

# Part 5, 5A, 6 – Transmission Applications

LAND TITLE PRACTICE MANUAL

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## Part 5, 5A, 6 – Transmission Applications

### [5-0000] General Law

One of the first duties of a personal representative is to reduce the estate of the deceased into possession. The manner of attending to this depends on the nature of the assets to which possession must be asserted or acquired. Title to the deceased's assets passes in the first instance to his/her executor (and if to more than one executor to them as joint tenants) or if there is no executor or no executor able and willing to act, to the Public Trustee (s. 45(1) of the *Succession Act 1981*).

Upon the court granting probate of the will or letters of administration of the estate of the deceased, the property vested in his/her executor or in the Public Trustee under the provisions of s. 45(1) of the *Succession Act 1981* devolves to and vests in the person to whom the grant is made (and if to more than one person, to them as joint tenants) (s. 45(2) of the *Succession Act*).

Where title to assets comprising the estate of the deceased is formally registered, the personal representative must not only assert and acquire possession of the asset, but must also make application to transmit the title into his/her name or as he/she may direct. Such applications are generally referred to as 'Transmissions by Death' or 'Transmission Applications'.

Notwithstanding that a water allocation is a registrable interest and a tradable asset it is part of the deceased's personal property as opposed to their real property<sup>2,3</sup>.

Division 6 of Part 6 of the *Land Title Act 1994* deals with, among other things, the transmission of the interest of a deceased person in a lot to that person's personal representative (in accordance with s. 111), or to a devisee of a deceased person (in accordance with s. 112)<sup>2</sup>.

Division 9 of Part 4 of Chapter 6 of the *Land Act 1994* deals with, among other things, the transmission of the interest of a deceased person to that person's personal representative (in accordance with s. 377), or to a legatee of a deceased person (in accordance with s. 379)<sup>1,3</sup>.

### [5-1000] Legislation

#### Application of the *Land Title Act 1994* to the *Water Act 2000*<sup>2,3</sup>

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].

### [5-2000] Practice

#### [5-2000] Introduction

**Note:** The text *Wills Probate and Administration Practice* by John K de Groot (published by Nina Psaltis Consulting) is recommended as a valuable reference source with regard to estate administration.

A Transmission Application (or Transmission by Death) involves the registration of an estate in the name of a new registered owner or holder of an interest after the death of a sole registered owner, sole holder of an interest, or the interest of a tenant in common. Registration of the death of a joint tenant is dealt with by a Form 4 – Request to Record Death.

A lot or interest held by a deceased person may be transmitted to:

- the personal representative of the deceased (via a Form 5 or Form 5A); or
- the devisee or legatee named in the person's last will (via a Form 6).

A personal representative, a devisee or anyone else interested in a lot of a deceased registered proprietor (or a trust involving such a lot) may also apply to the Supreme Court for an order that a named person be registered as proprietor of the lot (s. 114 of the *Land Title Act 1994*). The particulars of an order by the Supreme Court that a person be registered as proprietor of a lot under s. 114 of the *Land Title Act* can be registered by lodging a Form 14 – General Request to Register Order of the Court (also called a Request to Vest – refer to [14-2332]).

Transmissions involve either:

- a will where a grant of probate or a grant of letters of administration with the will has been made by the court;
- the original last will without a grant;
- an intestacy where a grant of letters of administration has been made by the court; or
- an intestacy where no grant has been made.

**[5-2010] and [5-2020] deleted**

## **[5-2030] Merger of Estates**

From time to time the situation arises where a person (A) who is registered on the title as 'devisee in trust' or as '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 the executorial duties required, other than having effected the transfer, and 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 will operate to merge the beneficial and legal estates.

Therefore, notwithstanding that A remains registered on the title as trustee, there is no trust in existence and, on A's death, the provisions of s. 16 of the *Trusts Act 1973* do not operate to vest the property in the Public Trustee. The property can be dealt with as an asset in A's estate by A's personal representative (pursuant to s. 45 of the *Succession Act 1981*).

Where A has died the property which is the subject of such a merger should be dealt with in the following manner:

A Transmission Application should be lodged by the person entitled to apply for a grant of representation in the estate of A, which should indicate that he/she is the person named as executor in A's will as the basis on which an application for grant would succeed.

A declaration by the executor must be deposited with the Transmission Application to the effect that A had completed all executorial duties in the original deceased estate and that A had not effected transfer to himself/herself and had for some time dealt with the property as beneficial owner rather than as trustee.

Where A is alive a Form 14 – General Request to merge the interest of A as trustee with his/her entitlement to the fee simple, water allocation or a State tenure or as sole beneficiary must be lodged (see [14-2400]).

**[5-2040] to [5-2050] deleted**

## **[5-2060] Intestate Estate**

Letters of administration in an intestate estate issued by a court outside of Queensland and resealed in Queensland can be applied to property in Queensland (s. 111(2)(a) of the *Land Title Act 1994*) and s. 377(2)(a) of the *Land Act 1994*.

Intestate estates, where the gross value of the estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was valued at no more than \$300,000, may be dealt with in a Form 5A without application for a grant of letters of administration, if no letters of administration of the deceased's estate have been granted in Queensland within six months from the date of death (s. 111(2)(b) of the *Land Title Act* or s. 377(2)(b) of the *Land Act*).



## [5-2070] Public Trustee

The Public Trustee of Queensland has, under relevant Acts, a wide range of powers in relation to deceased estates. The Public Trustee **may** obtain an 'order to administer' from the Supreme Court in many different cases. For example:

- where the Public Trustee is appointed executor of a will;
- where the executor appointed under a will has renounced;
- where the testator leaves no executor;
- where every executor or administrator has died, is absent from the State, is not known or cannot be found; and
- where the deceased dies intestate.

The Public Trustee may also administer estates in the name of the deceased (s. 16 of the *Trusts Act 1973*):

- where assets are the subject of a partnership; and
- which are estates held in trust where the sole or last trustee has died.

This point is expanded in part 51 – Trusts.

An order to administer has the same effect as a grant of probate or letters of administration.

Evidence of the order to administer is given in the form of a 'certificate of authority' issued pursuant to s. 138 of the *Public Trustee Act 1978*. If the order to administer is in relation to an intestate estate, this certificate should refer to an order to administer in intestacy.

If the deceased estate is valued under \$150,000, it is not necessary for the Public Trustee to obtain the consent of the court to administer the estate. The Public Trustee may instead file in the court an 'election to administer'. Evidence deposited with a Form 5 – Transmission Application would be in the form of a certificate of authority.

The certificate of authority includes the name and date of death of the deceased, as well as the name/s and address/es of the applicant/s.

## [5-2080] Original Will

### Care of Original Will

Original wills must be treated with **extreme care**. It is essential that no marks or holes are made in an original will. No pencil notes should be made on an original will, nor should any 'post it' note stickers be attached to an original will, nor should any pins or staples be added to or removed from an original will. An original will should not be stapled to the application.

The reason for this degree of care is that any attachment to a will, or any evidence of an attachment having been made to a will, may raise the presumption that a further testamentary document made by the testator had been attached by or at the direction of the testator, thereby altering the terms of the will.

Prior to depositing an original will with a Transmission by Death application, the applicant/lodger should inspect the original will for any marks on the original will (e.g. staple holes or paper clip indentations) which could infer another testamentary document may have been attached to the original will.

If there is such inference then a statutory declaration of Plight and Condition and Finding (using Form 111 of the Uniform Civil Procedure Rules 1999 as a guide) is required from the person who made the marks in the original will.

If the marks existed at the time the original will was located, the statutory declaration is required from the person who located the original will and must include a statement as to whether there was any other testamentary document.

A clear copy of the true and last original will is to be an exhibit to the statutory declaration and an exhibit certificate is to be endorsed on the copy (Form 47 of the Uniform Civil Procedure Rules). The accompanying statutory declaration must state the exhibit is a copy of the original will.

More than one declarant may exhibit the same copy of the original will provided it is endorsed with an exhibit certificate in respect of each statutory declaration. Alternatively, declarants may exhibit separate copies of the original will to their respective declarations.

## Original Will held by Court or Public Official

In some foreign jurisdictions a court or public official (e.g. notary public) will hold an original unproved will permanently, for example for safe keeping, and will not release the original will even after the death of the testator. In these cases the Registrar will accept the following in lieu of the original will.

For a court held original will:

- a court authenticated copy of the original will under seal (where there is a seal); and
- a statement from the court or a letter from a lawyer in the relevant jurisdiction advising for what purpose the will is being held and that it will not be released.

For a public official held original will:

- a copy of the original will authenticated by the public official under seal (where there is a seal); and
- a formal statement from the public official advising for what purpose the will is being held and that it will not be released.

Whether the original unproved will is held by a court or public official the following must also be provided:

- a statement of law from a practising lawyer in the relevant jurisdiction or the public official (e.g. notary public) that the will is a valid will under the law of which it was made; and
- a declaration by a practising lawyer in the relevant jurisdiction that a search was caused to be made in the jurisdiction where the unproved will is held and it was found that no grant of administration of the estate of the deceased has been made, applied for, or caveated against in the jurisdiction.

## [5-2085] Wills made under COVID-19 Regulations

For wills and codicils made pursuant to the Justice Legislation (COVID-19 Emergency Response – Documents and Oaths) Regulation 2020, it is strongly recommended that applicants for Transmission Applications first obtain a grant of representation from the court to avoid delays in registration.

## [5-2090] Probate

A grant of probate is the approval, or verification, of the Supreme Court that the particular will is actually the last will and testament of the deceased person, and that the person named as executor is authorised to act in that capacity.

It is not essential in every case to obtain a grant of probate. However, many people do so to have confirmation of the validity of the will and for the protection it affords the executor. If a later will is discovered, the executor of the probated will cannot be sued by the executor of the later will for actions taken by the first executor pursuant to the court's authority through the grant of probate. The exception is where the existence of the later will was known and not disclosed by the first executor in the probate application.

Where probate is granted, the original will remains permanently in the Supreme Court. A copy of the will is part of an original probate document which bears the seal of the Supreme Court of Queensland.

Generally, when probate has not been taken out, the original will is lodged with the Transmission Application. Where the Public Trustee is the applicant, a certificate is lodged if an order to administer or an election to administer is relied on.

## [5-2100] Grant of Representation from outside Queensland

### Queensland recognised grant - Grant of representation under the *British Probates Act 1898 (Qld)* – Form 5

A Queensland recognised grant is a grant of *probate* or *letters of administration* (within the meaning of the British Probates Act) from a jurisdiction to which the British Probates Act applies. The relevant Regulation sets out that the British Probates Act currently applies to grants from other Australian states and territories, New Zealand and the United Kingdom of Great Britain and Northern Ireland. A Queensland recognised grant may be resealed by the Supreme Court of Queensland.

If a Queensland recognised grant is resealed, it has the same standing as a Queensland grant and it may be lodged with a Form 5 Transmission Application to transmit the registered interest of the deceased to the personal representative.

