DOC-04 Statutory Declarations and Supporting Evidence

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1 Declarations Made for the Purposes of the TLA

Unless another written law provides otherwise, a statutory declaration made for the purposes of the Transfer of Land Act 1893 (TLA) must be made in accordance with s.12 of the Oaths, Affidavits and Statutory Declarations Act 2005 (OASD Act).

Section 12(2) of the above Act specifies that the statutory declaration must be in the form of Schedule 1 of that Act.

Statutory Declarations lodged with the Registrar of Titles may be made on a Form B3 Statutory Declaration. This form may be downloaded from Landgate’s website.

If a statutory declaration is lodged with the Registrar of Titles for the purposes of the TLA that is not made in accordance with s.12 of the OASD Act, it will need to be considered on a case by case basis to determine whether or not it will be acceptable (for the purposes for which it was lodged).

2 Form

Schedule 1 of the OASD Act, prescribes a form to be used when a statutory declaration is being made, as follows:

I,

(name, address and occupation of person making the declaration)

sincerely declare as follows –

(insert content of the statutory declaration; use numbered paragraphs if content is long)
This declaration is true and I know that it is an offence to make a declaration knowing that is false in a material particular.

This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005 at (place) on (date)

by -

(Signature of person making the declaration)

in the presence of -

(Signature of authorised witness)

(Full name, address and qualification of authorised witness)

There is a printed Form B3 available for statutory declarations (see Form Example 12). It is recommended that the printed form be used for short declarations. Where the content is likely to exceed one page, the declaration should be prepared on plain good quality bond paper. In these cases, the formal attestation should appear on the last page. Other pages should be signed at the foot by the declarant and the authorised witness.

3 Witnessing Statutory Declarations

Section 12 of the OASD Act outlines a procedure to be followed by the person making the statutory declaration and the authorised witness. The person who is making the statutory declaration must in the presence of an authorised witness declare orally:

- that he or she is the person named as the maker of the statutory declaration

- that the contents of the statutory declaration are true

and

- that the signature or mark is his or hers; and if necessary, that any attachment to the statutory declaration is the attachment referred to in it.

After the maker of the statutory declaration has complied with the above, the authorised witness must:

- sign or personally mark the statutory declaration

- sign or initial any alteration in the statutory declaration that has been signed or initialled by the maker

and

- imprint or clearly write his or her full name, address and qualification as an authorised witness.

4 Authorised Witnesses inside Western Australia

An authorised witness for a statutory declaration that is made at a place in Western Australia is:
- any person described in the second column of Schedule 2 of the OASD Act

or

- any person before whom, under the Commonwealth Statutory Declarations Act 1959, a statutory declaration may be made.

The informal descriptions of persons described in Schedule 2 of the OASD Act are listed below:

Authorised Witnesses

Academic (post-secondary institution)  Local government CEO or deputy CEO
Accountant  Local government councillor
Architect  Loss adjuster
Australian Consular Officer  Marriage celebrant
Australian Diplomatic Officer  Member of Parliament
Bailiff  Minister of religion
Bank manager  Nurse
Chartered secretary  Optometrist
Chemist  Patent attorney
Chiropractor  Physiotherapist
Company auditor or liquidator  Podiatrist
Court officer  Police officer
Defence force officer  Post office manager
Dentist  Psychologist
Doctor  Public notary
Electorate officer of a member of State Parliament  Public servant (Commonwealth and State)
Engineer  Real estate agent
Industrial organisation secretary  Settlement agent
Insurance broker  Sheriff or Deputy Sheriff
Justices of the Peace  Surveyor
Landgate officer  Teacher
Lawyer  Tribunal officer

Veterinary surgeon

Note: For the full formal description of authorised witnesses for statutory declarations refer to Schedule 2 of the Oaths, Affidavits and Statutory Declarations Act 2005.

5 Authorised Witnesses outside Western Australia
An authorised witness for a statutory declaration made under the OASD Act is specified in s.12(6) of that Act.

If the statutory declaration is made at a place outside Western Australia, but within Australia then an authorised witness is:

- any person who, under the law of that place, has authority to take or receive a statutory, solemn or other declaration;

or

- any person before whom, under the Commonwealth Statutory Declarations Act 1959, a statutory declaration may be made.

If the statutory declaration is made outside Australia, then an authorised witness is:

- a prescribed consular official who is performing official functions at that place

- a person who is a justice or notary public under the law of that place

or

- a person who has authority under the law of that place to administer an oath to another person or to take, receive or witness a statutory, solemn or other declaration.

