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*Grant of Easement (TG)
Preparation Notes*



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Grant of Easement (TG) Preparation Notes

PART 1

1. PURPOSE

The purpose of these notes is to provide assistance for land professionals in completing the Grant of Easement (TG) Form used to create easements.

Note: The word easement encompasses both easements and rights of way therefore if easement is referred to it also infers the same process relates to rights of way.

2. GENERAL INFORMATION

A Form TG is to be used to grant an easement in cases where the easement is not a condition of the plan and is identified as **“PROPOSED”** on plans of division and filed plans. Where an easement is described on a division plan as **“PROPOSED”** it can only be created in a TG after deposit of the plan or in series after the division application as it is not a condition of the division.

An easement or right of way may be created under Section 96 of the *Real Property Act 1886* (RPA) appurtenant to or over RPA land or land under General Law (NUA), using a Form TG. A Form TG may also be used to grant an easement in gross to Statutory Authorities or a body pursuant to Section 41A of the *Law of Property Act 1936*. To create an easement or right of way over Crown land a Form TG pursuant to Section 28 of the *Crown Land Management Act 2009* (CLMA) is to be used.

A general principle of the law of property is an easement or right of way must be appurtenant to dominant land and the easement must provide or confer a benefit to the dominant land. An exception to this principle is an easement in gross being an easement not attached to dominant land but to benefit a statutory authority or a body pursuant to Section 41A of the *Law of Property Act 1936* or other relevant legislation. The dominant land (in favour of¹) is gaining the benefit of the easement, while the servient land (land burdened²) is subject to the easement.

The extent of the easement or the easement alpha identifier may be changed in deposited plans and filed plans after lodgement with Land Services SA. Any TG documents that have an execution date prior to the relevant plan being approved for data may be affected by the change to the plan. In these situations, the document will be referred for correction for confirmation from the certifying party that the grantor and grantee are aware of and understand the changes made to the plan.

To create an easement of limited duration a Form TG must be used. A Lease Creating Easement/Right of Way Form (GU) can no longer be used to create easements or rights of ways of limited duration. See Notice to Lodging Parties No 172. A lessee can grant an easement over their leased land providing the easement is of no greater duration than their own interest and is appurtenant to land, another lease or to a dominant authority. This type of easement must be prepared on a TG document but the prefix changed to TG2.

An easement created over or appurtenant to a lease has the same criteria as easements created over the land in regard to registered interests. The registered interests over the lease must be dealt with appropriately in relation to the new easement.

¹ Plans depicting easements will show the dominant land in the easement details under ‘in favour of’.

² Plans depicting easements will show the servient land in the easement details under ‘land burdened’.

An easement for recreational purposes, for use and enjoyment or garden related will not be accepted for registration as it is not considered an easement. An easement must accommodate the dominant land by being necessary for the use of that land and cannot convey exclusive use to the dominant owner.

FEES

New title fees must be paid for all new titles issued as a result of the easement being granted. This includes titles issuing for the servient land and any dominant land or easement in gross. The registration fee is payable based on the consideration paid.

Refer to the Fee Calculator tool on the Land Services SA website.

3. GENERAL FORM STANDARDS

- PAGE NUMBERING: Each page must be numbered consecutively, e.g. 1 of 10, 2 of 10.
- TEXT: All handwriting MUST be in permanent, dense, rapid drying black or blue ink.
- Forms must be printed double sided.

4. PLAN REQUIREMENTS

The easement or right of way must be fully delineated on a new or existing plan that has been accepted for filing or deposited in the LTO (reference to a plan filed in the General Registry Office (G.R.O.) is not acceptable). The plan must define the position of the easement with an alpha identifier. Alternatively, the servient title may have an existing easement or right of way over exactly the same piece of land required for the proposed easement. The identifier shown on the existing title may be referred to in the description of the easement or right of way and a new plan will not be required to be prepared.

5. REAL PROPERTY ACT LAND

The Form TG is used for the creation of an easement in gross or an easement or right of way to be held appurtenant to other land. Where portion of the land in a title is being transferred and an easement or right of way is also being created or reserved, a Form T2 is used. (Refer to Jessups Lands Titles Office Forms and Practice – paragraph 3709).

The grantor and grantee may be the same party and more than one easement or right of way can be created in the one TG document. When creating more than one easement in a Form TG, they must be separately described otherwise they may be interpreted as one easement. The use of “First” “Secondly” “Thirdly” etc. may be used to describe them separately.

Where there is one grantor granting an easement or right of way to contiguous allotments (or Sections) of land held by different registered proprietors in separate certificates of title, separate Form TG’s (one for each dominant proprietor) should be used.

Similarly, where contiguous allotments or sections of land are held by different registered proprietors in separate certificates of title and are granting an easement or right of way to one grantee, separate Form TG’s (one for each servient proprietor) should be used.

When the easement or right of way is being granted appurtenant to land about to be brought under the RPA the operative words of the grant should be as follows: "grants to the grantee who is entitled to be the registered proprietor of the land comprised in a certain application no to bring land under the RPA and as appurtenant to such land".

An easement may be granted over a public road. Where there is no title for the road, a plan must be lodged fully defining the public road together with a document to request the issue a title (RT) for the public road. This must precede the Form TG.