If no reseat of a Queensland recognised grant has been obtained, application may be made to the Registrar to register a Form 5 Transmission Application which is supported by the original Queensland recognised grant or an exemplification of

the Queensland recognised grant provided that the person/s to whom the grant was made are the same as the applicant/s for the transmission. Reference should be made to [60-1030] relating to deposit of supporting documentation when preparing an application of this type.

## **Grant of representation not under the *British Probates Act 1898* (Qld)**

Where a grant of representation (however described) is made in a jurisdiction to which the British Probates Act does not apply, in order to transmit the registered interest of the deceased, a grant of representation should be sought from the Supreme Court of Queensland and the Queensland grant may be lodged with a Form 5 Transmission Application.

### **[5-2110] Intestacy**

When a registered owner or holder of an interest dies without leaving a will, the Supreme Court may appoint an administrator to administer the estate in accordance with the rules laid down in the Uniform Civil Procedure Rules 1999. A person who wishes to administer an estate applies to the Court to be appointed as the administrator.

The Supreme Court issues a document known as 'letters of administration', which authorises the person named as administrator to control and administer the estate of the deceased person in accordance with s. 610 of the Uniform Civil Procedure Rules. It is also referred to as a grant of administration. The letters of administration are the authority for a transmission to the administrator as personal representative.

Under the *Land Title Act 1994* and *Land Act 1994*, it is not essential to apply for letters of administration before making a Transmission Application unless the gross value of the estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was over \$300,000.

If letters of administration are not lodged, then the applicant on a Form 5A must explain in the declaration annexure to Form 5A his/her entitlement to administer the estate. The applicant must declare the names and relationships of all those entitled to the estate and details of the existence or non-existence of a de-facto spouse under the Uniform Civil Procedure Rules.

### **[5-2120] Name Variation**

The name of the deceased registered owner or holder of an interest is given in full in Item 1 of the Forms 5, 5A and 6 and minor differences in spelling do not require explanation. If it is considered that the name in the other documents being lodged cannot be safely accepted as being that of the deceased registered owner or holder of the interest (e.g. upon a change in surname), then a supplementary declaration (in Form 20) identifying one with the other, together with any relevant evidence (e.g. a copy of a certificate of marriage) is required.

Where the name of a beneficiary or personal representative is different in the Transmission Application to that shown in the will, a statutory declaration supported by relevant evidence, is required from that person setting out the circumstances of the difference in the name.

### **[5-2130] Return of Certain Deposited Documents**

Registry practice is to return to the lodger, at the time of lodgement, certain original documents that are required to be deposited as evidence. Refer to [60-1030]. The following comments relate to the return of some documents deposited with a Form 5, 5A or 6 – Transmission Application.

An original will once deposited with a Transmission Application in the registry will be dealt with in a similar manner as if it was deposited in the Supreme Court of Queensland Court of Probate. The original will is examined by registry staff to ensure it is in order and retained as a permanent public record.

An original will held by the registry with a registered Transmission Application will only be released to the Supreme Court of Queensland for a grant of representation application. Where the original will is required for such an application, the personal representative or their solicitor must request in writing for the Registrar to forward the original will to the Court. The request must state the authority for them to make the request and details of the probate registry where the application will be made. The Registrar will forward the original will and other relevant documentation (e.g. codicil) to the Court and notify the applicant it has been sent.

An original will held by the registry with an unregistered Transmission Application will only be released in the following circumstances:

- in response to a written request from the lodger to fully withdraw the Transmission Application after the application is withdrawn; or

- where the Transmission Application is rejected under s. 157 of the *Land Title Act 1994* or s. 306 of the *Land Act 1994*.

Where an original will is required for grant of representation in Queensland and the will is held with an unregistered Transmission Application, the dealing must be fully withdrawn from registration prior to its release from the Registry. The lodger must request in writing for the Transmission Application to be fully withdrawn. Registry staff will notify the lodger by letter once the dealing has been fully withdrawn. The original will can then be released with the Transmission Application to the lodger via registered post. It is then the responsibility of the personal representative to arrange for deposit of the original will with the grant of representation application.

Where a grant of representation is to be sought in a jurisdiction other than Queensland, a certified copy of the relevant Transmission Application, including a certified copy of the original will, may be provided on request and payment of the relevant fees.

## Forms of Transmission

### [5-2140] Form 5 – Transmission Application by Personal Representative (Grant in Queensland or Queensland recognised grant)

This form of Transmission Application is used by a personal representative who has obtained:

- a grant of representation in Queensland; or
- a reseal of a grant of representation in Queensland; or
- a Queensland Recognised Grant\* which has not been resealed in Queensland.

\* A Queensland Recognised Grant is a grant of *probate* or *letters of administration* (within the meaning of the *British Probates Act 1898*) from a jurisdiction to which the British Probates Act applies. The relevant Regulation sets out that the British Probates Act currently applies to grants of representation from other Australian states and territories, New Zealand and the United Kingdom of Great Britain and Northern Ireland.

On registration, the applicant appears on the title as 'personal representative'.

### [5-2150] Form 5A – Transmission Application by Personal Representative (No Grant in Queensland or no Queensland recognised grant)

This form of application is used when:

1	<b>the deceased registered proprietor died leaving a will</b>	<p>Where:</p> <ul style="list-style-type: none"> <li>a. the applicant is or is entitled to be the deceased's personal representative; or</li> <li>b. the registrar considers that the applicant would succeed in an application for a grant of representation (i.e. probate or letters of administration with the will annexed) but has not obtained such a grant.</li> </ul>
2	<b>the deceased registered proprietor died without a will (intestacy)</b>	<p>Where:</p> <ul style="list-style-type: none"> <li>a. the Registrar is of the opinion that the person would succeed in an application for a grant of representation; and</li> <li>b. the gross value of the deceased's estate in Queensland at the date of death, other than property held by the deceased as a joint tenant, was not more than \$300,000 (or such other amount as may be prescribed by regulation); and</li> <li>c. letters of administration of the deceased's estate have not been granted in Queensland within 6 months after the death of the registered proprietor.</li> </ul>

In these situations, the Registrar performs a similar role to a court of probate.

For the first situation where the deceased registered proprietor died leaving a will, the Registrar may require further evidence to be satisfied of the validity of the will and the testamentary capacity of the deceased registered proprietor at the date of the will:



## Validity of the will

The Registrar will require a supplementary statutory declaration to establish the validity of the will if considered necessary, e.g. a statutory declaration of due execution where no attestation clause appears in the will or the will is undated. In such cases, a clear and true copy of the last original will must be provided as an exhibit to any supplementary statutory declaration and endorsed with the appropriate exhibit marking and certificate.

The Registrar will also examine the deceased's certificate of death to ensure that the cause of death does not suggest a lack of testamentary capacity at the date of the will. If it does, the Registrar will ask for evidence to clarify the matter.

## Where the Executor is identified by their Position rather than by Name

There are instances where the testator appoints an executor who is identified only by their position, and/or employer, rather than by name (e.g. 'an Associate or a Partner at the firm of Atticus & Finch'). Where this has occurred, any person who holds the position (as described in the original will) may accept the nomination as executor.

If a person who holds the appointed position does choose to accept the role of executor, a 'Deed of Nomination and Acceptance' should be prepared and executed which must include the following:

- the full name of the executor who is accepting the nomination;
- the position that executor holds (this position must correspond with the position appointed as executor under the will - if there is any variation in the position held from the description in the will, an explanation of that variation, and why it is appropriate for the executor to accept the nomination despite that variation should be included);
- the executor's acceptance of the nomination under the will;
- a description of the will appointing the executor that is sufficient to identify it (such that there is no ambiguity).

The original Deed of Nomination and Acceptance is required to be deposited with the Form 5A. For further information regarding supporting documentation refer to Part [5-4140].

On registration the applicant appears on the title as 'personal representative'.

## [5-2160] Form 6 – Transmission Application for Registration as Devisee/Legatee

This form of application is made by a devisee/legatee of the deceased registered owner or holder of the interest, with the written consent of the personal representative or person entitled to appointment as such.

As indicated, the applicant must be the person beneficially entitled under a will to a lot or an interest of a deceased registered owner or holder of an interest.

## Presumption of Tenancy

For wills made or republished prior to 1 December 1975: the common law presumption of joint tenancy applies where there is no clear indication in the will as to the tenancy of the beneficiaries unless the will provides otherwise by express word or by necessary implication from the words used. E.g. a substitutional provision in a will is an indication that the primary beneficiaries are not to take as joint tenants. Where there is a substitutional provision or words of severance expressed in a will, the primary beneficiaries shall be taken to be tenants in common.

For wills made or republished on or after 1 December 1975: where there is no clear indication in the will as to the tenancy of the beneficiaries, s. 35 of the *Property Law Act 1975* provides that a disposition should be construed as made to or for the beneficiaries as tenants in common, and not as joint tenants, unless the disposition provides that the beneficiaries are to take as joint tenants or tenants by entireties.

## Beneficiaries Surviving Testator

Section 33B of the *Succession Act 1981* requires a beneficiary under a will to survive the testator for a period of 30 days, unless a contrary intention appears in the will. Accordingly, an application in Form 6 cannot be executed within 30 days of the deceased's death unless such a contrary intention appears in the will.

## Interested Witnesses

As a Transmission Application in Form 6 is akin to a transfer from the personal representative to the beneficiary, for deaths prior to 1 April 2006 the terms of the former s. 15 of the *Succession Act 1981* applicable prior to 1 April 2006 and in force at the date of death are relevant. The former s. 15 of the *Succession Act* renders dispositions other than payments of debts or remuneration to a witness, his/her spouse or persons claiming under the witness or spouse, null and void.

The applicants are to declare that neither they nor a spouse of theirs was a witness to the deceased's will. If this is not declared to, the application will be requisitioned as follows:

'The applicant should, by statutory declaration, declare that neither they nor a spouse of theirs was a witness to the will of... deceased'.

Section 11 of the Succession Act that replaces the former s. 15 applies to deaths on or after 1 April 2006. This section does not void the beneficial disposition to the spouse of a witness. It does void a beneficial disposition to a witness in circumstances other than mentioned in s. 11(3) of the Succession Act. Therefore, a statutory declaration is required from the applicant stating that they were not a witness to the will. If the declaration is not produced the application will be requisitioned as follows:

'The applicant should declare that they were not a witness to the will of [name of deceased], if such is the case (see s. 11 of the *Succession Act 1981*).'

For deaths on or after 1 April 2006, where a beneficial disposition has been made to a witness and one of the circumstances referred to in s. 11(3) of the Succession Act applies, the Registrar would require evidence of the particular circumstance. If there are more than two witnesses to the will, the matter will be gauged on its merits.

