

Transfer of Mortgage, Encumbrance or Lease

These Guidance Notes are of a general nature and are not intended to, and cannot, replace the advice of a Legal Practitioner or Registered Conveyancer.

This form may be used for a transfer of a Mortgage (prefix TM), Encumbrance (prefix TE), Lease (prefix TL) or Underlease (prefix TU).

All panels must be completed. If insufficient space, use approved annexure sheets. If more than one page is used, each must be numbered consecutively, e.g. 1-10, 2-10; 1/10, 2/10 or 1 of 10, 2 of 10.

All handwriting must be clear and legible in permanent, dense, rapid drying black or blue ink.

The Registrar-General *may refuse* to accept for registration any instrument, annexure sheet or additional or inserted sheet that does not comply with the provisions of LTO panel form standards.

MORTGAGE, ENCUMBRANCE, LEASE, UNDERLEASE BEING TRANSFERRED

The Mortgage, Encumbrance, Lease or Underlease must be identified by its registered number. If unregistered, identify it by referring to the parties and the date of the document, e.g. "Lease dated from A to B lodged contemporaneously herewith".

LAND DESCRIPTION

Indicate whether mortgage affects the whole or portion of the land comprised in a CERTIFICATE OF TITLE (CT) and/or CROWN LEASE (CL). If portion only then identify the relevant portion by reference to the appropriate plan.

WHOLE - e.g. "Whole of the land in CT Volume _____ Folio _____ "
or " Whole of the land in CL Volume _____ Folio _____ ".

PORTION - e.g. "Allotment 4 in DP42361 being portion of the land in CT Volume _____ Folio _____ ".

ESTATE & INTEREST

Insert as MORTGAGEE, ENCUMBRANCEE, LESSEE or UNDERLESSEE whichever the case may be. If dealing with less than the entirety you must state the quantum being transferred, e.g. "Mortgagee as regards 1 / 2 share".

TRANSFEROR

Full name and current address to be stated.

If the name of the transferor has been altered and he/she or it (body corporate) is disposing of the entirety of their interest, state the new name followed by the name as it appears on the Certificate of Title or Crown Lease, e.g. "[*New or correct name*] of [*insert address*] registered as [*old or incorrect name*] as a consequence of [*insert reason*]".

Where the transferor is not disposing of their entire interest an Application to Note Change/Correction of Name must be lodged prior to the transfer. For example, "X" (being the registered proprietor of the whole of the land) has altered her name to "Y", and transfers 1 / 2 share to "Z".

However, if the transferor transfers all of their interest, but then, in the same transfer, acquires a fresh interest as transferee, it is regarded as a total disposal of interest and therefore will not require an Application to Note Change/Correction of Name to be lodged. For example, "A" has altered his name to "B", and transfers all of his interest to himself and "C". The name will of course still need to be tied up in the transferor panel, as shown above.

If the transferor is registered as an executor or administrator of a deceased estate, that capacity is to be stated after the transferor's name and address.

TRANSFEEE

Full name, address and mode of holding must be stated (i.e. "as joint tenants" or "as tenants in common"). If the transferees are to hold as tenants in common in unequal shares, specify the share after each transferee's name, e.g. "as to 1 / 3 share" and "as to 2 / 3 shares"

CERTIFICATION

Any inapplicable certification statement(s) must be deleted.

Certification statements must be made by a prescribed person, being one of the following:

- a. A legal practitioner
- b. A registered conveyancer
- c. If the applicant is not represented by a legal practitioner or registered conveyancer – the applicant (i.e. self-represented party)
- d. If a party to an instrument is not represented by a legal practitioner or registered conveyancer – that party (i.e. self-represented party)
- e. If a provision of the *Real Property Act 1886* requires or permits some other person to provide certification under section 273 – that person (e.g. an employee of a body corporate that is a mortgagee)

All certifications apply where the Prescribed Person is a registered conveyancer or legal practitioner.

The first two listed certifications do not apply where the Prescribed Person is the mortgagee (or an employee of a body corporate that is a mortgagee).

The first two listed certifications do not apply where the Prescribed Person is a self-represented party. Self-represented parties are only required to make certifications relating to retaining evidence to support the registry instrument or document and ensuring the registry instrument or document is correct and compliant with relevant legislation and any prescribed requirement.

Note: - An attorney or a body corporate cannot make certification statements.

The Registrar-General's [Verification of Identity](#) and [Verification of Authority](#) requirements must always be complied with.

Please complete transfer tie up details at the bottom of Transferor(s) certifications, i.e. *in relation to*:

LAND
CONSIDERATION
TRANSFEROR
TRANSFEEE

Penalties of up to \$10,000 or 2 years imprisonment apply, where a prescribed person provides a false certification under section 273(1) of the *Real Property Act 1886*.

ANNEXURE

It will be necessary to use an annexure sheet (Form B1) if there is insufficient space in a panel for the text or to complete remaining certifications.

An annexure sheet to an instrument must:

- a. be in the format of Form B1 and identified therein as an annexure to the parent instrument;
- b. be referred to in the appropriate panel in the body of the instrument;
- c. be affixed securely and permanently to the top left-hand corner of the instrument. The annexure and instrument must not be bound;
- d. comply with the requirements in Form B1 Guidance Notes.

Note: The transfer is subject to any prior registered interests which are registered or noted against the interest being transferred e.g. a permissive caveat, mortgage or encumbrance etc.

FORM M3 (Version 1)



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