Party Wall rights may be created in the one Form TG even though the adjoining titles may be in different ownerships. One document number is assigned and one registration fee payable.

See pages 10 to 16 inclusive for information on consents and registered interests.

6. CROWN LEASE /CROWN LAND - CREATION OF AN EASEMENT

When dealing with Crown land, Crown Lands SA must be contacted.

Web address and contact details for Crown Lands SA (CLSA), Department of Environment, Water and Natural Resources (DEWNR).

http://www.environment.sa.gov.au/managing-natural-resources/Land/Crown_land

Email: DEW.CrownLandsEnquiries@sa.gov.au

Phone: +61 8 8204 1218

CREATION OF AN EASEMENT OVER RPA LAND APPURTENANT TO A CROWN LEASE

Easements and rights of ways may be created over RPA land appurtenant to a Crown lease. The grantee is the Minister responsible for the CLMA. A TG document is to be used to grant an easement over or appurtenant to Crown land.

A Form TG lodged over or appurtenant to Crown Leases can utilise the provisions of Section 144 and Section 90F of the RPA. Section 90F operates to extend the mortgage or encumbrance over the right for the dominant land whereas section 144 of the RPA discharges the mortgage or encumbrance as regards the rights on the servient land. Additional documentation will be required for adjustment of other registered interests.

There will no longer be the requirement for the issue of an “in gross” certificate of title where the Crown Lease is the dominant land as the Crown Lease will indicate reference to the easement on the Crown Lease in the easement details.

CREATION OF EASEMENT OVER A CROWN LEASE

A Form TG pursuant to Section 28 of the *Crown Land Management Act 2009* (CLMA) is used to create an easement or right of way over Crown land. Section 28 of the CLMA allows the Minister to grant to any person an easement over Crown land. The Minister may require a person requesting the easement to provide him with such documents and plans necessary to grant the easement.

A Form TG lodged pursuant to Section 28 of CLMA can utilise the provisions of Section 144 and Section 90F of the RPA in regard to mortgages and encumbrances. Additional documentation will be required for adjustment of other registered interests in relation to the creation of the easement for the servient and dominant land.

The Minister will be the grantor where an easement is to be granted over Crown land. Consent to the grant will be required from the Crown lessee. The consents of every person who has an interest in relation to the servient land must also be obtained. The Minister may grant an easement without all the required consents if he/she believes that the consents to such a grant have been unreasonably withheld, pursuant to Section 28 of the CLMA.

The CLMA provides the short form easements as set out in Schedules 5 and 6 under the RPA may be used to create easements over Crown land and an easement created under Section 28 of the CLMA has an effect as if it were an easement created under the RPA.

CREATION OF EASEMENT OVER OR APPURTENANT TO A CROWN RECORD

The Minister will be the grantor where an easement is to be granted over Crown land. The Form TG should include consent from the custodian where a Crown Record is the servient or dominant land within the TG.

There will no longer be the requirement for the issue of an “in gross” certificate of title where the Crown record is the dominant land as the Crown record will indicate reference to the easement on the Crown record in the easement details.

Easements and rights of ways may be created over RPA land appurtenant to a Crown record. The grantee is the Minister responsible for the CLMA.



PART 2

7. FORM TG PREPARATION (RPA) - EXPLANATION OF FORM

COVER SHEET

Supporting documentation lodged with Application

It is unlikely supporting documentation will be required to be lodged with a TG but when necessary insert reference to the supporting documentation.

New Title Instructions

New title instructions must be completed for all new titles to issue. Example of the required wording: -

1. "CT 5234/345 together with the easement herein"
2. "CT 6754/123 subject to the within easement"

OR

1. "Easement in Gross"
2. "Balance CT 6543/143 subject to the within easement"

Stamp Duty

Every Form TG must be assessed for stamp duty.

PAGE No. 1

Land Description

Insert only the reference to the certificate of title for the land being made subject to the grant.

e.g. "Whole of the land in CT 5672/123"

Note: The particular rights being created and the precise definition of the land to be affected will be set out (together with a reference to the appurtenant land) as part of the operative clause on Page 2 of the Form TG.

Estate & Interest

If the easement is being granted over RPA land insert fee simple, if over Crown land insert Crown land or if over a lease insert as lessee.

Grantor

Insert the grantor's full name (including their ACN/ABN if a company) and address

If the grantor(s) name has altered from that registered on their title, an application amending their name should precede the Form TG. In situations where the Application to Note Change of Name has been lodged after the Form TG then a tie-up of names is required e.g. *[new name] of [address] being registered on CT 5001/1 as [old name] which name has changed as is evidenced by Application to Note Change of Name dated..... and lodged contemporaneously herewith.*

The grantor and grantee may be the same party and more than one easement or right of way can be created in the one Form TG document.

Consideration

Amounts must be expressed in words and figures e.g. "Five thousand dollars (\$5000.00)"

Grantee

Insert the grantee's full name (including their ACB/ABN if a company), address and mode of holding.

The appurtenant certificate of title must be stated e.g.