## Validity of the will

The Registrar will require a supplementary statutory declaration to establish the validity of the will if considered necessary, e.g. a statutory declaration of due execution where no attestation clause appears in the will or the will is undated. In such cases, a clear and true copy of the last original will must be provided as an exhibit to any supplementary statutory declaration and endorsed with the appropriate exhibit marking and certificate.

The Registrar will also examine the deceased's certificate of death to ensure that the cause of death does not suggest a lack of testamentary capacity at the date of the will. If it does, the Registrar will ask for evidence to clarify the matter.

For further information regarding supporting documentation refer to [5-4260].

## Registration

On registration, the devisee/legatee appears on the title as a registered owner or holder of an interest. The personal representative is obliged to ensure that a distribution of the assets is in order before consenting to these applications.

Upon satisfying the registrar that the beneficiary is entitled to an interest in a lease, sublease or licence under the will and the personal representative has given written approval, the beneficiary may be registered as lessee, sublessee or licensee under s. 379 of the *Land Act 1994*<sup>1, 3</sup>.

## [5-2163] Life Estate Created by Will<sup>1, 2</sup>

The recording of a beneficial remainder estate is prohibited by s. 30(2) of the *Property Law Act 1974*. That section states that 'an interest in remainder created after the commencement of the Act must not be registered in the freehold land register'. Section 30(2A) provides that 'subsection (2) has effect despite anything in the *Land Title Act 1994*'.

Under a will, only the personal representative (as trustee) can exercise the powers conferred by the *Trusts Act 1973* in respect of trust property, including any life estate. To clarify, where a life estate is created under a will the life estate is not able to be recorded on title. Instead, the interest must be recorded in the name of the personal representative.

Therefore, a Form 6 – Transmission Application (by beneficiary) and a charge relating to a life estate cannot be registered.

A Form 5 or 5A – Transmission Application for transmission to the personal representative are the only acceptable forms in the circumstance. A request to record the life estate is **not** registrable in conjunction with the Form 5 or 5A.

## [5-2167] Rights to Reside, Charges and Conditions in Will<sup>1</sup>

Section 5 of the *Trusts Act 1973* includes within the definition of 'trust property' a personal licence to reside for life given by will. However, this is a personal right or licence and, like other conditions and charges contained in the will, it does not constitute an estate or interest in land.

A right to reside, a charge or some other condition contained in a will may **not** be recorded on the title.

If the terms of a will place a condition on the beneficiary which must be complied with before the beneficiary can take the land, then evidence of the condition being complied with must be deposited with the application (e.g. a statutory declaration from the personal representative).

## [5-2170] Undisclosed Trust

The Registrar is not required to supervise undisclosed trusts and will register applications which, on their face, are entitled to registration.

## [5-2180] Limitations

Most Transmission Applications in Form 5 are straightforward, as the validity of the will or the administration in intestacy has already been established and proved in the court and some form of evidence issued. These applications register the applicant as 'personal representative'.

If the grant of representation is a 'limited' grant to certain actions, e.g. limited to dealings with certain property, 'limited' should be noted in item 6 of the Form 5 after the words 'personal representative'. The titles registry is only concerned where the executor is limited to certain actions and not a limitation on the appointment of the executor.

## [5-2190] Other Equities

There may be other equities affecting a lot or an interest, such as trust or partnership equities or the equity of a purchaser under a contract of sale (between the deceased and the purchaser). A lot or an interest which is the subject of a trust, partnership or contract of sale should **not** be dealt with by way of a 'limited transmission', i.e. a recording of the personal representative as 'personal representative – trust', 'personal representative – partnership' or 'personal representative – contract of sale'. The personal representative should simply be recorded (by the transmission application) as 'personal representative'. Once this has occurred, the other equities can be dealt with by way of the appropriate Form 1 – Transfer (e.g. a Form 1 – Transfer to Trustees (see Part 1, esp. [1-2380] and [1-2390])).

## [5-2200] Advertising Requirements

The Registrar may require that public notice be given of a transmission application prior to registering the application. However, the Registrar has discretion in regard to this.

For information about advertising see [60-0760] and [60-0830].

[5-2210] to [5-2240] deleted

## Partnerships

### [5-3000] Partnerships generally

If a partner is the registered proprietor of an interest that is partnership property, then dealings with that interest will be subject to the provisions of the *Partnership Act 1891* and any partnership agreement. Partnership property is not recorded as such in the registers kept by the Registrar of Titles and Registrar of Water Allocations.

### [5-3100] Dealing with the interest of a deceased partner

Upon the death of a partner, the legal interest in any land which is an asset of the partnership passes in accordance with the general rules of law applying to succession (see section 23(2) of the *Partnership Act 1891*).

Section 36(1) of the Partnership Act provides that a partnership will dissolve upon the death of a partner, subject to any agreement to the contrary between the partners. If there is no written agreement between the partners, the partnership will dissolve.

Titles Registry practice is therefore that the interest of a deceased partner should be dealt with in the usual way (i.e., by lodgement of a Form 4 – Record of Death for a deceased joint tenant or a Form 5/5A for a deceased sole owner or tenant in common) but following this, the interest should be dealt with in accordance with the terms of the partnership agreement.

Three common scenarios where a deceased partner is the registered proprietor of an interest are detailed below:

- Scenario 1 – the death of a partner who is a sole registered proprietor of a partnership interest:
  - Scenario 1A – where the partnership dissolves
  - Scenario 1B – where the partnership continues
- Scenario 2 – the death of a partner who is a registered proprietor of a partnership interest as a joint tenant with the other partner/s:

- Scenario 2A – where the partnership dissolves
- Scenario 2B – where the partnership continues
- Scenario 3 – the death of a partner who is a registered proprietor of a partnership interest as a tenant in common with the other partner/s:
  - Scenario 3A – where the partnership dissolves
  - Scenario 3B – where the partnership continues

## Scenario 1 – Death of a partner who is a sole registered proprietor of a partnership interest

For example:

- Where a partner who is the sole registered owner of a lot dies.
- Where a partner who is the sole registered proprietor of a lease dies.

### Scenario 1 – Table showing instruments required in order of lodgement

SCENARIO	PARTNERSHIP STATUS	INSTRUMENTS REQUIRED IN ORDER OF LODGEMENT
1A	Dissolves	<p><b>Form 5/5A – Transmission Application</b> by the personal representative of the deceased partner.</p> <p><b>Form 1 – Transfer</b> to distribute the interest to the entitled partners (or the beneficiary of the deceased partner) in accordance with the terms of the partnership agreement (and the will of the deceased partner)</p> <p><u>Completion:</u></p> <ul style="list-style-type: none"> <li>• Item 4: the consideration must accurately describe the basis of the transaction. Example wording: In consideration of [A], now deceased, and [B] being entitled to a one-half share each in the interest described in Item 1 by virtue of a distribution of the partnership assets of the [AB PARTNERSHIP] pursuant to the partnership agreement dated [DATE].</li> </ul> <p><u>Evidence to be deposited in addition to any evidence required for the Form 1 (refer to Part 1):</u></p> <ul style="list-style-type: none"> <li>• evidence that demonstrates that the interest is being dealt with in accordance with the terms of the partnership agreement (e.g. a certified copy of the partnership agreement - refer to [5 3200])<sup>*</sup>.</li> </ul>
1B	Continues	<p><b>Form 5/5A – Transmission Application</b> by the personal representative of the deceased partner.</p> <p><b>Form 1 – Transfer</b> from the deceased partner to the new or continuing partners.</p> <p><u>Completion</u></p> <ul style="list-style-type: none"> <li>• Item 4 : the consideration must accurately describe the basis of the transaction. Example wording: In consideration of [B] and [C], being partners in the [PARTNERSHIP], assuming ownership of the land on behalf of the partnership in accordance with the partnership agreement of the [PARTNERSHIP] dated [DATE].</li> </ul> <p><u>Evidence to be deposited in addition to any evidence required for the Form 1 (refer to Part 1)</u></p> <ul style="list-style-type: none"> <li>• evidence that demonstrates the interest is being dealt with in accordance with the terms of the partnership agreement (e.g. a certified copy of the partnership agreement – refer to [5-3200])<sup>*</sup></li> </ul>

**\*Note:** reference can be made to the dealing number of a previous dealing where evidence was deposited.

## Scenario 2 – Death of a partner who is a registered proprietor of a partnership interest as a joint tenant with the other partner/s

For example:

- Where two partners are the registered owners of a lot as joint tenants and one of the partners dies.

- Where two partners are the registered proprietors of a lease as joint tenants and one of the partners dies.

## Scenario 2 – Table showing instruments required in order of lodgement

SCENARIO	PARTNERSHIP STATUS	INSTRUMENTS REQUIRED IN ORDER OF LODGEMENT
2A	Dissolves	<p><b>Form 4 – Record of death</b> for the deceased partner.</p> <p>No additional evidence is required - only the evidence required for the Form 4 (refer to Part 4).</p> <p><b>Form 1 – Transfer</b> to distribute the interest to the entitled partners in accordance with the terms of the partnership agreement.</p> <p><u>Completion:</u></p> <ul style="list-style-type: none"> <li>• Item 4: the consideration must accurately describe the basis of the transaction. Example wording: In consideration of [A], now deceased, and [B] being entitled to a one-half share each in the interest described in Item 1 by virtue of a distribution of the partnership assets of the [AB PARTNERSHIP] pursuant to the partnership agreement dated [DATE].</li> <li>• Item 5: insert the names of the entitled partners and the share in accordance with the terms of the partnership agreement. If the deceased partner is entitled to a share the partner's name followed by 'since deceased' must be inserted. Example: [Partner A] since deceased as tenants in common [Partner B] equal shares</li> <li>• Item 6: If the deceased partner is entitled to a share his/her personal representative can sign on his/her behalf.</li> </ul> <p><u>Evidence to be deposited in addition to any evidence required for the Form 1 (refer to Part 1):</u></p> <ul style="list-style-type: none"> <li>• evidence that demonstrates that the interest is being dealt with in accordance with the terms of the partnership agreement (e.g. a certified copy of the partnership agreement - refer to [5 3200])<sup>*</sup>.</li> </ul> <p><b>Form 5/5A/6 – Transmission Application</b> for the share of the deceased partner (if a share has been transferred to the deceased partner).</p>
2B	Continues	<p><b>Form 4 – Record of Death</b> for the deceased partner.</p> <p>No additional evidence is required - only the evidence required for the Form 4 (refer to Part 4).</p>

**\*Note:** reference can be made to the dealing number of a previous dealing where evidence was deposited.

## Scenario 3 – Death of a partner who is a registered proprietor of a partnership interest as a tenant in common

For example:

- Where a partner who holds a 1/3 share in a lot as a tenant in common dies.
- Where a partner who holds a 1/3 share in a lease as a tenant in common dies.



