

DOC-06 Memorandum of Common Provisions

Version 2 - 28/02/2018

The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action to protect your legal rights. Please read our [Terms of Use](#) on the Land Titles Registration policy and procedure guides web page. Landgate accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

1 Overview

It is possible to simplify the document production, checking and recording processes, both for conveyancers and Landgate, by separating the components of documents such as mortgages and leases into two documents.

The statutory or registration components of both documents can be made into a simple, short form mortgage or lease, leaving the contractual component as a Memorandum of Common Provisions. A short form mortgage would contain land description, estate and interest, encumbrances, mortgagor, mortgagee and perhaps (but not necessarily) details of the principal sum, interest and repayments. It would also contain the operative words of formal mortgage and a clause referring to the Memorandum of Common Provisions incorporating its terms and provisions in the mortgage and the formal attestation by the parties.

The Memorandum of Common Provisions would contain all the other elements that made up the formal mortgage document or lease. Care should be taken by conveyancers to ensure that the provisions of the memorandum do not conflict with any statute, especially in such matters as notice provisions, where the provisions of the TLA must prevail over any other listed forms agreed to by the parties.

It is possible, however, to create a provision in a memorandum in general terms, to achieve both compliance with the Statutes and the wishes of the parties. For instance, a notice provision could be expressed as:

"except where expressly required to be given in a particular manner by Statute, notice may be given by"

Similar drafting may be used to ensure that default and other provisions are not in conflict with the TLA. While Landgate has a policy of making every effort to register the document in a format

required by the parties, it will not register documents containing provisions in direct conflict with the requirements of Statutes.

The use of the technique shown in the example is encouraged as it permits the use of standard provisions in all States and ensures that the document does not become obsolete by any amendment to the legislation.

Memoranda of common provisions for mortgages and leases are lodged, numbered and stored in the same manner as all other documents. They are examined by the Lead Consultant, Dealings Section in the Registrations Branch, who will notify the lodging party of any requisitions.

Clients should ensure that the memoranda of common provisions have been accepted before committing to extensive printing orders.

2 Form

There is no specific form for a Memorandum of Common Provisions, a [Blank Instrument Form \(B2\)](#) may be used, if desired. The document must be consecutively page numbered, be duplex printed and where applicable contain adequate headings.

3 Also see

- [DOC-01 Document Preparation](#)
