that
- i. the purpose of the trustee lease is consistent with the purpose for which the trust land was reserved or granted in trust; OR
 - ii. the purpose of the trustee lease is inconsistent with the purpose for which the trust land was reserved or granted in trust and the trustee has a management plan for the trust land that satisfies the requirements of section 57(6) of the Land Act, and
- (b) that in granting the trustee lease, the trustee has complied with the requirements of section 28 of the Land Act.

A statutory body under the Land Act is:

- a government entity within the meaning of the *Government Owned Corporations Act 1993* or
- a local government or
- a port authority under the *Transport Infrastructure Act 1994*

The meaning of a government entity under the *Government Owned Corporations Act 1993* is:

- (a) a government company or part of a government company; or
- (b) a State instrumentality, agency, authority or entity or a division, branch or other part of State instrumentality, agency, authority or entity; or
- (c) a department or a division, branch or other part of a department; or
- (d) a Government Owned Corporations Act entity; or
- (e) an entity prescribed by regulation

Transfer of Lease

[7-2180]

Refer to Part 1 – Transfer, esp [1-2480].

Dealing with Expired Lease

[7-2190]

Where a dealing with a lease is lodged after the initial term and any first unexercised option period, it will be registered if it was executed **in** the initial term.

Where a dealing with a lease is lodged after the initial term and any first unexercised option period, it will not be registered if it was executed **after** the initial term.

Where a dealing with a lease is lodged in the first option period which has not been exercised, the following will apply:

- if the dealing has been executed in the initial term, the dealing may be registered
- if the dealing has been executed in the first option period which has not been exercised the dealing must be preceded by a Form 13 – Amendment to extend the term of the lease.

An amendment of a lease must not be lodged after the lease's term (which includes any first unexercised option period) has ended (s. 67(2)(c) *Land Title Act 1994*).

Cancellation of Expired Lease

[7-2200]

The Registrar may remove expired leases from the title in certain circumstances. Additionally, where the appropriate form is lodged, an expired lease will be removed (refer to [7-2110] for details).

Where a new lease over:

- the same lot; or
- ²same part of a lot

is lodged, the Registrar will remove an existing lease, in which the initial term and options have expired, in conjunction with an examination and registration of the new lease.

Where there is no option to renew or the period equivalent to a further term available under an option to renew has expired and no amendment has been lodged to extend the lease, the registered owner may at any time apply in a Form 14 – General Request to cancel the lease and remove it from the title. No lodgement fee is payable.

Where the lease contains an option for renewal and the period equivalent to a further term available under the option has not expired, the Form 14 – General Request to remove the lease from the title must be accompanied by a Form 20 – Declaration by the lessor confirming that the option was not exercised by the lessee. A solicitor or other authorised agent of the lessor may also make this statutory declaration provided the wording used in the statement reflects that they are authorised to do so. The Request may deal with multiple leases on one title or one lease on multiple titles. Lodgement fees are payable.

²It is recommended that instruments that require the creation of an indefeasible title be preceded by a Form 14 – Request to Remove all expired leases. The Request should be made by the registered owner (lessor) and should include all leases:

- (a) where the initial term, including any extensions registered by a Form 13 – Amendment of Lease, has expired and no option for renewal exists;
- (b) where the initial term and any period equivalent to a further term available under an option to renew have expired; and
- (c) with an option to renew that was not exercised by the lessee.

No lodgement fees are payable for leases in (a) or (b). Lodgement fees are payable for leases in (c). A Request relating to leases in (c) must be supported by a declaration by the registered owner (lessor) to the effect that the option was not exercised. No duty notation is required for requests for leases in (a) or (b). A duty notation is required for a request for a lease in (c) if the term of the lease commenced prior to 1 January 2006.

A single Form 14 – Request to Remove expired leases may be used for multiple leases over any number of lots owned by one registered owner.

See Example 4 in Part 14 – General Request for an example of a Request to remove an expired lease from the title.

¹Survey requirements of a lease over part of a lot

[7-2205]

Item 5 of the Form 7 contains a description of the premises being leased. If the premises being leased comprises the whole of a lot, the lease extent and land description fields must be completed.