### Scenario 3 – Table showing instruments required in order of lodgement

SCENARIO	PARTNERSHIP STATUS	INSTRUMENTS REQUIRED IN ORDER OF LODGEMENT
3A	Dissolves	<p><b>Form 5/5A – Transmission Application</b> by the personal representative of the deceased partner for the share of the deceased partner.</p> <p><b>Form 1 – Transfer</b> to distribute the interest to the entitled partners (or the beneficiary of the deceased partner) in accordance with the terms of the partnership agreement (and the will of the deceased partner)</p> <p><u>Completion:</u></p> <ul style="list-style-type: none"> <li>Item 4: the consideration must accurately describe the basis of the transaction. Example wording: In consideration of [A], now deceased, and [B] being entitled to a one-half share each in the interest described in Item 1 by virtue of a distribution of the partnership assets of the [AB PARTNERSHIP] pursuant to the partnership agreement dated [DATE] and in further consideration of [D] being entitled to the interest of [A], deceased, pursuant to the terms of his/her will dated [DATE].</li> </ul> <p><u>Evidence to be deposited in addition to any evidence required for the Form 1 (refer to Part 1):</u></p> <ul style="list-style-type: none"> <li>evidence that demonstrates that the interest is being dealt with in accordance with the terms of the partnership agreement (e.g. a certified copy of the partnership agreement - refer to [5-3200])<sup>*</sup>.</li> </ul>
3B	Continues	<p><b>Form 5/5A – Transmission Application</b> by the personal representative of the deceased partner for the share of the deceased partner.</p> <p><b>Form 1 – Transfer</b> of the deceased partner's share from the deceased partner to the new or continuing partners.</p> <p><u>Completion:</u></p> <ul style="list-style-type: none"> <li>Item 4: the consideration must accurately describe the basis of the transaction. Example wording: In consideration of [B] and [C], being partners in the [PARTNERSHIP], assuming ownership of the land on behalf of the partnership in accordance with the partnership agreement of the [PARTNERSHIP] dated [DATE].</li> </ul> <p><u>Evidence to be deposited in addition to any evidence required for the Form 1 (refer to Part 1):</u></p> <ul style="list-style-type: none"> <li>evidence that demonstrates that the interest is being dealt with in accordance with the terms of the partnership agreement (e.g. a certified copy of the partnership agreement - refer to [5-3200])<sup>*</sup>.</li> </ul>

**\*Note:** reference can be made to the dealing number of a previous dealing where evidence was deposited.

### [5-3200] Evidence that a partnership interest is being dealt with in accordance with the terms of the partnership agreement

When a Form 1 – Transfer is lodged that changes the registered proprietor of an interest that is a partnership asset (as per the scenarios set out in [5-3100]), it must be accompanied by evidence that demonstrates that the interest is being dealt with in accordance with the terms of the partnership in the form of either:

- if a written partnership agreement exists – a certified copy of the partnership agreement or certified copies of other partnership documentation (see [60-1030] regarding the deposit of supporting documentation), or
- if no written partnership agreement exists:
  - a statutory declaration from the personal representative for the deceased partner or a remaining partner declaring to the terms of the partnership and confirming that the interest in the lot being dealt with is an asset of the partnership; or

- a letter from a solicitor acting for the personal representative of the deceased partner or the remaining partner(s), confirming that the interest in the lot is an asset of the partnership and stating that the dealing is in accordance with the terms of the partnership agreement.

Alternatively, if evidence that demonstrates that the interest is being dealt with in accordance with the terms of the partnership agreement has been deposited with a previous dealing, reference can be made to that dealing number.

## **[5-4000] Forms**

### **[5-4000] General Guide to Completion of Forms**

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

**TRANSMISSION APPLICATION BY  
PERSONAL REPRESENTATIVE  
(Grant in Queensland or Queensland recognised grant\*\*)**

Dealing Number



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

COATES & SULLIVAN  
SOLICITORS  
210 ELIZABETH STREET  
BRISBANE QLD 4000  
mail@coatessullivan.com.au  
(07) 3227 5280

**Lodger  
Code**  
320

Print one-sided only

**1. Deceased's Name**

JOHN MICHAEL BROWN

**2. Lot on Plan Description**

LOT 1 ON RP155755

**Title Reference**

16560051

**3. Interest held by deceased**

FEE SIMPLE

**4. Applicant**

Given Names

MARY ALICE

Surname/Company Name and ACN/ARBN

BROWN

Address for service of notices to the applicant: 1 DOE STREET, CARINA QLD 4152  
(for rates purposes, etc.)

**5. Document(s) deposited**

\* Queensland Grant of Representation or Exemplification of Queensland Grant of Representation  
(Probate, Letters of Administration, Order or Election to administer, reseal of grant of representation from outside Queensland)

\* ~~Queensland recognised grant\*\* or Exemplification of Queensland recognised grant\*\* issued by the relevant authority (note declaration in item 6)~~

\* rule through/delete if not applicable

\*\* a Queensland recognised grant is a grant of probate or letters of administration (within the meaning of the British Probates Act 1898) from any Australian state or territory, New Zealand or The United Kingdom of Great Britain and Northern Ireland.

**6. Request / Declaration**

The applicant is the personal representative of the deceased and it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

Where the Transmission Application is made pursuant to a Queensland recognised grant or an Exemplification of a Queensland recognised grant – a search has been made that shows no Grant of Representation of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.

Date of Queensland Court File Search:    /    /

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

*J Coates*

..... signature

JOHN IAN COATES

..... full name

SOLICITOR

..... qualification

**Witnessing Officer**

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

20/07/2021

**Execution Date**

*M Brown*

.....  
**Applicant's or Solicitor's Signature**

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

Dealing Number



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

PHELPS & FOX  
SOLICITORS  
48 CREEK STREET  
BRISBANE QLD 4000  
mail@phelpsfox.com.au  
(07) 3227 4646

Lodger

Code  
(if any)  
205

Print one-sided only

**1. Deceased's Name**

JAMES MICHAEL BROWN

**2. Lot on Plan Description**

LOT 1 ON RP145344

**Title Reference**

16561151

**3. Interest held by deceased**

FEE SIMPLE

**4. Applicant**

Given Names

Surname

HELEN PETRA

BROWN

**Postal address of the applicant:**  
(for service of notices, including rates)

11 HARE STREET, CARINA QLD 4152

**5. Document(s) deposited**

\*Original last will )

\*Office copy of Death Certificate issued by the Registry of Births, Deaths & Marriages (Qld) or equivalent evidence from another state or country )

) of the deceased

\*rule through/delete if not applicable

\*\* a Queensland recognised grant is a *grant of probate or letters of administration* (within the meaning of the *British Probates Act 1898*) from any Australian state or territory, New Zealand or The United Kingdom of Great Britain and Northern Ireland.

Transmission applications by a personal representative, with a Grant in Queensland or a Queensland recognised grant, are to be on a Form 5.

**6. Request**

In accordance with the particulars disclosed in the attached declaration, it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

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

**Separate executions are required for each applicant. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).**

..... signature

..... full name

..... qualification

**Witnessing Officer**

..... signature

..... full name

..... qualification

**Witnessing Officer**

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

20/07/2021

**Execution Date**

J E Phelps

JOHN ERIC PHELPS

**Applicant's or Solicitor's Signature**

/ /

**Execution Date****Applicant's or Solicitor's Signature**

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

I, HELEN PETRA BROWN

of 11 Hare Street, Carina, Brisbane

in the State of Queensland

do solemnly and sincerely declare that:

1. The applicant is or is entitled to be the personal representative of the deceased because:
  - \* the applicant is the executor of the last will of the deceased.
  - \* ~~(if other, state basis of entitlement)~~
2. I have caused a search to be made and find that no grant of administration of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.

*If a will*

3. ~~\*(a) The deceased did not marry on or after the date of execution of the will.~~  
~~\*(b) The deceased married me on or after the date of execution of the will however, our marriage was solemnised on or after 1 April 2006 and I was married to the deceased at the time of his/her death.~~  
~~\*(c) The deceased did not enter into a civil partnership on or after the date of execution of the will.~~  
~~\*(d) The deceased did enter into a civil partnership with me on or after the date of execution of the will and I was in a civil partnership with the deceased at the time of his/her death.~~

*If a will and applicant is surviving husband or wife of the deceased*

4. \*The marriage between the deceased and me had not been dissolved nor had any proceedings for annulment been commenced.

*If a will and marriage between applicant and deceased has been dissolved/annulled*

5. ~~\*The marriage between the deceased and me was dissolved/annulled on or after 1 April 2006 however, by the deceased's will the deceased expressed an intention that my appointment as executor not be revoked.~~

*If a will and applicant is the survivor of a civil partnership with the deceased*

6. ~~\*The civil partnership between the deceased and me had not been terminated nor found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively.~~

*If a will and a civil partnership between the applicant and deceased has been terminated or is void*

7. ~~\*The civil partnership between the deceased and me was terminated or was found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively, however by the deceased's will the deceased expressed an intention that my appointment as executor would not be revoked.~~

*If a will and deceased died on or after 5 June 2017 and applicant is surviving de facto partner*

8. ~~\*The de facto relationship between the deceased and me had not ended.~~

*If a will and deceased died on or after 5 June 2017 and de facto relationship between the applicant and deceased had ended*

9. ~~\*The de facto relationship between the deceased and me had ended, however by the deceased's will the deceased expressed an intention that my appointment as executor would not be revoked.~~

*If deceased died intestate*

10. ~~\*The deceased died intestate and his/her gross estate in Queensland at the date of death did not exceed \$300,000.~~

**\*rule through if not applicable**

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867 (Qld)*.#

# The form of wording should comply with the appropriate Oaths/Evidence Act under which the declaration is being made. Note a declaration under the *Oaths Act 1867 (Qld)* can only be taken by the persons listed in section 13 of that Act.

*J E Phelps*

..... signature

JOHN ERIC PHELPS

..... full name

Solicitor

..... Qualification

**Witness**

as authorised under the relevant Oaths/Evidence Act

..... signature

..... full name

..... qualification

**Witness**

as authorised under the relevant Oaths/Evidence Act

20/06/2021

**Execution Date**

*H P Brown*

**Applicant's Signature**

/ /  
**Execution Date**

**Applicant's Signature**



Dealing Number



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**Lodger** (Name, address, E-mail & phone number)  
PHELPS & FOX  
SOLICITORS  
48 CREEK STREET  
BRISBANE QLD 4000  
mail@phelpsfox.com.au  
(07) 3227 4646

**Lodger Code**  
(if any)  
205

1. **Deceased's Name**  
JAMES MICHAEL BROWN

2. **Lot on Plan Description** **Title Reference**  
LOT 1 ON RP145344 16561151

3. **Interest held by deceased**  
FEE SIMPLE

Note: A Form 24A - Property Information (Transmission Application) must be attached to this Form where interest being transmitted is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "water allocation" (Water Act 2000)

4. **Applicant** Given Names Surname (include tenancy if more than one)  
PATRICIA ALICE BROWN

5. **Document(s) deposited**

\*Grant of probate )  
\*Grant of letters of administration with the will annexed )  
\*Reseal of grant of representation )  
\*Exemplification of grant of representation )

issued by the Supreme Court of Queensland in the estate of the deceased

\*Grant of representation ) other than from Queensland  
\*Exemplification of grant of representation ) other than from Queensland

\*Original last will of the deceased and an office copy of Death Certificate issued by the Registry of Births, Deaths & Marriages (Qld) or equivalent evidence from another state or country

\*rule through if not applicable

6. **Request**

In accordance with the particulars disclosed in the attached declaration and the consent of the (entitled) personal representative having been given, it is requested that the applicant be registered as proprietor of the above interest in accordance with this claim.

