

NOTICE TO LODGING PARTIES LAND SERVICES GROUP

Department for Administrative and Information Services
101 Grenfell Street Adelaide 5000



Government
of South Australia

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No. 132

1. FOREST PROPERTY AGREEMENTS

The Forest Property Act 2000 (FPA) came into effect on 1 November 2001. The FPA allows for the registration or noting of a Forest Property Agreement (the agreement) and associated dealings with that agreement.

An application to the Registrar-General to note the agreement is to be made on panel form A3 (See Annexure A) with a prefix of AG. The actual agreement must be attached to the application and the duplicate Certificate of title will need to be produced.

A Forest Property Agreement will appear as an endorsement. It may be registered over the whole or portion of the land in a Certificate of Title or Crown Lease. If lodged over portion, a plan must be deposited in the General Registry Office to identify the land to which the agreement relates.

An agreement must specify a date or the circumstances in which the agreement will terminate¹. The time frame or circumstances for termination will appear in the endorsement of the agreement.

The agreement (or an interest in one) may be transferred, mortgaged or encumbered². Existing panel forms dealing with Encumbrances (ie TE, ME and E2) are to be used. For other dealings, such as Foreclosures, Powers of Sale, Caveats etc. the existing document and prefixes for non fee simple dealings are to be used.

The agreement may be varied by agreement between the registered proprietor of the land and the Forest Property Owner³. The application to note the variation can be made on panel form A3 (See Annexure B) with a prefix of VA. The agreement to vary must be attached.

¹ Section 5(2)(e) FPA

² Section 8 FPA

³ Section 10(1) FPA

Determination of the agreement can occur in several ways:

- a) by the passage of time or the occurrence of a certain event,
- b) revoked by agreement between the parties
- c) revoked by one party to the agreement (if the agreement provides for unilateral revocation) or in any other way specified in the agreement
- d) terminated or discharged by an order of court

An application to determine an agreement under options a), b) and c) is to be made on panel form A3 with a prefix of AX. An application to terminate or discharge an agreement under option d) is to be made on panel form A3 with a prefix of OD

(See Annexure C for suggested wording to be used in "Specify Nature of Application" panel for each scenario)

Any consent required by the Act must be endorsed in the appropriate document and be witnessed.

Any dealings with land, the subject of an agreement, should include the agreement as an encumbrance.

Unlike a lease with a certain time frame these endorsements will not automatically be deleted or cancelled once that time frame has passed. These will only be deleted when a new Certificate of Title is to issue or an application to terminate is received.

2. PROFITS A` PRENDRE

The FPA also amended the Real Property Act 1886 to allow for the registration of profits a` prendre by inserting the definition of "*easement*" includes a *profits a` prendre*".

Profits a` prendre (profit) can now be created, varied and extinguished in the same way as an easement. A profit can be created either appurtenant to land in a Certificate of Title or a Crown Lease, or in gross.

The notation of a profit will appear on a Certificate of Title under the heading of Easements. If a certificate of title is to issue for the profit created, the heading and land description will also include the words "PROFIT A` PRENDRE".

A profit can be lodged over the whole or portion of the land in a Certificate of Title or Crown Lease. If lodged over portion, a plan must be lodged and be either filed or deposited by the Registrar-General in the Lands Titles Office identifying the land the subject of the profit.

A profit can be extinguished as per any easement but may also be determined by the passage of time or the occurrence of circumstances specified in the grant.

Notice of a time frame, or of a certain occurrence, that will terminate the profit will appear in the dominant and servient clauses for the profits and on any easement (profit) in gross title.

Unlike a lease with a certain time frame these clauses or easement in gross titles will not automatically be deleted or cancelled once that time frame has passed. These will be deleted when a new Certificate of Title is to issue or an application to terminate is received.

3. ACCESS AGREEMENTS

The Recreational Greenways Act 2000 (RGA) was introduced to provide for the creation of "Greenways" for recreational purposes. (eg. walking, cycling, horse riding etc.) These greenways can be protected by lodgement with the Registrar-General of an **Access Agreement** (the agreement).

The agreement may be made between the Minister⁴ and the owner of private land, with the consent of all persons with a legal interest in the land.

An application to the Registrar-General to note the agreement is to be made on panel form A3 (See annexure D) with a prefix of AG. The actual agreement must be attached to the application and the duplicate Certificate of Title will need to be produced.

The agreement may be noted over the whole or portion of the land in a Certificate of Title or Crown Lease. If lodged over portion, a plan must be deposited in the General Registry Office to identify the land to which the agreement relates.