If part of a lot is leased, a plan of survey identifying the part of the land must be lodged to precede the instrument of lease. If part of a building and part of the lot outside the building is leased, a sketch of the part of the building must be deposited, and a plan of survey identifying the part of the land is required to be lodged to precede the instrument of lease. The plan must be prepared in accordance with Direction 4.8.2 and either Direction 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans (**RTDPP**).

A sketch plan contained in a prior registered lease is not acceptable for identifying a leased area in a new lease of part of a lot.

Leases are to be described on plans of survey by an alpha descriptor, for example – Lease A (etc) in Lot [number] on [Plan type and number] (e.g. Lease A in Lot 1 on SP123456). For the requirements for describing leases on plans refer to Direction 4.8.3 of the RTDPP (see also Part 21 – Plans and Associated Documents, esp [21-2090]).

¹Sketch

[7-2210]

If part of a building on a lot is leased, the premises must be sufficiently identified, either by means of a description satisfactory to the Registrar or a sketch, which conforms to the standards, required by the Registrar (s. 65 of the *Land Title Act 1994*). An additional fee is payable for the examination of a sketch. For specific information on the requirements for a sketch, refer to Directions 5.2 and 5.3 of the RTDPP.

A lease sketch must boldly outline that area which is the subject of the lease, such that the leased area is clearly and unambiguously identified.

When the roof of a building is leased, it is regarded as being a lease of land. Consequently, the plan must define the roof height and the leased area as a volumetric parcel. The plan must be drawn to conform with the usual standards required for a volumetric plan of part of the land and the normal planning body approval requirements apply. The lease of space for signage on the wall of a building will require similar attention.

[7-2220] to [7-2340] deleted

¹General Comments

[7-2211]

Architectural or building plans are not acceptable.

Sketches must form part of the lease.

Prior to registration, when an original sketch plan in an instrument is deficient and is replaced by a new one, the original sketch plan should be marked 'cancelled' and initialled by all parties. The new sketch plan should be signed by all parties. Sketches may also be amended by the surveyor who certified the sketch in accordance with Direction 23 of the RTDPP.

After registration, amendments to the area of a lease are not permitted (s. 67(2) of the *Land Title Act 1994*).

Approval of the relevant planning body on Form 18 is required to some leases (refer to [7-2035]).

Note: Leases of the whole or part of a building, irrespective of the number of the floors, or the term of the lease, do not require planning body approval unless part of the land outside the building is also included.

[7-2355] and [7-2360] deleted

¹Examples of Sketches

[7-2212]

Refer to Direction 5.11 of the RTDPP for examples of sketches.

Description of Premises Being Leased

[7-2220]

Every lease must clearly and unambiguously identify the premises being leased. The types of leased premises will vary from very simple to complex. For further information refer to the guide to completion in Part [7-4050].

The description of each leased premises must be unique and cannot conflict with other registered interests at the time of lodgement, unless the conflict is addressed in Item 9 on the Form 7. For further information refer to Part [7-2230] and Directions 4.8.3, 5.2, and 5.3 of the RTDPP.

Previous Leases (Leased Area Conflicts)

[7-2230]

When a lease form is completed, the lessor must state whether the lease conflicts with any other lease lodged or registered on title, and if so, provide details of that conflict.

Details of how the conflict statements regarding previous leases should be completed are contained in the guide to completion for the Form 7 in Part [7-4090].

When a lease is lodged, the lodger must ensure that the statements relating to conflicts with previous leases are correct at the time of lodgement. If the statement in Item 9 on the Form 7 is incorrect after execution (but before lodgement), this must be corrected prior to lodgement either by:

- dealing with the conflict, refer to Part [7-2110]; or
- altering the statement on the form using the prescribed process, refer to Part [59-2040].

Where a previous version of a Form 7 is lodged (version 6 or earlier), the lodger must ensure the statements regarding previous leases (contained in paragraphs 4-7 of the Form 20 – Lease Declaration) are correct at the time of lodgement. If any statements in the Form 20 – Lease Declaration are not correct, the conflict will need to be dealt with either by:

- dealing with the conflict, refer to Part [7-2110]; or
- prepare a new Form 20 – Lease Declaration with updated statement(s).

Where a lease is lodged and a conflict in leased premises is not adequately dealt with by the statements contained in the previous leases section of the Form or Lease Declaration, it may be requisitioned, and the conflict will need to be dealt with.