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

**Separate executions are required for each applicant. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).**

G H Wilston

..... signature

GREGORY HAROLD WILSTON

..... full name

SOLICITOR

..... qualification

**Witnessing Officer**

20/07/2021

**Execution Date**

P A Brown

**Applicant's or Solicitor's Signature**

..... signature

..... full name

..... qualification

**Witnessing Officer**

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

/ /  
**Execution Date**

**Applicant's or Solicitor's Signature**

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

I, PATRICIA ALICE BROWN

of 24 Buck Street, Carina

in the State of Queensland

do solemnly and sincerely declare that:

1. The applicant is the devisee / legatee under the last will of the deceased.
2. ~~\*The land described in clause \_\_\_\_\_ of the will is the land described in item 2 on Form 6.~~  
To be completed where the land in item 2, on Form 6, is specifically identified other than by way of lot on plan description
3. The information contained on the attached Form 24A is true and correct.
4. *If a will*
  - \*~~(a) The deceased did not marry on or after the date of execution of the will.~~
  - \*~~(b) The deceased married me on or after the date of execution of the will however, our marriage was solemnised on or after 1 April 2006 and I was married to the deceased at the date of his/her death.~~
  - \*~~(c) The deceased did not enter into a civil partnership on or after the date of execution of the will.~~
  - \*~~(d) The deceased entered into a civil partnership with me on or after the date of execution of the will and I was in a civil partnership with the deceased at the time of his/her death.~~
5. *If deceased died before 1 April 2003*
  - \*~~(a) Neither I nor a spouse of mine was a witness to the execution of the will.~~

*If deceased died on or after 1 April 2003 but before 1 April 2006*

  - \*~~(b) Neither I nor a spouse of mine as defined by section 5AA of the Succession Act 1981 was a witness to the execution of the will.~~

*If deceased died on or after 1 April 2006*

  - (c) \*(i) I was not a witness to the execution of the will.
  - \*(ii) ~~I was a witness to the execution of the will but documentation is deposited herewith evidencing the application of section 11(3) of the Succession Act 1981.~~
6. \*I have caused a search to be made and find that no grant of administration of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.  
Only required if the will is not proved or not resealed in Queensland
7. \*The marriage between the deceased and me had not been dissolved nor had any proceedings for annulment been commenced.  
Required if the applicant is surviving husband or wife of the deceased and has not been granted a grant of representation in Queensland
8. ~~\*The marriage between the deceased and me was dissolved/annulled on or after 1 April 2006 however, by the deceased's will the deceased expressed an intention that my entitlement as a beneficiary not be revoked.~~
9. ~~\*The civil partnership between the deceased and me had not been terminated nor found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively.~~  
Required if the applicant is survivor of a civil partnership and has not been granted a grant of representation in Queensland
10. ~~\*The civil partnership between the deceased and me was terminated or found to be void under the Civil Partnerships Act 2011 sections 18 or 30 respectively, however, by the deceased's will the deceased expressed an intention that my entitlement as a beneficiary not be revoked.~~
11. *If deceased died on or after 5 June 2017*
  - \*~~(a) The de facto relationship between the deceased and me had not ended.~~  
Required if the applicant is surviving de facto partner of the deceased and has not been granted a grant of representation in Queensland
  - \*~~(b) The de facto relationship between the deceased and me had ended, however by the deceased's will the deceased expressed an intention that my entitlement as beneficiary not be revoked.~~

\* rule through if not applicable

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of *the Oaths Act 1867 (Qld)*.#

# The form of wording should comply with the appropriate Oaths/Evidence Act under which the declaration is being made. Note a declaration under the *Oaths Act 1867 (Qld)* can only be taken by the persons listed in section 13 of that Act.

G H Wilston

..... signature

GREGORY HAROLD WILSTON

..... full name

SOLICITOR

..... Qualification

Witness

As authorised under relevant Oaths/Evidence Act

20/06/2021

Execution Date

P A Brown

.....

Applicant's Signature

I, PATRICIA ALICE BROWN  
of 24 Buck Street, Carina, Queensland  
declare that:

- ~~\*I am the person to whom the grant of representation was made.~~
- \*I am the person named as executor in the original last will.
- ~~\*I am entitled to be the personal representative of the deceased by virtue of \_\_\_\_\_.~~
- \*rule through if not applicable

All just debts and funeral expenses have been paid and testamentary expenses have been adequately provided for.  
Legacies, if any, have been paid or adequately provided for.

AND I consent to this application.

*G H Wilston*

..... signature

GREGORY HAROLD WILSTON

..... full name

SOLICITOR

..... qualification

**Witnessing Officer**

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

20/06/2021

**Execution Date**

*P A Brown*

**Personal Representative's Signature**

..... signature

..... full name

..... qualification

**Witnessing Officer**

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

/ /

**Execution Date**

**Personal Representative's Signature**

## Guide to Completion of Form 5

### [5-4010] Item 1

Insert the name, as recorded, of the deceased registered owner or holder of the interest.

Where a personal representative of an estate is recorded on title (original personal representative) and a new personal representative is appointed before the estate was fully administered, Item 1 must be expanded in the following manner:

[name of the deceased original proprietor or holder] currently registered in the name of [name of the original personal representative] as personal representative.'

### [5-4020] Item 2

Insert the details of the lot which is being transmitted or the lot over which the interest being transmitted is registered. For further information see part 1 – Transfer, esp. [1-2020].

More than one lot on plan description may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is required for the transmission of different interests. For more information see [59-2020].

### [5-4030] Item 3

The following must be inserted:

- The interest held by the deceased; and
- Where the interest held by the deceased constitutes only part of a lot or interest – the share as a fraction (e.g.  $\frac{1}{4}$ ,  $\frac{1}{2}$ ).

For example:

WHOLE OF A LOT OR INTEREST	PART OF A LOT OR INTEREST
'Fee Simple'	' $\frac{1}{2}$ interest in Fee Simple'
'Lease No. G123456'	' $\frac{1}{2}$ interest in Lease No. G123456'
'Mortgage No. 701543622'	' $\frac{1}{2}$ interest in Mortgage No. 701543622'
'State Lease'	' $\frac{1}{2}$ interest in State Lease'
'Water Allocation'	' $\frac{1}{2}$ interest in Water Allocation'

### [5-4040] Item 4

Insert the applicant's full name. This should coincide with the name of the person in whose favour the grant of representation (referred to in Item 5) was made. Where the Form 5 is supported by a Queensland Reseal of Probate, the person claiming the estate in the application must be the person who submitted the documents to the Court for reseal and is named on the face of the reseal.

In the case of a (trustee) company, its Australian Company Number should be provided.

Complete the postal address of the applicant(s) for service of notice if the deceased was:

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

### [5-4050] Item 5

The relevant category of document/s deposited in support of the Transmission Application must be identified here. The inapplicable category must be ruled through or deleted.

Refer to [60-1030] for information relating to the deposit of supporting documentation.

## [5-4060] Item 6

Execution and dating of the Transmission Application is required as indicated on the Form. As noted on the Form, the Application may be signed by a solicitor on behalf of the applicant and no witness is required in this instance. However, the solicitor **must** print his/her full name immediately below the signature.

Where the Transmission Application is made pursuant to a Queensland recognised grant or an Exemplification of a Queensland recognised grant that has not been resealed by the Supreme Court, the signing party declares that a search has been conducted that shows no Grant of Representation of the estate of the deceased (including a reseat) has been made, applied for, or caveated against in Queensland. The date that the search was conducted must be inserted as the **Date of Queensland Court File Search**. In practice, the search should be conducted immediately prior to the execution of the Application, which should be lodged promptly thereafter.

Where the Application is made pursuant to a Queensland Grant of Representation (including a Queensland recognised grant that has been resealed by the Supreme Court) or Exemplification of Queensland Grant of Representation the declaration does not apply and the **Date of Queensland Court File Search** can be left blank.

[5-4070] deleted

## [5-4080] Declaration by Applicant

In the usual case, no additional declaration by the applicant is required and it will be noted that the Form does not incorporate a declaration as an annexure like a Form 5A or Form 6. However, if the deceased's name as recorded in the Register differs from the deceased's name as shown in the deposited grant of representation or reseat, a statutory declaration confirming that they are one and the same person is required.

For example:

'The George Brown shown as the registered proprietor of Lot [no.] is one and the same person as the George Howard Brown referred to in the grant of probate deposited with the Form 5 application dated the... day... of 20...'

If the differences are significant, the Registrar may require the grant to incorporate, as an alias, the name of the deceased as recorded in the register.

## [5-4090] Documentation to be Lodged

The following documentation must be lodged to register the transmission:

1. Form 5;
2. One of the following\*:
  - probate (either original or Supreme Court office copy);
  - or**
  - reseat of probate;
  - or**
  - letters of administration;
  - or**
  - where there is an order to administer or an order to administer in intestacy, certificate of authority and Supreme Court office copy of the will;
  - or**
  - election to administer and certificate of authority;
  - or**
  - a grant of representation or an exemplification of a grant of representation from a jurisdiction to which the *British Probates Act 1898* (Qld) applies (a Queensland recognised grant);
3. declarations and evidence to establish identity, if name changes are involved; and
4. for a water allocation title<sup>2, 3</sup>:
  - a. Form W2F152 – Notice to registrar of water allocations of existence of supply contract (for water allocations managed under a Resource Operations Licence) – see Part 49, esp [49-0020]; or



- b. Water Allocation Dealing Certificate – (for water allocations not managed under a Resource Operations Licence) – see Part 49, esp [49-0060]; and
- c. a Form W2F164 – Acknowledgement notice for water allocation to which a distribution operations licence applies (for water allocations subject to a Distribution Operations Licence) – see Part 49, esp. [49-2080].

\*Please note that the documents listed in (2) are not provided to the Titles Registry with a Form 5 (electronic) – Transmission Application by Personal Representative prepared and lodged through Electronic Conveyancing. The Subscriber representing the applicant/s will insert relevant particulars of any grant in the relevant panel in the form, make certifications in accordance with the Participation Rules (Queensland) for electronic conveyancing and retain a copy of the Grant of Representation as Supporting Evidence.

## Guide to Completion of Form 5A

### [5-4100] Item 1

Insert the name, as recorded, of the deceased registered owner or holder of the interest.