"Henry Albert Smith of 1 Adelaide Road Adelaide SA 5000 and being the registered proprietor of CT 5555/123"

If the grantee(s) name has altered from that registered on their title, an application amending their name should precede the Form TG. In situations where the Application to Note Change of Name has been lodged after the Form TG then tie-up of names is required e.g. *[new name] of [address] being registered on CT 5001/1 as [old name] which name has changed as is evidenced by Application to Note Change of Name dated..... and lodged contemporaneously herewith.*

PAGE No. 2

Description of the Easement

Easements and rights of way may be Short or Long Form. Short Form easements and rights of way are set out in full in the 6th and 5th Schedules respectively of the RPA and are created as if set out in full. Section 89 and 89A of the RPA provide where any short form is used in any instrument it shall mean the words set out in the Schedule, as if set out in full.

In most cases the easement will be over portion of the land in a certificate of title in which case the easement must be defined in a plan filed or deposited by the Registrar-General or in a certificate of title. Reference must be made to the identifier in a plan or title in the easement description i.e.

"An easement for water supply purposes over portion of Allotment 6 marked C on FX45321 and being portion of the land above described"

OR

"An easement for the transmission of electricity by underground cable over the land marked C on D89567 being portion of the land in Certificate of Title Volume 6016 Folio 191"

In the case of easements being granted over several servient titles where each may be appurtenant to a different dominant title the use of "FIRST" "SECONDLY" etc. should be adopted.

Short Form Easements and Rights of Way

The following are Short Form Easements in the 6th Schedule of the Real Property Act 1886:

- an easement for water supply purposes
- an easement for sewerage purposes
- an easement for drainage purposes
- an easement for gas supply purposes
- an easement for the transmission of electricity by overhead cable
- an easement for the transmission of electricity by underground cable
- an easement for the transmission of television signals by underground cable
- an easement for the transmission of telecommunication signals by underground cable
- an easement for the transmission of telecommunication signals by overhead cable
- party wall rights
- an easement for eaves and gutters
- an easement for support
- an easement to park a vehicle
- a right of way on foot

Long Form Easements and Rights of Way

Any easement or right of way, which does not conform to the wording in the 5th and 6th Schedules, is considered to be a long form easement or right of way and must be set out in full. As the plan annotation only shows the general purpose of the long form easement, it must be fully described in the Form TG.

To create long form wording, the description of various easements set out in the 5th or 6th Schedules may be adapted as a base incorporating additional wording to suit the particular easement or right of way that is being created. The type and content of the easement should be discussed in detail with the relevant parties before the document is prepared, executed and lodged. Note also that every easement should have an access component.

The unique identifier on a plan or title for the easement over the servient land must be included in the description.

Easements with Limitations

Short Form easements (including free and unrestricted rights of way) may be limited in height. It is considered that if a free and unrestricted right of way is limited in height then the quantum of the right is still free and unrestricted in use but limited in height.

The Filed Plan depicting the proposed free and unrestricted right of way with limitations should define the height limitation. To avoid any ambiguity the TG document should also make reference to the limitation e.g. "A free and unrestricted right of way over portion of Allotment 6 marked C limited in height as shown on FX45321 being portion of the land above described".

Where Long Form easements are limited in time i.e. may only be used between certain hours, the grant document should clearly specify the hours of use.

The expiry date of an easement of limited duration must be included in the easement description on the Form TG.

Creation of Party Walls – SEE APPENDIX ‘A’ EXAMPLE OF COMPLETED TG

Generally party wall rights are created as a short form easement and are taken to be as set forth in the Sixth Schedule of the RPA; however, they can be created in Long Form if required.

One Form TG is required where the adjoining titles are in the same ownership and where the adjoining titles are in different ownerships one Form TG may be prepared using “FIRST” “SECONDLY”. See completed TG example Appendix A. Where the grantor and grantee are the same party they should execute separately as the grantor and as the grantee.

If the servient and dominant land are subject to the same encumbrance/mortgage number, there is no requirement for the encumbrancee or mortgagee to consent.

Where the titles are subject to different encumbrances/mortgages, even if both titles are in the same ownership, the interest(s) is to be adjusted using the consent form within the Form TG.

Easement in Gross – SEE APPENDIX B EXAMPLE OF COMPLETED TG

An easement in gross is an "easement" not appurtenant to land. Easement in gross titles can be granted to Statutory Authorities e.g. Distribution Lessor Corporation, Local Council, South Australia Water Corporation, the Crown (including a Minister of the Crown, an agent or an instrumentality of the Crown).

Section 41A of the *Law of Property Act 1936* (LPA) enables a body to be declared as a section 41A body so as an easement in gross can be created in their favour without appurtenant land.

NOTE: The Office of the Registrar-General can be contacted in relation to creating a new section 41A body via DHUD.RegistrarGeneral@sa.gov.au

Easement in gross parties may also gain their authority through legislation. Examples of such legislation include the *Petroleum and Geothermal Energy Act 2000*, *Electricity Corporations (Restructuring and Disposal) Act 1999* and the *Natural Gas Authority Act 1967*.

Appurtenance

Where the easement is to be held appurtenant to land, it should be accurately described, with reference to the dominant certificate of title or parcel e.g.

“Whole of the land in CT 5561/37”

OR

“Allotment 12 in D85678 being portion of the land in CT 5600/57”

OR

“Portion of Allotment 10 marked Y on FX56894 being portion of the land in CT 5500/234”

Where the easements being granted are over several servient titles (in the same ownership), and each is to be appurtenant to a different dominant title the use of “FIRST” “SECONDLY” etc. must be adopted.

