

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.

Comprehensive preparation notes titled [Form TG notes information and preparation](http://www.landservices.com.au/property-professionals/land-division) are available from our website on the Easements page at www.landservices.com.au/property-professionals/land-division

GENERAL INFORMATION

- * Form TG is to be used to grant an easement where a plan shows a status of PROPOSED on Deposited or Filed Plans.
- * A grant should not be lodged unless the FP is filed or in the case of a DP, approved or deposited.
- * Must be assessed for stamp duty prior to being lodged with Land Services SA
- * New title fees must be paid for all new titles to issue as a result of the easement being granted. This includes titles issuing for the servient land and any dominant land or easement in gross.
- * Where there is a mortgage or encumbrance that is to be partially discharged as regards the easement the Consent to the Grant of Easement Form for the Form TG is to be completed with the inapplicable statement crossed through. Similarly, where a mortgage or encumbrance is to be extended over the dominant land the consent form for the Form TG is to be completed and the inapplicable statement crossed through.
- * Any completed consent forms are to be attached to the Form TG with the page(s) numbered so as to be part of the TG document.
- * Each page must be numbered consecutively, e.g. 1 of 10, 2 of 10.
- * All handwriting must be in permanent, dense, rapid drying black or blue ink.
- * Each page must be printed double-sided, where possible.

EXPLANATION OF FORM

Land description

Describe only the certificate of title to be subject to the easement.

e.g. "Whole of the land in CT Volume _____ Folio _____"

If numerous grants are in series refer to Notice to Lodging Parties No. 195 regarding the descriptions required for prior lodged dealings.

Estate and Interest

Insert fee simple or where the easement is being granted over a Crown lease or Crown Record insert Crown land

Grantors

- * Full name and address of the registered proprietor(s) of the land to be subject to the easement is required.
- * If the registered proprietor's name has altered, an application amending their name should precede the TG document.

- * Where contiguous allotments of land held by different registered proprietors in separate certificates of titles are granting an easement or right of way to one grantee, a separate TG document (one for each servient proprietor) should be used.

Consideration

Amounts must be expressed in words and figures.

Grantee(s)

- * Grantee's full name, address, manner of holding and certificate of title to which the easement is to be appurtenant is to be stated. No title reference will be required to be referred to where an easement in gross is to be granted.
- * Where a grantee(s) name has altered from that registered on their title, an application amending their name should precede the TG document.
- * Where there is one grantor granting an easement or right of way to contiguous allotments of land held by different registered proprietors in separate certificates of title, separate TG documents (one for each dominant proprietor) should be used.

Description of easement being granted

The description of the easement being granted must:

- Precisely describe the type of easement being created by either the use of the-
 - Short Form as set out in the 5th and 6th Schedules of the *Real Property Act 1886* (RPA) or
 - Long Form and fully describing the easement.
- Include reference to an identifier with a plan number filed or deposited by the Registrar-General or in a Certificate of Title. Where over the whole of a parcel in a title refer to the relevant parcel and plan in the title or where over the whole of the land in a title refer to the title. The TG document must not be lodged for registration unless the plan it refers to has been filed or in the case of a DP, approved or deposited. If the FP is not filed or in the case of a DP, approved or deposited at the time of lodgement of the document the TG document will be referred for correction.
- Describe if over the whole or portion of the land in the title to be subject to the easement e.g. An easement for drainage purposes over the land marked B in FX57143 being portion of the land above described.

Appurtenance

Where the easement is to be:

- Appurtenant to land, this must be accurately described e.g. Allotment 12 in DP 45678 being portion of the land in CT Volume 5600 Folio 57 or Whole of the land in CT Volume 5000 Folio 37.
- Held "in gross", show the applicable statute where due to the nature of the easement the grantee is entitled to hold an easement in gross e.g. Section 51 of the Petroleum Act 2000.

Consent to the Grant of an Easement

Consenting party

- * Only a mortgagee or encumbrancee can consent on this form
- * Show consenting party's full name, including if a company their ACN or ABN, and their address.
- * Where Encumbrancee's or Mortgagee's name has altered from that registered on their title, an application amending their name must precede the TG document.

Where a servient title is subject to a registered interest (other than a mortgage or encumbrance) over the land the easement is to be granted, satisfactory arrangements may need to be made so the easement is not subject to the interest. For example, if the servient land is subject to a Land Management Agreement and the easement is not to be subject to the Agreement, the Agreement is to be rescinded over the easement by separate documentation, which must precede the TG document.

Nature of estate or interest held

- * State the nature of the estate or interest held e.g. Mortgagee or Encumbrancee

Consent to discharge/extension

The consent form can only be used to adjust a mortgage or encumbrance. Separate documentation will be required if any other type of interest is required to be adjusted.

- * If a mortgage or encumbrance is being partially discharged over the easement:
 - In (1) cross through the inapplicable and insert number of interests being discharged and delete (2), if inapplicable
- * Where mortgage or encumbrance is being extended over the easement
 - In (2), cross through the inapplicable and insert number of interests being extended and delete (1), if inapplicable.

Where the servient and dominant land share the same numbered mortgage/encumbrance, no consent is required.

Must be dated

Execution by Consenting Party(s)

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. A different format must be used where a person is not signing in his or her own right (e.g. he or she is signing as attorney for the consenting party). If the party executing the consent is a body corporate, it may execute in any manner permitted by law.

Pursuant to Section 267 of the *Real Property Act 1886* (RPA), 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.*

Consenting parties may instruct a practitioner to execute on their behalf under client authorisation. Where consent forms exist for both execution by the consenting party and under client authorisation only the relevant consent form is required.

CERTIFICATION

Any inapplicable certification statement(s) must be deleted.

Certification statements must be made by the Certifier, being one of the following:

- A legal practitioner
- A registered conveyancer
- If the applicant is not represented by a legal practitioner or registered conveyancer – the applicant (i.e. self-represented party)
- 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 Certifier is a registered conveyancer or legal practitioner.

The first listed certification does not apply where the Certifier 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.

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*.

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION

Insert reference to supporting documentation that is required to be lodged with the application.

NEW TITLE INSTRUCTIONS

Instructions must be completed for all new titles to be issued.

ANNEXURE

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

An annexure sheet to an instrument shall:

- a. be in the format of Form B1 and identified therein as an annexure to the parent instrument;
- b. be referred to in the body of the instrument where insufficient space;
- 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 requirements in Form B1 Guidance Notes.

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:

- a. it is affixed securely and permanently to the top left-hand corner of the instrument; and
- b. the printing or handwriting thereon is clear and legible and in permanent form.

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 these standards.

PLEASE NOTE:

If the title is subject to any prior registered interests (other than a mortgage/encumbrance) e.g. permissive caveat, land management agreement etc. these will require separate documentation to partial withdrawal, rescind etc.

FORM TG (Version 3)