### [5-4110] Item 2

Insert the details of the lot which is being transmitted or the lot over which the interest being transmitted is registered. For further information see Part 1 – Transfer, esp [1-2020].

More than one lot on plan description may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is required for the transmission of different interests. For more information see [59-2020].

### [5-4120] Item 3

The following must be inserted:

- The interest held by the deceased; and
- Where the interest held by the deceased constitutes only part of a lot or interest – the share as a fraction (e.g.  $\frac{1}{4}$ ,  $\frac{1}{2}$ ).

For example:

WHOLE OF A LOT OR INTEREST	PART OF A LOT OR INTEREST
'Fee Simple'	' $\frac{1}{2}$ interest in Fee Simple'
'Lease No. G123456'	' $\frac{1}{2}$ interest in Lease No. G123456'
'Mortgage No. 701543622'	' $\frac{1}{2}$ interest in Mortgage No. 701543622'
'State Lease'	' $\frac{1}{2}$ interest in State Lease'
'Water Allocation'	' $\frac{1}{2}$ interest in Water Allocation'

### [5-4130] Item 4

Insert the applicant's full name. In the case of a company, its Australian Company Number should be provided.

Complete the postal address of the applicant(s) for service of notice if the deceased was:

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

### [5-4140] Item 5

The document/s deposited in support of the application must be listed here.

Any inapplicable documents listed on the Form must be ruled through or deleted.

Refer to [60-1030] for information relating to the deposit of supporting documentation.

## Original will

If the deceased registered proprietor died leaving a will then “\*Original last will” must be included in this item and the original will must be deposited.

If the deceased registered proprietor died without a will (see [5-2150]) then “\*Original last will” must be ruled through or deleted.

## Death certificate – testamentary capacity at the date of the will

If the deceased registered proprietor died leaving a will and the official certificate of death of the deceased is being deposited, the cause of death should be checked to ensure that it does not suggest a lack of testamentary capacity at the time the will was made. If it does, the Registrar will require evidence to be deposited to satisfy the Registrar that the deceased had testamentary capacity at the date of the will. For example:

- an original letter from a registered medical practitioner who treated the deceased during the period of time in which the will was drafted and executed. The letter is required to detail the deceased's capacity during this time and state that in the practitioner's opinion the deceased had testamentary capacity for the period in which the deceased's will was drafted and executed; or
- a statutory declaration from a solicitor who was a witness to the execution of the will, detailing how they satisfied themselves as to the deceased's testamentary capacity.

## [5-4150] Item 6

Execution and dating of the Transmission Application is required as indicated on the Form. As noted on the Form, the Application may be signed by a solicitor on behalf of the applicant and no witness is required in this instance. However, the solicitor **must** print his/her full name immediately below the signature.

## [5-4160] Declaration by Applicant

The document/s deposited will be those necessary to establish the entitlement to be the personal representative of the deceased. In the case of an application by the executor of any unproved will, the original will and the certificate of death of the deceased are likely to be the only documents required.

As the Form is used in different circumstances, it is necessary to comment separately on the declarations required for the separate circumstances in which the Form is used. This Form of Transmission Application is used where:

- a. the deceased registered owner or holder of an interest left a will and the applicant is or is entitled to be the deceased's personal representative or, in the opinion of the Registrar, would succeed in an application for a grant of representation (i.e. probate or letters of administration with the will annexed); or
- b. in the case of an intestacy, the applicant would be entitled, in the opinion of the Registrar, to obtain a grant of letters of administration (but has not obtained such a grant); and:
  - i. the gross value of the deceased's estate in Queensland, other than property held by the deceased as a joint tenant, was not over \$300,000 (or such other amount as may be prescribed by regulation); and
  - ii. six months have elapsed from the date of death of the intestate.

A declaration in the prescribed Form 5A annexure must be completed and lodged with the Transmission Application. The statements required to be included or deleted are indicated on the declaration.

## [5-4170] Paragraph 1

This paragraph may require the applicant to state the basis upon which he/she is entitled to be the personal representative. For example, if the instituted executor has died or renounced and the substituted executor is the applicant, this should be made clear and the relevant certificate of death or renunciation must be deposited. Similarly, if the applicant is the surviving executor, this should be made clear and a copy of the certificate of death of the deceased executor should be deposited with the Application. In these circumstances, the statement which should appear in paragraph 1 might be:

- a. 'The applicant is the surviving executor appointed under the will referred to above.
- b. AB, the other executor so appointed, died on 10 July 1992 as appears by the office copy of certificate of death deposited herewith.'

If the applicant is entitled to appointment as an administrator with the will annexed, the evidentiary statements required to establish this are the same as are required by the Supreme Court of Queensland in an application for a grant of letters of

administration with the will annexed. It may be that the basis of entitlement can be stated, such as 'The executor AB appointed by the will referred to above has died (certificate of death deposited herewith) and I am the sole residuary beneficiary'. In such a case, the space provided on the Form may be sufficient.

Where there is insufficient space on the single page declaration annexed to Form 5A for all declarants to execute on the single page of the declaration, separate declarations must be completed and executed. (Copies of certificates of death, original renunciations and/or consents should be referred to as 'deposited' with the Application).

If the situation is that referred to in paragraph (b) above (intestacy), paragraph 1 will require the applicant to establish his/her entitlement to a grant of letters of administration.

Prior to 1 April 2003, s. 5 of the *Succession Act 1981* included a definition of 'de facto spouse' to provide for a sharing by a de facto spouse of the estate of a person who died intestate.

Section 5AA of the *Succession Act* now includes the definition of a spouse generally as 'the person's husband or wife; or de-facto partner, as defined in the *Acts Interpretation Act 1954* (the AIA), section 32DA; or civil partner, as defined in the AIA, schedule 1'.

Where a Grant of Letters of Administration in Queensland of an intestate's estate has not been made and the deceased died on or after 1 May 1998, if in an application of this type the applicant is:

a. the deceased spouse, the following is required:

for a death between 1 May 1998 and 31 March 2003, inclusive –

- a statement that he/she is the spouse of the deceased and the deceased was not survived by a de facto spouse as defined by s. 5 of the *Succession Act 1981* as in force at the date of death of the deceased.

for a death on or after 1 April 2003 –

- a statement that he/she/they is/are the surviving spouse/s of the deceased as defined by s. 5AA of the *Succession Act 1981*.

b. the deceased's de facto spouse, the following is required:

for a death between 1 May 1998 and 31 March 2003, inclusive –

- a statement that he/she is the de facto spouse of the deceased as defined by s. 5 of the *Succession Act 1981*, as in force at the date of death of the deceased, and that the deceased was not survived by a spouse.

c. the deceased's child, the following is required:

for a death between 1 May 1998 and 31 March 2003, inclusive –

- a statement that he/she is a child of the deceased and that the deceased was not survived by a spouse or a de facto spouse as defined by s. 5 of the *Succession Act 1981* as in force at the date of death of the deceased.

for a death on or after 1 April 2003 –

- a statement that he/she is a child of the deceased and the deceased was not survived by a spouse as defined by s. 5AA of the *Succession Act 1981*.

The applicant child of the deceased must also identify, by name, all the children of the deceased who survived the deceased and their dates of birth.

However, if the deceased was survived by more than one child, as many as four children may apply as personal representatives.

Section 610 (Priority for letters of administration) of the Uniform Civil Procedure Rules 1999 requires that a person with a higher priority to the applicant must be accounted for (e.g. if a child of the deceased is the applicant and the deceased was survived by a spouse/de facto spouse, the spouse/de facto spouse must renounce his/her right to administer the deceased's estate).

## [5-4173] Paragraph 2

The 'search' which this paragraph states as having been caused to be made is the same as the one required in an application for a grant of representation. It is not necessary to lodge any evidence that the search referred to in this paragraph has been made, nor is it necessary to specify the date on which the search was made. In practice, the search should be conducted immediately prior to the execution of the Application, which should be lodged promptly thereafter.

### [5-4176] Paragraph 3

As indicated on the form the inapplicable clauses must be ruled through.

### [5-4179] Paragraph 4

When the husband or wife of the deceased is the applicant in a Form 5A, and the marriage between the deceased and the spouse has not been dissolved or annulled, then this must be indicated by retaining paragraph 4.

### [5-4182] Paragraph 5

When the former husband or wife of the deceased is the applicant in Form 5A, and the divorce or annulment occurred on or after 1 April 2006, and a contrary intention appears in the will that the former husband or wife is entitled despite the divorce or annulment, then this must be indicated by retaining paragraph 5.

### [5-4184] Paragraph 6

When the surviving civil partner of the deceased is the applicant in a Form 5A, and the civil partnership between the deceased and the civil partner had not been terminated or has not been found to be void under section 18 or 30 of the *Civil Partnerships Act 2011*, then this must be indicated by retaining paragraph 6.

### [5-4188] Paragraph 7

When the former civil partner of the deceased is the applicant in a Form 5A, and the civil partnership between the deceased and the civil partner had been terminated or has been found to be void under section 18 or 30 of the Civil Partnerships Act, and a contrary intention appears in the will that the civil partner's appointment as executor would not be revoked despite the termination or finding, then this must be indicated by retaining paragraph 7.

### [5-4189] Paragraph 8

When the surviving de facto partner of the deceased is the applicant in a Form 5A, and the de facto relationship between the deceased and the de facto partner had not ended, then this must be indicated by retaining paragraph 8.

### [5-4190] Paragraph 9

When the former de facto partner of the deceased is the applicant in a Form 5A, and the de facto relationship between the deceased and the de facto partner had ended, and a contrary intention appears in the will that the de facto partner's appointment as executor would not be revoked despite the ending of the de facto relationship, then this must be indicated by retaining paragraph 7.

### [5-4191] Paragraph 10

Substantiation of the statement that the gross value of the estate in Queensland does not exceed \$300,000 is **not** required. The Registrar relies on the applicant's statement in the declaration.

### [5-4200] General Comments

Separate executions are required for each declarant. Where there is sufficient space on the single page annexure to Form 5A, it is permissible for more than one declarant to make and execute the declaration on the single page annexure. However, where there is insufficient space for all declarants to execute on the same single page declaration, separate declarations must be completed and executed.

If the applicant is to execute the declaration outside of Queensland, the appropriate form of attestation clause should be used. Refer to [60-0260] regarding the requirements for the form of declarations for other jurisdictions.

Although not required to be disclosed, if the lot or interest is an asset of a partnership or the deceased was the undisclosed sole trustee of it, the Form 5A may be inappropriate as a grant of representation may be necessary to enable the trust to be assumed. Such lot or interest should **not** be dealt with by way of a 'limited transmission', i.e. a recording of the personal representative as 'personal representative – trust' or 'personal representative – partnership'. The personal representative would be recorded (by the transmission application) as 'personal representative'. Once this has occurred, these other equities can be dealt with by way of the appropriate Form 1 – Transfer (e.g. a Form 1 – Transfer to Trustees (see [1-2380] and [1-2390])).