The agreement is binding on all subsequent owners of the land.

An agreement can be varied at any time by agreement between the parties but only if it remains in conformity with the proclamation declaring the relevant greenway.⁵

The application to note the variation can be made on panel form A3 (See Annexure E) with a prefix of VA. The agreement to vary must be attached.

If the variation affects the position of the greenway a plan must be deposited in the GRO to identify its new position.

The agreement or the variation of an agreement has no force or effect until noted by the Registrar-General against the relevant interest of title⁶.

The Minister may also acquire an easement over land for the purposes of the RGA pursuant to an agreement with the owner of the land.

The easement will be an easement in gross and will have priority over all other interests in the land⁷. If lodged over portion, a plan must be lodged and be

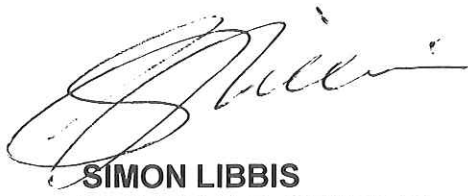
⁴ "Minister" for the purposes of the Act is currently the Minister for Recreation Sport and Racing

⁵ Section 17 RGA

⁶ section 18 of RGA

either filed or deposited by the Registrar-General in the Lands Titles Office identifying the land the subject of the easement.

Although there is no specific reference to a termination of an access agreement the act allows for the revocation of the Greenway (by Proclamation)⁸. This abolishes the Greenway and will terminate any access agreement to protect that Greenway. Notification of the revocation can be made by either party to the agreement on panel Form A3 (See annexure F) with a prefix of TH



SIMON LIBBIS
REGISTRAR-GENERAL

22-May-02

⁷ section 23 RGA

⁸ Section 8 of RGA

APPLICATION

ANNEXURE A

Form A3

TO NOTE FOREST PROPERTY AGREEMENT

CERTIFICATE(S) OF TITLE AFFECTED

If less than whole, the portion the agreement is over to be described precisely.

ESTATE AND INTEREST

APPLICANT (Full Name and Address)

Application can be made by either party to the agreement.

SPECIFY NATURE OF APPLICATION

The Applicant applies pursuant to section 6 of the Forest Property Act 2000 to note the attached agreement dated the Day of Betweenand on the above Certificate(s) of Title (or Crown Lease).

Actual agreement must be attached.

DATED

EXECUTION

.....
Signature of APPLICANT

.....
Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity. *

.....
Print Full Name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Business Hours Telephone No.

Execution and witnessing must comply with the normal requirements of the Registrar-General in relation to any instrument. Any consents required by the Act to register the agreement must be completed on Annexure form B2 or if the Court dispenses with any consents a copy of the Order.

APPLICATION

Form A3

TO VARY FOREST PROPERTY AGREEMENT

CERTIFICATE(S) OF TITLE AFFECTED	Insert Certificate(s) of Title affected by the agreement.
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ESTATE AND INTEREST

APPLICANT (Full Name and Address)	Application can be made by either party to the agreement.
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<p>SPECIFY NATURE OF APPLICATION</p> <p>The Applicant applies pursuant to section 10 of the Forest Property Act 2000 to register the attached agreement dated the Day of Betweenand which varies Agreement , on the above Certificate(s) of Title (or Crown Lease).</p>	
	<p>Actual agreement to vary must be attached. Note if the land the subject of the agreement is varied the following will need to be added, "which varies the position of the agreement to in GP....."</p>

DATED	
<p>EXECUTION</p> <p>Insert the relevant titles / crown lease affected by the variation.</p> <p>.....</p> <p>Signature of APPLICANT</p> <p>.....</p> <p>Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity. *</p> <p>.....</p> <p>Print Full Name of Witness (BLOCK LETTERS)</p> <p>.....</p> <p>.....</p> <p>Address of Witness</p> <p>.....</p> <p>Business Hours Telephone No.</p>	<p>Execution and witnessing must comply with the normal requirements of the Registrar-General in relation to any instrument. Any consents required by the Act to register the agreement must be completed on Annexure form B2 or if the Court dispenses with any consents a copy of the Order.</p>

* A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

Wording to be used in "SPECIFY NATURE OF APPLICATION" panel in panel Form A3 when:

a) determined by the passage of time or the occurrence of a certain event,

The applicant applies pursuant to section 5(2)(d) of the Forest Property Act 2000 and clause of Forest Property Agreementto note the determination of the agreement on the above Certificate(s) of Title (or Crown Lease).

b) revoked by agreement between the parties

The Applicant applies pursuant to section 11 of the Forest Property Act 2000 to note the attached agreement dated the Day of between and which revokes Forest Property Agreement on the above Certificate(s) of Title (or Crown Lease).