Lease Type (Purpose)

[7-2240]

The lessor must select the relevant lease type for the transaction. This is determined by the purpose of the lease rather than the nature of the lessor.

The available lease types are: Residential, Commercial, Residential and Commercial, Government, and Water.

Residential leases under the *Residential Tenancies and Rooming Accommodation Act 2008* are generally not capable of registration. There are some exceptions which can be registered, e.g. where a life tenancy has been granted.

Commercial includes most other lease types that would not be described as Residential or Government and would encompass purposes such as office, retail, industrial, not-for-profit, storage, sporting, and recreation.

Residential and Commercial would apply where a single lease is used for a combination of these two purposes.

Government means any lease for a Government purpose, whether that be to a local government, or to a department or agency of a State or the Commonwealth.

Water applies where the lease is for a water allocation, and it may be combined with another lease type where appropriate.

Forms

General Guide to Completion of Form 7 – Lease/Sublease

[7-4000]

For general requirements for completion of forms refer to Part 59 – Forms, esp [59-2000].

Dealing Number



OFFICE USE ONLY

Privacy Statement
Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Titles Queensland website.

1. Lessor BIG SHOPPING CENTRE LTD A.C.N. 123 456 789	Lodger (Name, postal address, E-mail & phone number) Name: Busy Law Postal Address: 1234 Queen St, Brisbane QLD 4000 Email: info@busylaw.com.au Phone Number: 07 3000 1234	Lodger Code 165C
--	---	----------------------------

2. Lot on Plan Description (Use Form 20 - Enlarged Panel if multiple lines required) LOT 123 ON SP654321	Title Reference 79876543
--	------------------------------------

3. Lessee Given name(s)	Surname/Company name and number SMALL BAKERY PTY LTD A.C.N. 789 654 321	Tenancy / Capacity AS TRUSTEE
-----------------------------------	--	----------------------------------

4. Interest being leased FEE SIMPLE	Dealing Number (if applicable):
---	--

5. Description of premises being leased (delete statements with a * if not applicable)	
Lease extent: Part of a Building *Building premises designation: Shop 306 *Building level: Level 3 *Building identifier: Building A *Building sketch reference: MPS 1345 v1	Land description: Lot 123 on SP654321

6. Term of lease Commencement date/event: 22/04/2025 Expiry date: 21/05/2028 and/or Event: Options: 2 x 3 Years	7. Lease Details Rental/Consideration: \$36,000 plus GST per annum Lease Type: Commercial Area/Volume: 67 Square Metres
---	---

8. Terms and Conditions (delete statements with a * if not applicable) (a) Document Reference - Nil; (b) Additional terms and conditions: *the attached schedule

9. Previous Leases (delete statements with a * if not applicable) The Lessor confirms that: *the time for the exercise of the option in a registered Lease has ended and the option has not been exercised for Lease no. 712345678

10. Grant/Execution The Lessor leases to the Lessee, and the Lessee accepts the lease of, the premises described above on the terms and conditions in this lease and the Lessee acknowledges the amount payable or other consideration for the lease. Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994
--

<div><i>J.Preston</i>Signature John James Prestonfull name Solicitorqualification</div>	<div>22 / 04 / 2025 Execution Date</div>	<div>Big Shopping Centre Ltd A.C.N 123 456 789 by its duly appointed attorney Roland McKenzie under power of attorney No. 812345667 <i>McKenzie</i> Lessor's Signature</div>
<div>Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 e.g. Legal Practitioner, JP, C Dec) signaturefull namequalification</div>	<div>19 / 04 / 2025 Execution Date</div>	<div>Van Nguyen Sole Director and Secretary Small Bakery Pty Ltd A.C.N. 789 654 321 <i>Vnguyen</i> Lessee's Signature</div>
<div>Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 e.g. Legal Practitioner, JP, C Dec)</div>		

Item 1 - Lessor**[7-4010]**

Insert the full name of lessor(s) or, in the case of a sub-lease, the full name of the lessee under the head-lease.

²If the lessor is a body corporate under a community titles scheme then insert 'Body Corporate for [name of scheme] community titles scheme [scheme number]' e.g. 'Body Corporate for Seaview community titles scheme 1234'.