“FIRST: Allotment 12 in D85678 being the whole of the land in CT 5600/57”

“SECONDLY: Allotment 13 in D85678 being the whole of the land in CT 5600/58”

When easements are to be held appurtenant to an authority and not land show “in gross”.

Easement Covenants

Covenants are considered binding on the original parties providing they are separate parties (i.e. grantor and grantee not the same party) but they may not be binding on successors in title.

Covenants should not be included when granting easements without legal advice. If covenants are to be included, they should not form part of the easement recital but can be set out separately on a B1 Annexure. The easement/right of way should be set out as a long form easement or right of way.

It may be prudent for the parties to the covenants to initial each page of the B1 Annexure.

Example for the recital of covenants:

“A and B, the parties to the easement hereby covenant as follows....” (set out the terms and conditions of the easement)

OR

“It is hereby covenanted to and agreed between the grantor and the grantee that.....” (set out the terms and conditions of the easement)

CERTIFICATION PAGE OF THE FORM TG

Client Authorisation

A grant of easement is effectively a transfer under section 96 of the *Real Property Act 1886* and is therefore a document where both parties require to be represented and client authorisations required.

Certifications

When executing a TG pursuant to a Client Authorisation, practitioners will need to fully comply with the new legislative requirements and give certifications regarding:

- Verification of Identity;
- Client Authorisation;
- Evidence retention; and
- Correctness and compliance of the dealing with relevant legislation and any prescribed requirements.

FORM TG CONSENT FORM

General Information

The RPA was amended in 2009 to allow for a mortgagee or encumbrancee, pursuant to Sections 90F and 144 of the RPA to consent to a grant of an easement within the Form TG for the relevant interest to be extended or discharged over the easement without the need for additional documentation. This legislation applies only to mortgages and encumbrances. Leases, statutory encumbrances and caveats must be dealt with by the lodgement of separate documentation if they are required to be adjusted as result of the creation of the easement. These interests are dealt with later under the heading of “OTHER REGISTERED INTERESTS”.

Prior to the 2009 amendment, a separate partial discharge(s) of a mortgage or encumbrance (as regards the “rights and liberties”) had to precede the Form TG and a collateral mortgage or encumbrance had to follow the Form TG. Unless the mortgage or encumbrance is extended to cover the easement or right of way the mortgage or encumbrance is considered to be only over portion of the land in the title and if a registered proprietor defaults on the encumbrance or mortgage the mortgagee or encumbrancee may not be able to exercise their power of sale.

The practice of lodging a partial discharge(s) of an encumbrance or mortgage as regards the “rights and liberties” and a collateral mortgage or encumbrance is acceptable but the preferred and simpler option is for the mortgagee or encumbrancee to complete a consent form in the Form TG. Using the Form TG Consent Form will simplify the information on the new title(s) to issue and alleviate the requirement of temporary withdrawals when the PM, TG & M have been lodged out of order.

A separate Consent Form must be completed for each different mortgage or encumbrancee.

Where both the dominant and servient land are subject to the same mortgage or encumbrance (i.e. they must be the same numbered document e.g. “M 56432782”) there is no requirement for the mortgagee or encumbrancee to complete a consent form.

Where the name of the mortgagee or encumbrancee has changed and is not an automatic change of name (e.g. by Statute), the appropriate change/correction of name application should precede the Form TG. In situations where the Application to Note Change of Name has been lodged after the Form TG then a tie-up of names is required e.g. *[new name] of [address] being registered on CT 5001/1 as [old name] which name has changed as is evidenced by Application to Note Change of Name dated..... and lodged contemporaneously herewith.* In an automatic name change where a change of name application is not required, “tie-up” wording must be included. Some financial institutions do this using a stamp in their execution.

Where a company, has gone bankrupt and ceases to exist (defunct) or are deregistered, contact the Australian Securities & Investment Commission (ASIC). In most cases ASIC will consent on behalf of the company.

<http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Deregistered%20companies>

Completing the Consent Form

Consenting Party

Show consenting party’s full name, (including their ACN/ABN if a company) and their address e.g. “Adelaide Bank Pty Ltd ACN 523456798 of 100 Adelaide Road Adelaide SA 5000”

Where the name of the mortgagee or encumbrancee has changed and is not an automatic change of name (e.g. by Statute), the appropriate change/correction of name application should precede the Form TG.

Nature of Estate or Interest Held

State the nature of estate or interest held e.g.: “As Mortgagee or Encumbrancee”

Consent to the Discharge or Extension

Where a mortgage or encumbrance is being discharged over the easement in statement “(1)”, cross through the inapplicable and insert number of interest being discharged. Delete the whole of statement “(2)”, if inapplicable.

Where a mortgage or encumbrance is being extended over the easement in statement “(2)”, cross through the inapplicable and insert number of interest being extended. Delete the whole of statement “(1)”, if inapplicable.