Note: The agreement to revoke MUST be attached

c) the Forest Property Agreement itself provides for unilateral revocation or revocation in some other way:

The Applicant applies pursuant to section 11 of the Forest Property Act 2000 and clause(s)..... of Forest Property Agreement to note the revocation of the agreement on the above Certificate(s) of Title (or Crown Lease)

d) terminated by an order of court

The Applicant applies pursuant to section 12 of the Forest Property Act 2000 and the attached Order of Court to note the termination of Forest Property Agreement on the above Certificate(s) of Title (or Crown Lease)

e) discharged by an order of court

The Applicant applies pursuant to section 13 of the Forest Property Act 2000 and the attached Order of Court to note the discharge of Forest Property Agreement on the above Certificate(s) of Title (or Crown Lease)

APPLICATION

Form A3

TO NOTE ACCESS AGREEMENT

CERTIFICATE(S) OF TITLE AFFECTED

If less than whole, the portion the agreement is over to be described precisely.

ESTATE AND INTEREST

APPLICANT (Full Name and Address)

Application can be made by either party to the agreement.

SPECIFY NATURE OF APPLICATION

The Applicant applies pursuant to section 18 of the Recreational Greenways Act 2000 to note the attached agreement dated the Day of Betweenand
on the above Certificate(s) of Title.

Actual agreement must be attached.

DATED

EXECUTION

.....
Signature of APPLICANT

.....
Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity. *

.....
Print Full Name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Business Hours Telephone No.

Execution and witnessing must comply with the normal requirements of the Registrar-General in relation to any instrument.

* A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

APPLICATION

Form A3

TO NOTE VARIATION OF ACCESS AGREEMENT

CERTIFICATE(S) OF TITLE AFFECTED	Insert the relevant title(s) / crown lease(s) affected by the variation.
ESTATE AND INTEREST	
APPLICANT (Full Name and Address)	Application can be made by either party to the variation of the agreement.
<p>SPECIFY NATURE OF APPLICATION</p> <p>The Applicant applies pursuant to section 18 of the Recreational Greenways Act 2000 to note the attached agreement dated the Day of Betweenand which varies Agreement to note the variation on the above Certificate(s) of Title (or Crown Lease).</p>	
<div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content; margin: 0 auto;"> <p>Actual agreement to vary must be attached. Note if the land the subject of the agreement is varied the following will need to be added, "which varies the position of the agreement to in GP</p> </div>	
DATED	
EXECUTION	
..... Signature of APPLICANT	Execution and witnessing must comply with the normal requirements of the Registrar-General in relation to any instrument.
..... Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity. *	
..... Print Full Name of Witness (BLOCK LETTERS)	
..... Address of Witness	
..... Business Hours Telephone No.	

* A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

APPLICATION

Form A3

TO NOTE TERMINATION OF ACCESS AGREEMENT

CERTIFICATE(S) OF TITLE AFFECTED	Insert the relevant title(s) / crown lease(s) affected by the termination.
ESTATE AND INTEREST	
APPLICANT (Full Name and Address)	Application can be made by either party to the agreement.
<p>SPECIFY NATURE OF APPLICATION</p> <p>The Applicant applies pursuant to section 8 of the Recreational Greenways Act 2000 to note the abolition by proclamation in Government Gazette dated the Day of Page..... of the Recreational Greenway covered by Access Agreement on the above Certificate(s) of Title.</p>	
<div style="border: 1px solid black; border-radius: 10px; padding: 5px; width: fit-content; margin-left: auto;"> <p>Note: if only portion of the land the subject of the agreement is to be abolished the following will need to be added, "as regards the portion marked in GP....."</p> </div>	
DATED	
<p>EXECUTION</p> <p>..... Signature of APPLICANT</p> <p>..... Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity. *</p> <p>..... Print Full Name of Witness (BLOCK LETTERS)</p> <p>..... Address of Witness</p> <p>..... Business Hours Telephone No.</p>	
<div style="border: 1px solid black; border-radius: 10px; padding: 5px; width: fit-content; margin-left: auto;"> <p>Execution and witnessing must comply with the normal requirements of the Registrar-General in relation to any instrument.</p> </div>	

* A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.