If the lessor holds on trust or as a personal representative, then this must be stated, e.g. '[name of lessor] as Trustee' or '[name of lessor] as personal representative'.

If there is insufficient space, any lessors not included on the Form can be included on a Form 20 – Enlarged Panel. Refer to Part [20-2020] for more information.

Item 2 – Lot on Plan Description and Title Reference**[7-4020]****¹Freehold 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.

The entire panel of Item 2 must be completed.

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

Item 2 must contain the description of the lot or lots and the title reference or references for the land that is affected by the lease, for example:

- for a multi-lot title, include only the descriptions of the lot or lots that the lease area spatially affects;
- where the lease is of part of a building and the building is situated on more than one lot or one title include only the lot or title that the lease area spatially affects.

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.

All information needed to complete Item 2 will appear on a search of the water allocation title.

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

Multiple Titles

Where a lease is over multiple titles, the first title should be completed on the Form 7, and any remaining titles or lines should be completed on a Form 20 – Enlarged Panel. Refer to Part [20-2020] for further information.

Item 3 - Lessee**[7-4030]**

Insert the lessee(s) full name and tenancy if there is more than one lessee.

If holding as tenants in common, the share each lessee intends to hold must also be shown.

If the lessee is to be recorded as a trustee, the words 'as trustee' must be inserted after the lessee(s) name(s) in Item 3. There is no requirement for a Form 20 - Trust Details Form to be deposited or other details of the trust instrument to be provided. See Part [7-2060].

For example:

3. Lessee

Given name(s)	Surname/Company name and number	Tenancy/Capacity
JOHN JAMES	PRESTON	AS TRUSTEE

¹If the lessee is a body corporate under a community titles scheme then insert 'Body Corporate for [name of scheme] community titles scheme [scheme number] e.g. 'Body Corporate for Seaview community titles scheme 1234'.

If there is more than one lessee, insert the name of the first lessee in Item 3 and include all remaining lessees on a Form 20 – Enlarged Panel. Refer to Part [20-2020] for further information.

Item 4 – Interest being leased**[7-4040]**

Insert 'fee simple' or 'water allocation'. If a sub-lease, the dealing number of the head lease must also be completed.

Item 5 – Description of premises being leased**[7-4050]**

The fields which need to be completed in Item 5, will depend upon the type of premises that is being leased e.g. 'whole of the land' or 'part of a building'.

This section is comprised of various sub-headings which correspond with the available fields in Item 5.

Example of Item 5, showing the fields that can be completed:**5. Description of premises being leased** (delete statements with a * if not applicable)

Lease extent:

Land description:

*Part of land area description:

*Building premises designation:

*Building level:

*Building identifier:

*Building sketch reference:

The first step in completing Item 5, is to identify which of the fields need to be completed. Statements in Item 5 of the Form 7 that are marked with an '*' and are not applicable to the type of premises being leased must be either deleted or ruled through.

Where only one premises is being leased, complete the relevant fields to provide the description of the premises.

Where there are multiple premises being leased, a separate description (Item 5) for each leased premises must be provided. A Form 20 – Enlarged Panel should be used in these instances. Refer to Part [20-2020] for further information.

Which Fields in Item 5 need to be completed?**[7-4051]**

The Lease Extent and Land Description fields must be completed for all leases; the table below shows which other fields in Item 5 may be required for each type of leased premises:

Example Number	Type of Leased Premises	Item 5 Fields					
		Lease Extent	Part of Land Area Description	Building Premises Designation	Building Level	Building Identifier	Building Sketch Reference
1	Whole of the land	✓					
2	Part of the land	✓	✓				
3	Whole of a building • only building on title	✓		⊙		✓	⊙
4	Whole of a building: • more than one building on title	✓		✓		✓	✓
5	Part of the building: • only building on title • whole level being leased	✓		⊙	✓	✓	⊙
6	Part of the building: • only building on title • part of level being leased	✓		✓	✓	✓	✓
7	Part of the building: • multiple buildings on title • whole level being leased	✓		✓	✓	✓	✓
8	Part of the building: • multiple buildings on title • part of level being leased	✓		✓	✓	✓	✓

✓ Must Complete

⊙ Complete if a sketch is deposited which includes this information.

Examples

The examples of the various lease types which have been included below show the fields which should be completed for each premises type. In these examples, the inapplicable statements have been deleted entirely.