Below is an example where the servient land is subject to Mortgage 11179643 and the mortgage is being partially discharged over the easement:

I/~~We~~ the consenting party consent to the
 (1)* discharge of ~~*Encumbrance / *Mortgage 11179643~~ over the easement being
 Granted pursuant to Section 144 of the Real Property Act 1886.
 (2)* ~~granting of the easement subject to *Encumbrance / *Mortgage.....~~
 pursuant to Section 90F of the Real Property Act 1886.

* Delete the inapplicable

The following example is where the dominant land is subject to Encumbrance 99866543 and the encumbrance is being extended over the easement:

I/~~We~~ the consenting party consent to the
 (1)* ~~discharge of *Encumbrance / *Mortgage over the easement being granted pursuant to~~
~~Section 144 of the Real Property Act 1886.~~
 (2)* granting of the easement subject to *Encumbrance / *Mortgage **99866543** pursuant to Section 90F
 of the Real Property Act 1886.

* Delete the inapplicable

Consent Execution

Must be dated and executed by the consenting party.

If the party executing the consent is a natural person who is signing in his or her own right, he or she must sign their usual signature in the place indicated on the form in front of an independent witness. A different form of execution is required where a person is not signing in his or her own right i.e. he or she is signing as attorney for the applicant(s). For the recommended form Refer to Notice to Lodging Parties No.123 "Execution under a Power of Attorney". If the party executing is a body corporate, its execution must conform to any prescribed formalities. Notice to Lodging Parties Nos. 110,121,139 and 163 provide information on execution by a corporation.

Section 267 of the Real Property Act 1886 (RPA) requires that the witness must be aged 18 years or over and must know the party personally or have satisfied him or herself as to their identity. The witness cannot be a party to the instrument. The witness must sign his or her name and print his or her full name, address and business hours telephone number legibly beneath his or her signature.

Pursuant to Section 268 of the RPA, a witness is guilty of an offence if he or she does not know the person executing the instrument personally and has no reasonable ground on which to be satisfied as to the person's identity OR knows or has reasonable grounds for suspecting that the person signing the instrument is not a party to the instrument or does not have the authority to sign on behalf of the party. Maximum Penalty - \$5 000 or 1-year imprisonment.

8. OTHER REGISTERED INTERESTS

CAVEATS (X)

All caveats registered over servient land must be looked at to determine if it is permissive or absolute as it may prevent the registration of the Form TG.

If the servient land is subject to a caveat over the land the easement is being granted, then a partial withdrawal as regards the rights and liberties must be lodged and precede the Form TG or the caveat will remain over the dominant easement. An example of the wording in the land description for the partial withdrawal document

“The rights and liberties to be created in the subsequent dealing(s) in series and being portion of the land in CT 6011/111”

If the dominant land is subject to a caveat the caveat must be checked to ensure there is no effect on the creation of the easement, irrespective of the caveat being absolute or permissive. The caveat is to be carried forward as being “over portion” as the dominant easement or right of way will not be subject to the caveat.

CHARGES

There are various types of charges pursuant to different legislation including the *Community Housing Providers (National Law) (South Australia) Act 2013*, *Local Government Act 1999*, *Land Tax Act 1936*, *Stamp Duties Act 1923*, *Enforcement of Judgement Act 1991* or *Bankruptcy Act 1966 (Commonwealth)*.

Charges pursuant to the community housing legislation over servient or dominant titles are discharged or extended over the easement or right of way by obtaining the consent on a “Form B1” of the South Australian Housing Trust and using the provisions of the *Community Housing Providers (National Law) (South Australia) Act 2013*. The consent of the chargee automatically discharges or extends the charge without lodging additional documentation to cover the easement.

NOTE: Where a Form TG is lodged over land subject to a charge other than the community housing charges, legal advice may be required.

COVENANTS (C) under the SOUTH AUSTRALIA HOUSING TRUST

Section 21A of the South Australian Housing Trust Act 1995 allows the South Australian Housing Trust to apply to the Registrar-General to register a covenant on the relevant title. Once the covenant is registered it is binding on subsequent owners, despite any other Act or law.

Where an easement is to be created over land subject to a covenant, the land is to be discharged as regards the easement. If the covenant is not discharged it must be carried forward onto the new title that issues for the easement. The discharge of the covenant document as regards the easement must precede the Form TG. A “Form A3” is used and an example of the wording in the land description.

“The rights and liberties to be created in the subsequent dealing(s) in series and being portion of the land in CT 9011/111”

An example of the wording in the “SPECIFY NATURE OF APPLICATION” is: *“The applicant applies pursuant to section 21A of the South Australian Housing Trust Act 1995 to discharge Covenant 31155544 registered on the land described above”*

LAND MANAGEMENT AGREEMENTS (AG), HERITAGE AGREEMENTS (AH) and other Agreements (AG)

When the servient land is subject to an agreement and the agreement is to be rescinded over the easement or right of way it must be done by separate documentation and should precede the Form TG. A Form A3 with a prefix RA or TH is used to partially rescind the land management agreement or a heritage agreement respectively. The form of other types of agreements will depend on the legislation for that particular agreement.

An example of the wording in the land description of the rescinding document is: *“The rights and liberties to be created in the subsequent dealing(s) in series and being portion of the land in CT 6011/111”*

An example of the wording in the “SPECIFY NATURE OF APPLICATION” is: “The Applicant hereby applies to rescind Land Management Agreement No..... dated on the certificate of title for the land above described”

A rescission need not be prepared if the proprietor of the easement or right of way agrees that the right can be subject to the agreement.