As previously noted, a Transmission Application may be registered in these circumstances only after six months from the date of death, where no letters of administration have been granted in that time and where the gross estate of the intestate in Queensland, other than property held by the deceased as a joint tenant, was not over \$300,000 (or as otherwise prescribed by regulation).

### [5-4210] Documentation to be Lodged

The following documentation must be lodged to register the transmission:

1. Form 5A;
2. documents referred to as 'deposited' in Item 5 of the Transmission Application;
3. Form 20 and supplementary statutory declaration/s, as appropriate; and
4. for a water allocation title:
  - a. Form W2F152 – Notice to registrar of water allocations of existence of supply contract (for water allocations managed under a Resource Operations Licence) – see Part 49, esp. [49-0020]; or
  - b. Water Allocation Dealing Certificate (for water allocations not managed under a Resource Operations Licence) – see Part 49, esp. [49-0060]; and
  - c. Form W2F164 – Acknowledgement notice for water allocation to which a distribution operations licence applies (for water allocations subject to a Distribution Operations Licence) – see Part 49, esp. [49-2080].

## Guide to Completion of Form 6

### [5-4220] Item 1

Insert the name, as recorded, of the deceased registered owner or holder of the interest.

### [5-4230] Item 2

Insert the details of the lot which is being transmitted or the lot over which the interest being transmitted is registered. For further information see Part 1 – Transfer, esp [1-2020].

More than one lot on plan description may be included in this Item and if the space provided is insufficient, a Form 20 – Enlarged Panel should be used. A separate application is required for the transmission of different interests. For more information see [59-2020].

### [5-4240] Item 3

The following must be inserted:

- The interest held by the deceased; and
- Where the interest held by the deceased constitutes only part of a lot or interest – the share as a fraction (e.g.  $\frac{1}{4}$ ,  $\frac{1}{2}$ ).

For example:

WHOLE OF A LOT OR INTEREST	PART OF A LOT OR INTEREST
'Fee Simple'	' $\frac{1}{2}$ interest in Fee Simple'
'Lease No. G123456'	' $\frac{1}{2}$ interest in Lease No. G123456'
'Mortgage No. 701543622'	' $\frac{1}{2}$ interest in Mortgage No. 701543622'
'State Lease'	' $\frac{1}{2}$ interest in State Lease'
'Water Allocation'	' $\frac{1}{2}$ interest in Water Allocation'

### [5-4250] Item 4

If there is more than one applicant, their entitlement should be shown, e.g. 'as joint tenants' or 'as tenants in common in equal shares' or 'as tenants in common in the shares of one-third and two-thirds respectively', etc as the case may be.

## [5-4260] Item 5

The document/s deposited in support of the application must be listed here.

Any inapplicable documents listed on the Form must be ruled through or deleted.

Refer to [60-1030] for information relating to the deposit of supporting documentation.

### Death certificate – testamentary capacity at the date of the will

If the deceased registered proprietor died leaving a will and the official certificate of death of the deceased is being deposited, the cause of death should be checked to ensure that it does not suggest a lack of testamentary capacity at the time the will was made. If it does, the Registrar will require evidence to be deposited to satisfy the Registrar that the deceased had testamentary capacity at the date of the will. For example:

- an original letter from a registered medical practitioner who treated the deceased during the period of time in which the will was drafted and executed. The letter is required to detail the deceased's capacity during this time and state that in the practitioner's opinion the deceased had testamentary capacity for the period in which the deceased's will was drafted and executed; or
- a statutory declaration from a solicitor who was a witness to the execution of the will, detailing how they satisfied themselves as to the deceased's testamentary capacity.

## [5-4270] Item 6

Execution and dating of the Transmission Application is required as indicated on the Form. As noted on the Form, the Application may be signed by a solicitor on behalf of the applicant and no witness is required in this instance. However, the solicitor **must** print his/her full name immediately below the signature.

## [5-4280] Declaration by Applicant

A declaration in the prescribed Form 6 annexure must be completed and deposited with the Application. The statements required to be included or completed are indicated on the declaration. However, some paragraphs are deserving of comment.

### [5-4290] Paragraph 1

Where the devisee/legatee is a corporation, this paragraph should be varied to begin 'The applicant is' (not 'I am'). The declarant should include a statement that he/she is authorised to make the declaration on the corporation's behalf. Further, even in the normal case where the applicant declares that he/she is the devisee/legatee, additional identification or evidence of entitlement may be required, for example, where:

- a. the applicant is not named or is named differently in the will and/or is a substituted beneficiary; or
- b. the effectiveness of the devise/legacy depends, as a matter of law, on other conditions being fulfilled.

In either of these circumstances, evidence must be provided to establish the entitlement of the applicant to the devise/legacy.

The Registrar does not require evidence of the payment of legacies and debts.

Examples falling within (a) above are as follows:

- i. Where the devise/legacy is to a class such as 'to such of my children as shall survive me'. Here, the applicant must give details of the testator's children, including age, and make it clear that, if a child has failed to survive the testator, that child died without issue. Otherwise, the implications of s. 33N of the *Succession Act 1981* must be considered (i.e. the entitlement of the deceased child's issue to take the deceased child's share). An appropriate statement in this Item might be:

'The deceased left as his only children surviving him, us, your declarants.'

'No child of the deceased predeceased him.'

'AB, the only other child of the deceased, died on 10 January 1985 as appears by the office copy certificate of death deposited herewith, without issue.'



Note that s. 65 of the *Succession Act 1867* continues to have relevance where the will was executed prior to 1 January 1982 (the commencement date of the *Succession Act 1981*) and the deceased died prior to 1 April 2006.

- ii. If the devisee/legatee is named 'Albert Brown' in the will, but his correct name is 'Albert William Brown', then no statement is required to identify them as one and the same. However, a significant difference, e.g. in the surname, will require explanation.
- iii. If the applicant received his/her entitlement to claim by virtue of being a substituted or residuary beneficiary, then particulars of the predeceasing of the primary beneficiary should be declared and an office copy certificate of death of the primary beneficiary should be deposited with the Application. The statement required might be:

'I am the substituted beneficiary of the land described in Item 2, AB the primary beneficiary having predeceased the deceased as appears by the office copy certificate of death deposited herewith.'

Where the primary beneficiary was 'issue' of the testator, the relevance of s. 33N of the *Succession Act 1981* should be addressed as discussed in example (i) above. Again, the relevance of s. 65 of the *Succession Act 1867* should also be considered.

Examples falling within (b) above are as follows:

- i. If the applicant is required by the will to have attained a certain age or met a certain qualifying condition (e.g. to have married), then evidence will be required showing that the age or other condition has been met.

If the provisions of ss. 28, 29 or 30 of the *Succession Act 1981* or the comparable sections that replaced those sections from 1 April 2006 as contained in Division 5 of Part 2 of the *Succession Act 1981* appear to affect the devise or legacy, appropriate evidence would need to be provided to establish entitlement.

## **[5-4300] Paragraph 2**

Please complete as requested in the paragraph on the form.

## **[5-4303] Paragraph 3**

As indicated on the form the information contained in the Form 24 must be true and correct.

## **[5-4305] Paragraph 4**

As indicated on the form the inapplicable clauses must be ruled through.

## **[5-4307] Paragraph 5**

As indicated on the form the inapplicable clauses must be ruled through.

## **[5-4310] Paragraph 6**

As indicated on the form, this paragraph is relevant only where the applicant's claim is pursuant to an unproven will.

## **[5-4320] Paragraph 7**

When the husband or wife of the deceased is the applicant in a Form 6, and the application is not supported by a grant of representation in Queensland, then he/she must indicate that the marriage between the deceased and the husband or wife has not been dissolved or annulled by retaining paragraph 7.

## **[5-4322] Paragraph 8**

When the husband or wife is the applicant in a Form 6, and the marriage between the deceased and the applicant was dissolved or annulment occurred on or after 1 April 2006, and a contrary intention appears in the will that the former husband or wife is entitled despite the divorce or annulment, then this must be indicated by retaining paragraph 8.

## **[5-4324] Paragraph 9**

When the surviving civil partner is the applicant in a Form 6, and the civil partnership between the deceased and the civil partner had not been terminated or has not been found to be void under section 18 or 30 of the *Civil Partnerships Act 2011*, then this must be indicated by retaining paragraph 9.

### [5-4326] Paragraph 10

When the former civil partner of the deceased is the applicant in a Form 6, and the civil partnership between the deceased and the civil partner had been terminated or has been found to be void under section 18 or 30 of the Civil Partnerships Act, and a contrary intention appears in the will that the former civil partner's entitlement as beneficiary not be revoked, then this must be indicated by retaining paragraph 10.

### [5-4327] Paragraph 11

When the surviving de facto partner of the deceased is the applicant in a Form 6, and the de facto relationship between the deceased and the de facto partner had not ended, then this must be indicated by retaining paragraph 11(a).

When the former de facto partner of the deceased is the applicant in a Form 6, and the de facto relationship between the deceased and the de facto partner had ended, and a contrary intention appears in the will that the de facto partner's entitlement as beneficiary would not be revoked despite the ending of the de facto relationship, then this must be indicated by retaining paragraph 11(b).

### [5-4330] General Comments

Separate executions are required for each declarant. Where there is insufficient space on the annexure to Form 6 for declarants to make and execute on the annexure, additional declarations must be completed.

If the applicant is to execute the declaration outside of Queensland, the appropriate form of attestation clause should be used. Refer to [60-0260] regarding the requirements for the form of declarations for other jurisdictions.

### [5-4340] Consent of Personal Representative

This part of the Form requires the completion of the name and address of the personal representative or person entitled to appointment as such and requires the deletion of the inapplicable items.

As with a devisee/legatee, if the unproven will showed the executor's name as 'Alice Brown', but her correct name was 'Alice Emily Brown', no evidence is required to identify them as one and the same. However, a significant difference (e.g. in the surname) will require an explanation.

It is necessary to insert in this section of the Form the basis of entitlement to be the personal representative. Where the Form 6 is supported by a Queensland Reseal of Probate, the person entitled to consent to the transmission as personal representative is the person whose name appears on the face of the reseal.

The execution of the consent by the personal representative must be witnessed by a person qualified in accordance with s. 161 of the *Land Title Act 1994* or s. 310 of the *Land Act 1994*.

A personal representative, without a grant of representation in Queensland, who is not the applicant must make a statutory declaration with any relevant paragraphs from the Form 5A Declaration by Applicant annexure (with "applicant" replaced with "personal representative"). For example, if the personal representative was:

- the current or former husband or wife of the deceased – paragraphs 4 and 5 (see [5 4179] and [5 4182]); or
- the current or former civil partner of the deceased – paragraphs 6 and 7 (see [5 4184] and [5 4188]); or
- the current or former de facto partner of the deceased – paragraphs 8 and 9 (see [5 4189] and [5 4190]).