Example 1 - Whole of the Land:

[7-4051-1]

Where the lease is for the **Whole of the Land** (a lease of the whole of one or more lots) the following fields must be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Whole of the land

Land description: Lot 1 on
SP789101

Example 2 - Part of the Land

[7-4051-2]

Where the lease is for **Part of the Land** (a lease of part of one or more lots), the following fields must be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Part of the land

*Part of land area description: Lease A on SP123456

Land description: Lot 1 on
SP789101

Example 3 – Whole of a Building – Only building on the Title

[7-4051-3]

Where the lease is for the **Whole of a Building**, if the lease is the only building on the relevant title the following fields will need to be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Whole of a Building

*Building identifier: the only building

Land description: Lot 1 on
SP789101

Example 4 – Whole of a Building - More than one building on the Title

[7-4051-4]

Where the lease is for the **Whole of a Building**, if the lease is not the only building on the relevant title the following fields will need to be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Whole of a Building

*Building premises designation: Building 3

*Building identifier: Building 3

*Building sketch reference: MPS 1345 v1

Land description: Lot 1 on
SP789101

Example 5 – Part of a Building – Only Building on Title – Whole level being leased

[7-4051-5]

Where the lease is for **Part of a Building** of the **Only building on the title** for a **Lease of whole level** the following fields will need to be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Part of a Building
 *Building level: Ground Floor
 *Building identifier: the only building

Land description: Lot 1 on
 SP789101

Example 6 – Part of a Building – Only Building on Title – Part of Level being leased**[7-4051-6]**

Where the lease is for **Part of a Building** of the **Only building on the title** for a **Lease of part of the level** the following fields¹ will need to be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Part of a Building
 *Building premises designation: Shop 5
 *Building level: Ground Floor
 *Building identifier:¹ the only building
 *Building sketch reference: MPS 1345 v1

Land description: Lot 1 on
 SP789101

¹ Insert a specific Building identifier if one is completed on the sketch (e.g. Building A)

Example 7 – Part of a Building – Multiple Buildings on Title – Whole level being leased**[7-4051-7]**

Where the lease is for the **Part of a Building** where there are **Multiple buildings on the title** for a **Lease of the whole level** the following fields will need to be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Part of a Building
 *Building level: Ground Floor
 *Building identifier: Building A
 *Building sketch reference: MPS 1345 v1

Land description: Lot 1 on
 SP789101

Example 8 – Part of a Building – Multiple Buildings on Title – Part of a Level being leased**[7-4051-8]**

Where the lease is for the **Part of a Building** where there are **Multiple buildings on the title** of a **Lease of part of the level** the following fields will need to be completed:

5. Description of premises being leased (delete statements with a * if not applicable)

Lease extent: Part of a Building
 *Building Premises Designation: Shop 5
 *Building level: Ground Floor
 *Building Identifier: Building A
 *Building sketch reference: MPS 1345 v1

Land description: Lot 1 on
 SP123465

Land Description**[7-4052]**

Complete the Land Description for the parcel of land in which the premises being leased is located.

The ‘Land Description’ must only include the ‘Lot on Plan Description’ for the land containing the premises being leased. Although the ‘Lot on Plan Description’ may be identical to that inserted in Item 2, it is not permissible to insert the words ‘See item 2’.

Lease Extent Example	Land Description Example	Form to be Completed
Whole of the Land	Lot 1 on SP789101	Only on Form 7
Whole of a Building	Lots 1-2 on SP789101	Only on Form 7
Multiple premises on one lot <ul style="list-style-type: none"> • Part of the Land, and • Part of the Building. 	Lot 1 on SP12345 Lot 1 on SP12345	Form 7 Form 20 – Enlarged Panel
Multiple premises over multiple lots <ul style="list-style-type: none"> • Part of the Land, and • Part of the Building. 	Lot 1 on SP12345 Lot 2 on SP12345	Form 7 Form 20 – Enlarged Panel

Where there are multiple premises (e.g. part of the land and part of a building), the whole of Item 5 must be repeated for each of the premises being leased using a Form 20 – Enlarged Panel, refer to Part [20-2020]

Lease Extent

[7-4053]

Where the whole of every lot or the whole of every water allocation in the title(s) described in Item 2 is being leased, insert ‘Whole of the land’, or ‘Whole of the lot(s)’ or ‘Whole of the water allocation(s)’.