LEASES

Lease (L) Endorsement on the Servient Land

Where the title for the servient land discloses a lease, the lease must be carefully checked. Ascertain if the document is disclosed as a lease of an easement or right of way (generally prefixed GU). If so, these endorsements have no effect as they are an easement for limited duration. If a lease of the land is over the whole of the land it will need to be partially surrendered as regards the right.

If the lease is over portion of the land the position of the lease for occupation must be ascertained relative to the easement being granted. If the leased area is determined to be outside the area that the easement being created lies, then the lease has no effect as regards the easement being granted.

A lease may be fixed by monument and the easement to be granted is generally fixed by data. As such, it may not be possible to ascertain if the leased area lies within the easement area. In these circumstances a letter signed by a licensed land surveyor will be required to clarify the matter and attached to the Form TG. Alternatively, the easement plan could disclose a relevant annotation note e.g. “Shop A in GRO 124/2006 lies outside of proposed easement B”

Where the servient land is subject to a lease that will be affected by a grant of easement i.e. over the leased area, a separate partial surrender of the lease as regards the “rights and liberties” being granted will need to be lodged and must precede the Form TG. Example wording for the surrender document land description. *“The rights and liberties to be created in the subsequent dealing(s) in series and being portion of the land in CT 6011/111”*

Where the name of the lessee has changed and is not an automatic change of name (e.g. by statute), the appropriate change/correction of name application should precede the partial surrender document and the Form TG.

Any registered interests over the lease such as a mortgage of the lease must consent within the surrender document. It is also a requirement of the RPA for the mortgagee or encumbrancee of the fee simple to consent to a surrender of a lease.

Underlease (UL) Endorsement on the Servient Land

As mentioned above, if the grant of easement is over the leased area a separate partial surrender of the lease as regards the “rights and liberties” being granted will need to be lodged and must precede the Form TG. Where there is also an underlease the position of the underlease must be ascertained relative to the easement being granted. If the underleased area is determined to be outside the area that the easement being granted lies, then the underleasee is not required to consent to the surrender. Alternatively, if the underleased area is determined to be within the area that the easement being granted lies, then a partial surrender of the underlease is required.

Where the name of the underleasee has changed and is not an automatic change of name (e.g. by statute), the appropriate change/correction of name application should precede the partial surrender and Form TG.

Generally, any registered interests over the underlease such as a mortgage of the underlease must consent within the surrender document.

Lease (L) Endorsement on the Dominant Land

Consideration should be given to each situation on case by case basis. For example, if an existing lease covers the whole of the land in a title prior to the grant of easement then the new dominant title that issues from the grant of easement will disclose the lease “of portion” i.e. the lease now covers all the land in the new title to issue but not the easement annexed thereto. Where the lessee requires their lease to cover the new easement now annexed to the land a separate TG between the servient land owner and the lessee may be lodged so as the right is appurtenant to the registered lease. Alternatively, the lease may be fully surrendered after the registration of the grant of easement and a new lease lodged to cover all of the land in the resultant dominant title.

Open Space

When an easement is to be created over land subject to Open Space, an approval must be obtained from the Development Assessment Commission (DAC). Applications are made to the Principal Planner, Development Assessment Branch. The title will have a note to indicate it is subject to an open space system in the schedule of endorsements. A copy of the letter from DAC, confirming there are no objections should be attached to the Form TG.

Where an easement is being created over land subject to Open Space, the dominant title will issue subject to the Open Space.

Order of Court (CO)(CO2)(OC)(OC2)

If preparing a Form TG to create an easement or right of way over land subject to an Order of Court, the Order of Court should be viewed to determine the effect on creation of the easement. It is suggested legal advice may need to be sought as the easement and/or right of way may not be able to be created.

Retirement Villages (AR)

There is no requirement to cancel a Retirement Villages Application noted on a title where an easement is to be granted as it is purely a notice to show the usage of the land. The easement to be granted will not be subject to the Retirement Village Application.

Warrants Of Sale (WS)

A Warrant of Sale acts as a caveat for six months from the date of its receipt by the Registrar-General. An extension of that period may be granted by the court. After this period the warrant will not prevent the Registrar-General from registering any transactions. If a transfer pursuant to the warrant is not presented for registration, and six months have expired a Form TG may be lodged.

Liens (LN)

A notice of lien lodged over RPA land forbids the registration of any dealing with the estate or interest unless it is made subject to the claim of the lienor.

Liens are similar to caveats in that the interest should be dealt with prior to the TG by way of a partial withdrawal of the rights and liberties being granted – see example under CAVEATS.

Trust Grants

Where an easement or right of way is being granted over land subject to a trust, investigation will need to be done to determine how the trust was created and under what legislation. If created pursuant to Crown lands legislation it may be possible by contacting Crown Lands SA (contact details under Crown land heading) for a removal of the trust by the lodgement of a waiver document.

For other trusts created pursuant to different legislation legal advice may be required on the process in removing the trust.

If the trust is to remain the Form TG must make reference to the trust. The dominant title will issue subject to the trust as regards the dominant easement or right of way. If the trust is over both the servient and dominant land the option is to investigate to determine if there is a requirement to remove the trust from the land or if to remain, the titles will re-issue subject to the trust.