A prescribed consular official means:

- an Australian Consular Officer, or an Australian Diplomatic Officer, within the meaning of the Commonwealth Consular Fees Act 1955;

- a British consul or vice consul

or

- an official prescribed by the regulations to be a prescribed consular official.

6 Content

The person making the statutory declaration should state his or her full name, address and occupation and, following the form provided in Schedule 1 of the OASD Act should state:

- the capacity in which the declaration is made i.e. as registered proprietor, as trustee, etc.

- where the declarant is not a party to the document, the means of knowledge for the statements made

- the volume and folio reference to the land in all cases and, where a mortgage, charge or lease is dealt with, the number of the instrument to which the declaration refers

- the facts applicable to the matters being declared

- any further information pertinent to the matters declared

- what evidence is produced or attached

- an identifying description such as a letter or number for each attachment (and that identifying
description should be marked on each attachment)

and

- where the declaration is in support of a caveat, it must give precise details of the estate and interest claimed in the land,

7 Declarations by Two or More Persons

Where a declaration is made by two or more persons, they should declare jointly and severally and there should be a separate execution and attestation for each person.

8 Amendments to a Declaration

8.1 Before first execution

Where errors are noticed prior to first execution the offending words should be struck out and, if necessary, substitution made. The person making the declaration and the authorised witness must initial such amendments and then complete the formal attestation.

8.2 After first execution

Very simple errors may be amended and initialled by the person making the statutory declaration and having it re-declared before the same or another authorised witness. Major amendments should be made by preparing and executing a new statutory declaration.

9 Evidence Produced

As the evidence listed below is returned to the lodging party at the time of lodgement, it need not be formally attached to a declaration, but must be specifically referred to in the declaration (e.g. Produced herewith is a certified copy of my marriage certificate). Landgate requests that when lodging evidence that a photocopy of single sheet evidence, such as marriage and birth certificates, and the original documents, be presented to enable the photocopy to be certified 'Original Sighted' by a Landgate Officer, with the original item being returned to the lodging party.

Death Certificates Birth Certificates

Marriage Certificates Advice of Bankruptcy

Change of Name Certificates Grants of Probate

Appointment of Liquidator Trustee Certificate

Letters of Administration

Evidence originating from outside of Australia which is not in English script is required to be accompanied by a translation of that document.
9.1 Certification of Evidence by Australia Post

The Registrar of Titles has now authorised Australia Post to certify original documents that are required as evidence to support documents lodged at Landgate. The rules pertaining to the types of evidence required by Landgate have not changed. Anyone who is required to produce original documents that are needed as evidence to support a "Landgate transaction" may now take their original documents to an authorised Australia Post outlet for certification.

Australia Post will:

- Ensure that the document is an authentic original or certified copy issued from the correct relevant authority.

- Make a photocopy of the original (all pages)

- Certify that it is a true copy of an original document sighted by Australia Post.

- Every page of the evidence must be certified.

- Australia Post will then return the Original and the "Australia Post certified copy" to the Client.

Australia Post will not send anything to Landgate. It will be up to the client to pass the certified copies onto their Lawyer or Settlement Agent or to include the certified copy when lodging their documents at Landgate.

Landgate will not accept any certified copies of evidence, unless;

- The certified copies are included within the documents that need them when they are lodged at Landgate

or

- The certified copy is required for an existing document that has already been lodged at Landgate. In this instance the client must always provide a current (active) Landgate document reference number before it can be accepted.

Note: This service will not be available at all Australia Post outlets and a fee will be charged for the service. For details, see the Australia Post website: https://auspost.com.au/.

9.2 Court Orders and SAT Orders

Some Court Orders and Orders issued by the State Administrative Tribunal (SAT) have now started to issue electronically. Where an electronically issued Order is lodged as supporting evidence, Landgate will not certify the evidence as 'Original Sighted'. Where it is clear that the Order was issued electronically the Order will be accepted.

Landgate will only certify an electronically issued Order where the Order contains original Duty endorsement.

10 Attachments

Attachments should be identified by letter or number and referred to as such in the declaration.
Sequential numbering or lettering of the attachments is required where more than one is attached. The identifying description (letter or number) should also be marked on each document.

Attachments are part of the statutory declaration and will therefore be retained by Landgate.

11 Also see

- CAP-02 Incapable Persons