Where only part of the land is being leased, insert ‘Part of the land’.

If the whole of a building is being leased, insert ‘Whole of a building’.

If only part of a building is being leased, insert ‘Part of a building’.

Part of Land Area Description

[7-4054]

Use only for leases of part of the land (and not leases of part of a building).

If only part of the land described in Item 2 is being leased, insert in Item 5 ‘Lease [identifier] on SP [number] (must be a survey plan that has been registered or lodged)’.

Building Premises Designation

[7-4055]

Use only for leases of buildings (and not for leases of land).

Describes the part of the building being leased – e.g. ‘Shop 5’.

Optional for leases of the whole of a level unless there is a building premises designation specified in the lease sketch.

When completing the field insert the description of the leased premises as shown in the description on the lease sketch (e.g. ‘Shop 5’).

The ‘Building premises designation’ in Item 5 and that identified in the lease sketch must be identical.

Building Level

[7-4056]

Use only for leases of part buildings (and not for leases of land or of whole buildings).

Describes the level of a building being leased e.g. ‘Level 3’. The Building level in Item 5 and that identified in the lease sketch must be identical.

Building Identifier**[7-4057]**

Use only for leases of buildings (and not for leases of land).

Describes the building being leased – e.g. ‘Building A’.

Complete with ‘the only building’ for leases of the only building on a lot, unless a building identifier is included in the lease sketch.

Where there are multiple separate buildings on the land and each building has been given an identifier, insert the identifier that corresponds to the premises being described.

In either case, the ‘Building identifier’ in Item 5 must be consistent with the lease sketch.

Building Sketch Reference**[7-4058]**

Use only for leases of buildings (and not for leases of land) where a lease sketch is attached.

This refers to the Building sketch reference allocated to the lease sketch e.g. ‘MPS 1345 v1’

The Building sketch reference must be identical to that allocated to the lease sketch.

The sketch file reference is usually found on the bottom right-hand corner of the sketch and may be identified as a drawing number, plan number or similar. The building sketch reference shown in Item 5 of the Form 7 and that used on the sketch plan must be identical and easily identifiable. Some examples of references have been provided below:

OF THE OVER PART OF F A BUILDING 13166	PLANMAKERS		
	REF: 45149LPA1	SHEET: 1 of 1	REV: 1

Sketch File Reference: →

Q.A. Approved A. Surveyor Date: 16/1/2024	Project Manager A. Surveyor Date: 16/1/2024
Plan No. → 640159LE	

Sketch File Reference: →

Item 6 – Term of Lease**[7-4060]**

Complete the commencement and expiry dates in full e.g. 16/10/2024 and/or include details of the event(s) on which the lease commences and/or expires.

For the expiry details, do not insert the expiry date into the event field. If the lease expires upon an event, the event must be in writing e.g. ‘death of tenant.’ It is not acceptable to insert ‘refer to schedule’ for an event. If there is insufficient space to describe the event, a Form 20 – Enlarged Panel should be used, refer to Part [20-2020] for further information.

The details of the option/s must be completed. Where the lease does not contain an option/s, insert Nil.

Example

6. Term of lease

Commencement date/event: 22/10/2024

Expiry date: 21/10/2029 and/or Event:

Options: Nil

Item 7 – Lease Details

[7-4070]

The fields that can be completed in Item 7 have been addressed separately in Parts [7-4070-1] to [7-4070-3].

Rental / Consideration

[7-4070-1]

Provide information about the rent or other consideration in the space provided. The details may also be set out in a Form 20 – Schedule attached to the Form 7, or a supplementary document that is deposited with the lease. In this case, the words ‘See Schedule’ should be inserted.

Lease Type

[7-4070-2]

Insert the Lease Type in the space provided. For more information on the available lease types, refer to Part [7-2240].

Area / Volume

[7-4070-3]

Include the Area/Volume in numerals of the total area being leased in the space provided.

The available Area options are – Square Metres and Hectares. Only one of these options is to be used for the area.

The available Volume options are Cubic Metres and Megalitres (for leases of Water Allocations). If the lease combines different options, show each option (e.g. for a lease of land and a water allocation include 450 hectares and 500 megalitres).

