



# CAP-01 Capacity of Parties

Version 1 - 19/03/2018

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## 1 Minors

Any person who is under the age of eighteen years is a minor and as such is incapable of dealing in real property. However, a minor can become the registered proprietor of land. Section 59 of the Transfer of Land Act 1893 (TLA) requires the Registrar to show the age of the minor on a certificate of title registered in the name of a minor.

Where a minor is required to execute an instrument as accepting party, it is a matter of discretion as to whether such instrument can be signed by the minor or should be signed by a parent or guardian on the minor's behalf. A Court Order is required, appointing a person to sign instruments under the Act, where it is necessary or desirable for a minor to sell or mortgage land (see s.82 of the Trustees Act 1962).

The instruments are prepared in the name of the minor and executed by the person appointed in the Order. The Order must be produced when the instruments are lodged. A form of attestation suitable to such cases is:

Signed by (Name of the Minor )

by (his or her) guardian ad litem )

(Name of Guardian) in ) (Signature of Guardian)

the presence of )

Witness

(Full Name, Address and Occupation)

To overcome this restriction, land held beneficially by a minor is frequently registered in the name of a trustee pursuant to a declaration of trust.

In certain cases, minors are given statutory power to deal with their real property. The Land Act

1933 (s.26 and 150) provided that a person over 16 years of age may select, acquire, transfer or hold and mortgage any land under the Land Act 1933. The TLA (s.81G) contains complementary provisions in respect of Crown leases registered under the TLA.

Note: The LAA makes no specific provisions with regard to minors dealing in Crown land.

### 1.1 Verification of Identity of a Minor

Where a minor is capable of executing a document that is a VOI compliant document they will be required to be identified using reasonable steps, similar to an adult. Where a Guardian or Parent sign on behalf of the minor, the process is similar to that of an Attorney signing.

## 2 Partnerships

A partnership involves two or more people (up to 20, with some exceptions) going into business together with a view to making a profit. In Western Australia, partnerships are governed by the Partnership Act 1895.

A partnership is not a separate legal entity. Each partner is fully responsible for debts and liabilities incurred on behalf of the business by other partners. The most commonly seen partnerships are those of Law Firms, but not limited to.

In almost all dealings in land by a partnership it must be carried out by listing the names of the individual partners and where appropriate, converting their share in the partnership to a like share of the interest shown in the document.

A group of partners lending money as a mortgagee must show the individuals as mortgagees in the mortgagee panel, preferably with their shares also disclosed. The contractual part of the mortgage may, however, contain a reference to the partnership by its trading name.

A partnership may lodge caveats. the caveat should list all the members of a partnership by their individual names as caveators and show that they are operating as a partnership (by use of the trading name). The caveat is commonly signed by one of the Partners either as the Solicitor or Agent, but can be signed by all.

Under the rules of the Court, Property (Seizure and Sale) Orders can be issued showing the creditor as a partnership.

### 2.1 Removal of an encumbrance by a Partnership

The preparation and execution of a removal of a Property (Seizure and Sale) Order depends greatly on the option selected in the [application to discharge](#) - see [PSS-02 Property \(Seizure and Sale\) Order - removal](#).

A withdrawal of caveat should name all the partners individually as shown on the certificate of title. It is preferable that all the partners sign the document, however a single partner may sign on behalf of all using an appropriate execution clause, such as:

Signed by.....

as Partner for .....

In the presence of (witness).

Where one partner executes a document on behalf of all the other partners, the partner executing the document must provide a statutory declaration setting out a list of the partners and declare that they have authority from each of the other partners to execute the document (specify the document) on their behalf.

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