9. PROFITS A' PRENDRE

A profit à prendre is a right that permits a person to take soil, minerals, naturally occurring produce or wild animals from the land of another. A right to go on to servient land, to cultivate it, produce some crop and remove it is generally outside the concept.

A profit à prendre may be created, appurtenant to land in a certificate of title (or a Crown lease) or in gross. Generally, it will be created under Section 96 in a Form TG and held in gross. One title will issue for the profit and a balance title for the servient land. The owner of the profit does not need to be a person who is capable of holding an easement in gross.

It may be granted to a natural person or a body corporate including companies, associations and government bodies. There may be more than one grantee who may hold as joint tenants, tenants in common or with no survivorship.

Where held appurtenant to land the new title will issue for the dominant land; *“together with a profit à prendre over the land marked (TG 11453678)”*. The servient land title will issue *“subject to a profit à prendre over the land marked (TG11453678)”*.

The definition of an easement in the RPA includes a profit à prendre and any registered interests will need to be adjusted accordingly. A profit à prendre may be varied or extinguished in the same way as an easement. If an easement is to be created over land the subject of a profit, the easement will be subject to the profit unless other arrangements are made – legal advice may need to be sought.

10. ANNEXURES

It will be necessary to use an annexure if there is insufficient space for the text or to complete the remaining executions. An annexure sheet to an instrument shall be in the format of "Form B1" and identified therein as an annexure to the parent instrument.

It must be affixed securely and permanently to the top left-hand corner of the instrument. The annexure and instrument must not be bound. The annexure sheet must comply with requirements of Notice to Lodging Parties No. 134 and also see Form B1 Guidance Notes. The Registrar-General may refuse to accept for registration any instrument, annexure sheet, additional or inserted sheet that does not comply with the provisions of these standards.

When an additional or inserted sheet being a certificate, statutory declaration or writing of a similar nature is intended to form part of an instrument ensure that it is affixed securely and permanently to the top left-hand corner of the instrument; and the printing or handwriting thereon is clear and legible and in permanent form.



APPENDIX A

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

GRANT OF EASEMENT

FORM APPROVED BY THE REGISTRAR-GENERAL

FORM TG (Version 1)
GUIDANCE NOTES AVAILABLE

PRIORITY NOTICE ID	
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BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY

SERIES NO	PREFIX
	TG

AGENT CODE

LODGED BY: ACME CONVEYANCING ACCO

CORRECTION TO: ACME CONVEYANCING ACCO

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION
(COPIES ONLY)

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

- 1. Bal. CT 5672/123 sub & tog p/wall rights
- 2. Bal. CT 5999/321.sub & tog p/wall rights

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

GRANT OF EASEMENT

(Pursuant to Section 96 of the Real Property Act 1886)

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION OVER WHICH RIGHTS AND LIBERTIES ARE BEING GRANTED

First: the whole of the land in Certificate of Title Volume 5672 Folio 123

Secondly: the whole of the land in Certificate of Title Volume 5999 Folio 321

ESTATE & INTEREST

FEE SIMPLE

GRANTOR(S) (Full name and address)

First: John Henry Smith and Henry Albert Smith of 1 Adelaide Road Adelaide SA 5000

Secondly: Mary Jane Brown of 20 Rundle Road Adelaide SA 5000

CONSIDERATION (Words and figures)

No monetary consideration

GRANTEE(S) (Full name, address, mode of holding and appurtenant land description)

First: Mary Jane Brown of 20 Rundle Road Adelaide SA 5000 being the Registered Proprietor of Certificate of Title Volume 5999 Folio 321

Secondly: John Henry Smith and Henry Albert Smith of 1 Adelaide Road Adelaide SA 5000 being the Registered Proprietors of Certificate of Title Volume 5672 Folio 123

THE GRANTOR ACKNOWLEDGES RECEIPT OF THE CONSIDERATION HEREIN EXPRESSED AND HEREBY GRANTS TO THE GRANTEE

HERE SET FORTH THE RIGHTS AND LIBERTIES BEING CREATED AND DEFINE PRECISELY

First: party wall rights over portion of Allotment 12 marked A on FX 58762 being portion of the land in Certificate of Title Volume 5672 Folio 123

Secondly: party wall rights over portion of Allotment 10 marked B on FX 58762 being portion of the land in Certificate of Title Volume 5999 Folio 321

TO BE HELD APPURTENANT TO: -

HERE SET FORTH THE APPURTENANCE AND DEFINE PRECISELY

First: portion of Allotment 10 marked B in FX58762 being portion of the land in Certificate of Title Volume 5999 Folio 321

Secondly: portion of Allotment 12 marked A in FX58762 being portion of the land in Certificate of Title Volume 5672 Folio 123

DATED 27/8/2016

CERTIFICATION **Delete the inapplicable*

Grantor(s)

*The Prescribed Person has taken reasonable steps to verify the identity of the Grantor.

*The Prescribed Person holds a properly completed Client Authorization for the Conveyancing Transaction including this Registry Instrument or Document.