### [5-4350] General Comments

The consent of the personal representative is required even if the personal representative and the applicant are one and the same.

Separate executions are required for each personal representative consenting to a Form 6.

It is noted that the consent incorporates statements regarding the payment of or provision for just debts, funeral and testamentary expenses and legacies. The Registrar does not require evidence that these matters have been attended to. It is the personal representative's responsibility. These statements are incorporated to replace the need for a declaration relating to these issues by alerting personal representatives to some basic matters they should consider before consenting to the application.

## [5-4355] Appropriation

Where an appropriation has taken place in the course of administering the estate, a Form 6 will be permitted provided that it is accompanied by a declaration from the personal representative stating, if such is the case:

- an appropriation has occurred during the course of administering the deceased's estate;
- the provisions of s. 33(1)(l) of the *Trusts Act 1973* have been complied with; and
- no application has been made to the Court to vary the appropriation.

## [5-4360] Documentation to be Lodged

The following documentation must be lodged to register the transmission:

1. Form 6;
2. those referred to as 'deposited' as set out in Item 5 of the Transmission Application;
3. supplementary statutory declaration/s, as appropriate;
4. for fee simple, a State tenure (State lease or licence) and a water allocation title a Form 24A – Property Information (Transmission Application);
5. for fee simple or a State tenure (State lease or licence) a Form 25 – Foreign Ownership Information, if applicable (see [25-0020] and [25-0030])<sup>1</sup>; and
6. for a water allocation title<sup>2,3</sup>:
  - a. Form W2F152 – Notice to registrar of water allocations of existence of supply contract (for water allocations managed under a Resource Operations Licence) – see Part 49, esp. [49-0020]; or
  - b. Water Allocation Dealing Certificate – (for water allocations not managed under a Resource Operations Licence) – see Part 49, esp. [49-0060]; and
  - c. Form W2F164 – Acknowledgement notice for water allocation to which a distribution operations licence applies (for water allocations subject to a Distribution Operations Licence) - see Part 49, esp. [49-2080].

[5-6000] deleted

## [5-5000] eConveyancing

### [5-5010] Electronic Conveyancing and Electronic Conveyancing Document

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 [5-5105 and 62-6000] for further information on the application of the eConveyancing mandate.

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).

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.

### [5-5100] Scope Restrictions

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

### [5-5105] Electronic Conveyancing Mandate

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 5 – Transmission Application is a required instrument under the regulation and is 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.

## [5-5110] Exemptions to Required Instruments

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 5 – Transmission Application) 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.

## [5-5115] When an Exemption Applies

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

## [5-5200] Prescribed Requirements – Form 5 (electronic)

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.

The following are prescribed requirements under the Participation Rules (Queensland) for Subscribers that are completing and digitally signing a Form 5 (electronic):

- 5-001 the Subscriber must retain as supporting evidence (refer to Rule 6.6 of the Participation Rules (Queensland)) a copy of the Grant of Representation that is the Evidentiary basis for the Transmission Application (e.g. a copy of the Queensland Grant of Probate).
- 5-002 Where the Evidentiary basis of the Transmission Application (Item 5) is a *Queensland recognised grant*\* or an Exemplification of a *Queensland recognised grant*\*:
  - 1. a search must be made that shows that no Grant of Representation of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland; and
  - 2. the Subscriber must retain evidence of the search (e.g. a copy of the search or a file note) as supporting evidence (refer to Rule 6.6 of the Participation Rules (Queensland)).

\* A *Queensland recognised grant* is a grant of *probate* or *letters of administration* (within the meaning of the *British Probates Act 1898* (Qld)) from a jurisdiction to which the British Probates Act applies. The relevant Regulation sets out that the British Probates Act currently applies to grants from other Australian states and territories, New Zealand and the United Kingdom of Great Britain and Northern Ireland.

**Note:** this requirement does not apply to a *Queensland recognised grant* that has been resealed by the Supreme Court of Queensland because this is a Queensland grant.

## **[5-5300] Attachments – Form 5 (electronic)**

There is no requirement or provision for any document or evidence to be included as an attachment with a Form 5 (electronic) lodged through eConveyancing.

## **[5-5400] Execution and Certification**

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

## **[5-5600] Electronic Form**

### **[5-5610] Approved Electronic Form**

A Transmission Application by Personal Representative that is an Electronic Conveyancing Document must be lodged through an Electronic Lodgment Network in the form approved by the Registrar under s. 7 of the Electronic Conveyancing National Law (Queensland).

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.

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## TRANSMISSION APPLICATION BY PERSONAL REPRESENTATIVE

---

Lodger Details:

---

### 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. Deceased's Name

Date of death:

---

### 2. Lot on Plan Description

Title Reference

---

### 3. Interest held by deceased

---

### 4. Applicant

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

---

### 5. Evidentiary basis for the Transmission Application

Jurisdiction:

Reference:

Date of Queensland Court File Search:

---

### 6. Request

The applicant is the personal representative of the deceased and it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

Where the evidentiary basis of the Transmission Application is a Queensland recognised grant or an Exemplification of a Queensland recognised grant – a search has been made that shows no Grant of Representation of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.

I certify that:

Signed by:

For  
On behalf of  
Dated:

---





## TRANSMISSION APPLICATION BY PERSONAL REPRESENTATIVE

**720015235**

SY 202

07/01/2021 09:01:13

Lodger Details:

FRESH LEGAL SOLUTIONS  
UNIT 1 25 THE SPIT  
MAROOCHYDORE QLD 4558

### 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. Deceased's Name

JOHN MICHAEL BROWN

Date of death: 01/12/2020

### 2. Lot on Plan Description

LOT 1 ON RP155755

### Title Reference

16560051

### 3. Interest held by deceased

Fee Simple

### 4. Applicant

MARY ALICE BROWN

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

1 Doe Street  
Carina QLD 4152

### 5. Evidentiary basis for the Transmission Application

Queensland Grant of Representation

Reference: S 0001 of 2021

### 6. Request

The applicant is the personal representative of the deceased and it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

Where the evidentiary basis of the Transmission Application is a Queensland recognised grant or an Exemplification of a Queensland recognised grant – a search has been made that shows no Grant of Representation of the estate of the deceased (including a resale) has been made, applied for, or caveated against in Queensland.

I certify that:

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed by:

John Ian Coates  
For FRESH LEGAL SOLUTIONS  
On behalf of  
MARY ALICE BROWN  
Dated: 07/01/2021

## TRANSMISSION APPLICATION BY PERSONAL REPRESENTATIVE

**720015236**

PX 202

08/01/2021 09:01:13

**Lodger Details:**

TODEFF LEGAL SOLUTIONS  
UNIT 2 25 THE SPIT  
MAROOCHYDORE QLD 4558

### 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. Deceased's Name

JOHN MICHAEL BROWN

Date of death: 01/12/2020 Approximately

### 2. Lot on Plan Description

LOT 1 ON RP155755

### Title Reference

16560051

### 3. Interest held by deceased

Fee Simple

### 4. Applicant

MARY ALICE BROWN

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

1 Hot Spot Lane  
SUMMER BAY NSW 2012

### 5. Evidentiary basis for the Transmission Application

Queensland recognised grant

Jurisdiction: New South Wales

Reference: 2020/21121

Date of Queensland Court File Search: 07/01/2021

### 6. Request

The applicant is the personal representative of the deceased and it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

Where the evidentiary basis of the Transmission Application is a Queensland recognised grant or an Exemplification of a Queensland recognised grant – a search has been made that shows no Grant of Representation of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland.

I certify that:

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed by:

John Ian Coates  
For TODEFF LEGAL SOLUTIONS  
On behalf of  
MARY ALICE BROWN  
Dated: 08/01/2021

## TRANSMISSION APPLICATION BY PERSONAL REPRESENTATIVE

**720015238**

SY 202

09/01/2021 09:01:13

Lodger Details:

JAZZY LEGAL SOLUTIONS  
UNIT 3 25 THE SPIT  
MAROOCHYDORE QLD 4558

### 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. Deceased's Name

JOHN MICHAEL BROWN

Date of death: 01/12/2020 – 03/12/2020

### 2. Lot on Plan Description

LOT 1 ON RP155755

### Title Reference

16560051

### 3. Interest held by deceased

Fee Simple

### 4. Applicant

MARY ALICE BROWN

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

2 Loch Downs Avenue  
MELBOURNE VIC 3001

### 5. Evidentiary basis for the Transmission Application

Exemplification of Queensland recognised grant

Jurisdiction: Victoria

Reference: BS 20001/20

Date of Queensland Court File Search: 08/01/2021

### 6. Request

The applicant is the personal representative of the deceased and it is requested that the applicant be registered as proprietor of the above interest in the land as personal representative.

Where the evidentiary basis of the Transmission Application is a Queensland recognised grant or an Exemplification of a Queensland recognised grant – a search has been made that shows no Grant of Representation of the estate of the deceased (including a resale) has been made, applied for, or caveated against in Queensland.

I certify that:

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed by:

John Ian Coates  
For JAZZY LEGAL SOLUTIONS  
On behalf of  
MARY ALICE BROWN  
Dated: 09/01/2021

## [5-5700] Electronic Form Notes for Completion

Refer to the table below for notes for the completion of a Form 5 (electronic).

ITEM	NOTES
Item 5	<p>There is no requirement for copies of documents showing the evidentiary basis of a transmission to be provided with the Form 5 (electronic).</p> <p>However, Prescribed Requirement 5-001 requires a Subscriber to retain a copy of the Grant of Representation that is the evidentiary basis of the transmission as supporting evidence (refer to [5 5200]).</p>
Item 6	<p>Where the evidentiary basis of the Transmission Application (Item 5) is a <i>Queensland recognised grant</i>* or an Exemplification of a <i>Queensland recognised grant</i>* there is a requirement to carry out a search that shows that no Grant of Representation of the estate of the deceased (including a reseal) has been made, applied for, or caveated against in Queensland (refer to Prescribed Requirement 5 002 in [5 5200]).</p> <p>There is no requirement for evidence of the search to be provided with the Form 5 (electronic).</p> <p>However, Prescribed Requirement 5 002 requires a Subscriber to retain evidence of the search (e.g. a copy of the search or a file note) as supporting evidence (refer to [5 5200]).</p>

\* A *Queensland recognised grant* is a grant of *probate* or *letters of administration* (within the meaning of the *British Probates Act 1898* (Qld)) from a jurisdiction to which the British Probates Act applies. The relevant Regulation sets out that the British Probates Act currently applies to grants from other Australian states and territories, New Zealand and the United Kingdom of Great Britain and Northern Ireland.

## [5-7000] Case Law

Nil.

## [5-8000] Fees

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

## [5-9000] Cross References and Further Reading

Part 60 — Miscellaneous

Part 62 — eConveyancing

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

### [5-9050] Notes in text

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.