



LANDS TITLES OFFICE GUIDANCE NOTES

UNDERLEASE

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.

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

This form is to be used for an Underlease only.

A lease of a Crown Lease must be prepared on a Form L1.

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.

LEASE BEING UNDERLEASED

The head lease must be identified by its registered number. If the head lease is 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 the underlease affects the Memorandum of Lease as regards the whole or portion of the land comprised in the relevant CERTIFICATE OF TITLE (CT). 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. "Shop 4 in FP54861 being portion of the land in CT Volume _____ Folio _____".

UNDERLESSOR

Full name and current address to be stated. If the underlessor's name has altered then you must lodge an Application to Note Change/Correction of Name prior to the Underlease.

UNDERLESSEE

Full name and address to be stated. Mode of holding to be included where appropriate.

TERM OF UNDERLEASE

The term of the underlease must have a certain beginning and certain ending. It must expire prior to the headlease.

RENT AND MANNER OF PAYMENT

Details to be inserted here.

OPERATIVE CLAUSE

Strike through the inapplicable words concerning the location of the covenants and insert memorandum number if applicable.

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

- * **Refer Section 118 Real Property Act 1886** - Underleases do not bind non-consenting mortgagees or encumbrancees
- * **Section 32 Development Act 1993** states - "Subject to this Act no development may be undertaken unless the development is an approved development" - the following certification will be required in

the case of an underlease of portion of an allotment: "**This lease does not contravene Section 32 of the *Development Act 1993***"

- * If the underlessor or underlessee is the Crown or an instrumentality or agency of the Crown the following certification will be required when the lease is of portion of an allotment: "**This lease does not contravene Section 49 of the *Development Act 1993***".

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)

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 a self-represented underlessor. Self-represented underlessors 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.

A self-represented underlessee is exempt from the need to provide any certifications. In such instances, the Lease should include either on an annexure or the last page of the covenants:

- the properly witnessed signature of the underlessee, meeting the requirements of s 267 of the *Real Property Act 1886*; or
- the execution of the incorporated body in accordance with any prescribed formalities.

The underlessee's certification clause should then be struck-through and the text "Underlessee is self-represented" inserted.

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

The Registrar-General's [Verification of Identity](#) and [Verification of Authority](#) requirements must be complied with except where the underlessee is self-represented.

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.

PLEASE NOTE

The underlease is subject to any prior registered interests e.g. a permissive caveat, mortgage, lease or encumbrance etc.