If the lease is a combination of area and volume measurements, repeat Item 7 on the Form 20 – Enlarged Panel.

Item 8 – Terms and Conditions

[7-4080]

Complete the relevant statement in part (a) or (b), or both; and provide a dealing number of the relevant Standard Terms Document and/or an attached Form 20 Schedule setting out the terms and conditions of the lease. Statements that are not applicable should be deleted.

Example:

8. Terms and Conditions (delete statements with a * if not applicable)

(a) Document Reference - Nil;

(b) Additional terms and conditions: *the attached schedule

Item 9 – Previous Leases

[7-4090]

Item 9 must be completed for all leases. The purpose of Item 9 is to confirm that there is no conflict in the leased area in the lease being registered and any lease that is currently registered on title (including unregistered dealings). For more information, refer to Part [7-2230].

A title search should be conducted prior to lodgement to determine if a conflict exists with any lease on title (whether registered or an unregistered dealing).

If there is a conflict between an existing leased area and the leased area in the lease being lodged, one or more of the first three statements must be completed. In these circumstances complete each of the statements which is relevant.

If there is no conflict in the leased area between the lease being registered and a lease that is currently registered on title, only the final statement in Item 9 will apply, and the first three statements should be deleted.

If the lease is a sublease, there will be no conflict in the leased area with the head lease. Only complete one of the first three statements if there is a conflict of the leased area with another lease or sublease.

Example where a conflict exists (single statement):

[7-4090-1]

9. Previous Leases (delete statements with a * if not applicable)

The Lessor confirms that:

*the time for the exercise of the option in a registered Lease has ended and the option has not been exercised for Lease no. 712365410

Example where a conflict exists (multiple statements):

[7-4090-2]

9. Previous Leases (delete statements with a * if not applicable)

The Lessor confirms that:

*the time for the exercise of the option in a registered Lease has ended and the option has not been exercised for Lease no. 712365410

*this lease of the premises described in item 5 will surrender by operation of law registered Lease no. 723219860

Example where no conflict exists:

[7-4090-3]

9. Previous Leases (delete statements with a * if not applicable)

The Lessor confirms that:

*the premises described in Item 5 are not, either wholly or partly, the subject of any other lease currently lodged or registered.

Item 10 – Grant/Execution

[7-4100]

The lessor(s) and lessee(s) are required to execute the lease in the spaces provided. If there is insufficient space, a Form 20 – Enlarged Panel should be used.

For further information on execution and witnessing, refer to Part 61.

Note: all executions must be completed with an original, ‘wet signed’ signature. For more information, refer to Part [59-2000].

General Guide to Completion of Form 20 – Lease Declaration

[7-4500]

For general requirements for completion of forms, refer to Part 59 – Forms, esp [59-2000], and for the general requirements of a Statutory Declaration, refer to Part [20-2040].

LEASE DECLARATION

Title Reference [79876543]

Oaths Act 1867

STATUTORY DECLARATION

I, John James Preston, of 1234 Queen St, Brisbane, in the **State of Queensland** solemnly and sincerely declare that:

1. I am authorised to make this declaration: on behalf of the Lessor(s) as their Solicitor.
2. The premises being leased is described as follows:
 - a) Lease extent: Part of a Building
 - *Building premises designation: Shop 306
 - *Building level: Level 3
 - *Building identifier: Building A
 - *Building sketch reference: MPS 1345 v1
 - b) Land Description: Lot 123 on SP654321
3. The lease type is Commercial and the area of the premises being leased is 67 Square Metres.
4. The time for the exercise of the option in a registered Lease has ended and the option has not been exercised for Lease no. 712345678

and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1867.

The contents of this statutory declaration are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge. I understand that a person who makes a declaration that the person knows is false in a material particular commits an offence.

I state that:

- ~~A. This declaration was made in the form of an electronic document.~~
~~B. This declaration was electronically signed.~~
~~C. This declaration was made, signed and witnessed under part 6A of the Oaths Act 1867~~
D. This Declaration was physically signed in the physical presence of the witness.