*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By: *Harry Brown*

Harry Brown

Registered Conveyancer

for: Brown Conveyancing Services

on behalf of the Grantor

Grantee(s)

*The Prescribed Person has taken reasonable steps to verify the identity of the Grantee.

*The Prescribed Person holds a properly completed Client Authorization for the Conveyancing Transaction including this Registry Instrument or Document.

*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By: *Josie Smith*

Josie Smith

Registered Conveyancer

for: ACME Conveyancing

on behalf of the Grantee

CONSENT TO THE GRANT OF AN EASEMENT

CONSENTING PARTY (Full Name and Address)

Interest Free Bank Ltd. ACN 111 222 333 of 101 Grenfell Street Adelaide SA 5000

NATURE OF ESTATE OR INTEREST HELD

Mortgagee

I/We the consenting party consent to the

(1) * discharge of * ~~Encumbrance~~ / *Mortgage ...9978810..... over the easement being granted pursuant to Section 144 of the Real Property Act 1886.

(2) * granting of the easement subject to * ~~Encumbrance~~ / *Mortgage 9978810.....pursuant to Section 90F of the Real Property Act 1886.

* Strike through the inapplicable

EXECUTION BY CONSENTING PARTY

DATED 12/8/2016

Executed by
Interest Free Bank Ltd. ACN 111 222 333

By being signed by its Attorney

Sign *D I Murphy*

Tier three Attorney
Name Dean Ian Murphy
Address 1 Wayville Road Wayville SA 5010
Under Power of Attorney no. 11223344

in the presence of:

Sign *P K Sander*

Name Patricia Kate Sander
Address 1 Wayville Road Wayville SA 5010
Phone 82269223

APPENDIX B

FORM TG (Version 1)
GUIDANCE NOTES AVAILABLE

LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA
GRANT OF EASEMENT

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
--------------------	--

BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY

SERIES NO	PREFIX
	TG

AGENT CODE

LODGED BY: ACME CONVEYANCING ACCO

CORRECTION TO: ACME CONVEYANCING ACCO

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION
(COPIES ONLY)

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

- 1 Easement in Gross.....
- 2...Balance CT 5672/123
- 3.....
- 4.....
- 5.....

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

GRANT OF EASEMENT

(Pursuant to Section 96 of the Real Property Act 1886)

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION OVER WHICH RIGHTS AND LIBERTIES ARE BEING GRANTED

The whole of the land in Certificate of Title Volume 5672 Folio 123

ESTATE & INTEREST

FEE SIMPLE

GRANTOR(S) (Full name and address)

Henry Albert Smith of 1 Adelaide Road Adelaide SA 5000

CONSIDERATION (Words and figures)

Five Hundred Dollars (\$500.00) (incl. GST)

GRANTEE(S) (Full name, address, mode of holding and appurtenant land description)

The District Council of Yatala of PO Box 14 Yatala Vale SA 5555

THE GRANTOR ACKNOWLEDGES RECEIPT OF THE CONSIDERATION HEREIN EXPRESSED AND HEREBY GRANTS TO THE GRANTEE

HERE SET FORTH THE RIGHTS AND LIBERTIES BEING CREATED AND DEFINE PRECISELY

An easement for drainage purposes over that portion marked B in FX57143 being portion of the land above described

TO BE HELD APPURTENANT TO: -

HERE SET FORTH THE APPURTENANCE AND DEFINE PRECISELY

In Gross

DATED 12/9/2016

CERTIFICATION **Delete the inapplicable*

Grantor(s)

*The Prescribed Person has taken reasonable steps to verify the identity of the Grantor.

*The Prescribed Person holds a properly completed Client Authorization for the Conveyancing Transaction including this Registry Instrument or Document.

*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By: *Harry Brown*

Harry Brown

Registered Conveyancer

for: Brown Conveyancing Services

on behalf of the Grantor

Grantee(s)

*The Prescribed Person has taken reasonable steps to verify the identity of the Grantee.

*The Prescribed Person holds a properly completed Client Authorization for the Conveyancing Transaction including this Registry Instrument or Document.

*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By: *Josie Smith*

Josie Smith

Registered Conveyancer

for: ACME Conveyancing

on behalf of the Grantee

CONSENT TO THE GRANT OF AN EASEMENT

CONSENTING PARTY (Full Name and Address)

ABC Bank Ltd. ACN 123 123 123 of 101 Grenfell Street Adelaide SA 5000

NATURE OF ESTATE OR INTEREST HELD

Mortgagee

I/We the consenting party consent to the

(1) * discharge of * Encumbrance / *Mortgage ...9978810..... over the easement being granted pursuant to Section 144 of the Real Property Act 1886.

~~(2) * granting of the easement subject to * Encumbrance / *Mortgage 9978810..... pursuant to Section 90F of the Real Property Act 1886.~~

* Strike through the inapplicable

EXECUTION BY CONSENTING PARTY

DATED1/8/2016.....

Executed by ABC Bank Ltd ACN 123 123 123
By being signed by its Attorney

Sign *A M Drake*

Tier three Attorney
Name Ann Mary Drake
Address 101 Grenfell Street Adelaide SA 5000
Under Power of Attorney no. 11223344

in the presence of:

Sign *P R Turner*

Name Peter Robert Turner
Address 101 Grenfell Street Adelaide 5000

Phone 82269223