Mkenzie

Signature

Louisa Jane Scott

Full Name

Solicitor

Type of Witness

Busy Law

Name of Law Practice / Witness's Place of Employment

23 / 04 / 2025
Execution Date

JPreston

Declarant's Signature

Paragraph 1 – Details of the Declarant**[7-4510]**

The declarant must provide their authority for making the declaration, either as the lessor or on behalf of the lessor. If the declarant is making the declaration on behalf of the lessor, they must state in what capacity they are making the declaration (e.g. legal practitioner, attorney under registered power of attorney). For further information on making a Statutory Declaration, refer to Part [20-2040].

Paragraph 2 – Description of premises being leased**[7-4520]**

The ‘Description of premises being leased’ in Paragraph 2 of the form is identical to Item 5 on the Form 7. Accordingly, refer to the guidance contained in Parts [7-4050] to [7-4058] to complete this paragraph.

Multiple Premises

If there are multiple premises being leased, Paragraph 2 should be repeated in the declaration for each leased premises.

Paragraph 3 – Lease Type and Area / Volume**[7-4530]**

The ‘Lease Type’ and ‘Area/Volume’ fields in Paragraph 3 of the form are identical to Item 7 on the Form 7. Accordingly, refer to the guidance contained in Part [7-4070] to complete this paragraph.

Paragraphs 4-7 – Previous Lease Statements (Leased Area Conflicts)**[7-4540]**

Paragraph 4-7 of the form are identical to the statements contained in Item 9 on the Form 7. When completing the Declaration, the paragraphs that apply must be completed, and any paragraphs that do not apply must be deleted. Guidance is contained in Parts [7-2230] and [7-4090] on preparing or deleting these paragraphs.

Execution of the Declaration**[7-4550]**

The requirements for the execution of the declaration are the same as for any other declaration, refer to Part [20-2040] for more information.

Note: If there is more than one lessor, only one lessor (or their representative) is required to give a declaration on the Form 20 – Lease Declaration.

[7-6000] deleted

Case Law

***Broons & Lennox Hatfield Nominees Pty Ltd v Registrar of Titles* (unreported, OS No 285 of 1989)**

[7-7000]

A lease by a registered owner to himself/herself cannot contain enforceable covenants.

***Cowper v Fletcher* (1865) 122 ER 1270**

[7-7010]

A joint tenant may lease his/her interest to another without severing the joint tenancy.

***Sinclair v Connell* [1968] 1 NZLR 118**

[7-7020]

The term of a lease can be granted for the life of a lessor, a lessee or a named third person. This was followed in *Borambil Pty Ltd v O'Carrol* [1972] 2 NSWLR 302.

[7-7030] deleted

***Daniher v Fitzgerald* (1919) 19 SR (NSW) 260**

[7-7040]

Consent of a mortgagee does not affect the validity of a lease against third parties, but protects the lessee if the mortgagee takes possession of the fee simple.

***Mercantile Credits Ltd v Shell Co Aust Ltd* (1976) 136 CLR 326**

[7-7050]

An option to renew contained in a registered lease is protected by registration of that lease.

***Friedman v Barrett, Ex p Friedman* [1962] Qd R 498**

[7-7060]

Option/s to renew a short lease beyond three years from the commencement of the original term must be registered to achieve indefeasibility.

***Medical Benefits Fund of Australia Ltd v Fisher* [1984] 1 Qd R 606**

[7-7070]

The registered owner of a new indefeasible title holds its interest free from all interests not notified on the new indefeasible title.

***Re Eastdoro Pty Ltd* [1990] 1 Qd R 424**

[7-7080]

Where a registered lease contains options for renewal, the options are indefeasible interests. Therefore the due exercise of each of the options for renewal is enforceable against a proprietor who becomes registered after registration of the lease.

***Massart v Blight* (1951) 82 CLR 423**

[7-7090]

The lack of lessor's consent will not prevent the valid passing of a leasehold estate.

Fees

[7-8000]

Fees payable to the Titles Registry are subject to an annual review. Refer to the Titles Fee Calculator available on the Titles Queensland website or refer to [60-8000].

Cross References and Further Reading

[7-9000]

Part 8 – Surrender of Lease

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

Part 20 - Schedule, Enlarged Panel, Additional Page, Declaration, Standard Terms Document

Part 59 – Forms

Notes in text

[7-9050]

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

Note ² – This paragraph or statement is not applicable to freehold land.