TFR-01 Transfers - common scenarios

Version 2 - 24/01/2018

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Note: Transfer documents are subject to the Verification of Identity Practice issued jointly by the Western Australian Registrar of Titles and Commissioner of Titles. Please refer to the Vol webpage.

1 Transfer - Where Land is Encumbered

Where land is sold encumbered by an existing mortgage lease or other encumbrance a concise entry should be made in the Limitation, Interest, Encumbrance and Notification panel, where there is one. For example:

- Where the encumbrance is a mortgage the consideration in the transfer should be expanded either to include or exclude the amount of money owing under the mortgage, e.g. Four thousand dollars inclusive (or exclusive) of the principal and interest owing under Mortgage F323654.

- Where land is encumbered by a lease the term of which (inclusive of any option to renew or extend the term) has expired no reference to the lease as an encumbrance need be made. If the lease is still current or has been extended and such extension registered, then the lease (not the extension) must be noted as an encumbrance.

2 Transfers to Joint Tenants

The transferee panel containing the names and addresses of the transferees must contain in addition the words as joint tenants.

Although there is a presumption of a joint tenancy where no tenancy is stated (see s.60 of the TLA), Landgate requires tenancy to be stated in a transfer that is lodged for registration to avoid any doubt as to the intention of the transferees.
Further information on the effect and rights of a Joint Tenancy can be found in DOC-05 Tenancy and DEC-01 Deceased Proprietor.

3 Transfers to Tenants in Common

A tenancy in common does not arise by implication or presumption and must be expressly set out in a transfer. The correct place to show a tenancy in common is in the transferee panel of a transfer form following a description of the transferees.

The panel should be completed as set out in the following examples:

- Where the shares are equal:

  William Brown of 5 Gray Street PERTH WA 6001 of one undivided half share and Graham Jones of 10 White Avenue FREMANTLE WA 6158 of one undivided half share as tenants in common, or

  William Brown of 5 Gray Street PERTH WA 6001 and Graham Jones of 10 White Avenue FREMANTLE WA 6158 as tenants in common in equal shares.

- Where the shares are unequal:

  A of address of two undivided third shares and B of address of one undivided third share as tenants in common.

Further information on the effect and rights of Tenants in Common can be found in DOC-05 Tenancy and DEC-01 Deceased Proprietor.

Note: Shares must be shown as whole numbers and where appropriate the lowest share ratio should be shown. For example: 33.3 undivided one hundredth share will not be accepted but a one undivided third share (1/3) will be accepted.

4 Transfer - Tenants in Common and Joint Tenants

Where persons desire to hold land as tenants in common but some of them, between themselves, desire to create a joint tenancy as to their share, the transferee panel should show:

James Smith, and Mary Smith, both of 10 Kew Street PERTH WA 6001, as joint tenants of one undivided half share and Thomas Jones of 5 Timm Street BALGA WA 6061, of one undivided half share, as tenants in common.

or

James Smith, and Mary Smith, both of 10 Kew Street PERTH WA 6001, as joint tenants, of one undivided half share and Thomas Jones, and Jane Jones, both of 5 Timm Street BALGA WA 6061, as joint tenants, of one undivided half share, as tenants in common.

or

James Smith and Mary Smith, both of 10 Kew Street PERTH WA 6001, as joint tenants of two undivided fourth shares, Thomas Jones of one undivided fourth share and Jane Jones of one undivided fourth share, both of 5 Timm Street BALGA WA 6061, as tenants in common.

Note: Persons holding individual shares cannot also be joint tenants, for example: 'A' of one
undivided third share, 'B' of one undivided third share and 'C' of one undivided third share as Joint Tenants. This situation creates a conflict of interest and rights of the parties.

In the case of a digital title, tenants in common will only receive one duplicate certificate of title showing all their shares noted on that one duplicate certificate of title. If a separate duplicate certificate of title is required for each tenant in common’s share, separate paper titles can be created and registered for the respective shares of the transferees.

The request should be typed or written on the transfer form and signed by each new transferee or by the transferee’s solicitor or agent. A further fee is payable for each additional certificate created (click on the following link for a current list of search and lodgement fees.)

5 Transfer by a Tenant in Common of His or Her Entire Interest to a Stranger

In this case the estate or interest panel should read fee simple as to one undivided half share or whatever share represents the entire interest of the transferor. Unless the creation of separate (paper) titles is requested, the digital title will show all the current owners, and their share entitlement. Another way of achieving this result is for all the present proprietors to transfer the entire interest in the land to the continuing proprietors and the stranger as tenants in common in the appropriate shares.

6 Transfer by a Proprietor to Himself

Transfers where the transferor and the transferee are one and the same are sometimes prepared in an attempt to give effect to a change in the beneficial ownership of land. Landgate will not however accept these types of transfer for registration even though s.44 of the Property Law Act 1969 (the PLA) appears to provide for this.

Section 44 of the PLA is inconsistent with s.84 of the TLA. Section 84 of the TLA states that it shall be lawful for a proprietor to make a transfer directly to himself and another person or jointly with any other person to himself alone. This means that a proprietor cannot transfer from himself solely to himself solely.

When there is inconsistency between the PLA and the TLA, s.6 of the PLA states that the PLA does not apply. Therefore s.84 of the TLA takes precedence over s.44 of the PLA.

Transfers lodged to change the beneficial ownership of interest in land where there is no change in the legal ownership cannot be registered as they are in breach of s.84 of the TLA.

Where the beneficial interest in land has changed, the lodgement of a Declaration of Trust may be appropriate.

Note: Where land is held in two different capacities, the different interest will not be shown on the certificate of title. For example, where A holds ½ share in their own right and the other ½ share as a Trustee for a Trust, the title will only show A once. The lodgement of a Declaration of Trust (Registrars Caveat) or Beneficiary Caveat should be used to define the two interests. Similarly, where there are joint trustees holding a share in the land.

7 Transfer by a Tenant in Common of Part of His or Her Interest to
a Stranger or Strangers

It is necessary in transfers of this type that there be no ambiguity in stating what part of the interest of a tenant in common is being transferred. It is considered that the most effective and direct method is to translate the interest of the transferor being transferred to a proportion of the entirety.

For example, where a tenant in common is registered as proprietor of a one undivided fourth share and wishes to sell a one fourth share of that interest, the estate or interest panel should read fee simple in one undivided sixteenth share. One undivided sixteenth share in the entirety is what the transferor sells and one undivided sixteenth share in the entirety is what the transferee purchases.

No objection would be taken if the estate or interest panel reads fee simple in one of the transferor’s four undivided sixteenth shares.

Where there is more than one transferee (with equal share, the tenancy between them may be shown in the transferee panel by the words:

"joint tenants, as tenants in common in equal shares."

Where the tenants in common hold unequal shares, e.g. two thirds, one third, (the tenancy between them may be shown in the transferee panel by the words:

"A of etc. of two undivided forty-eighth shares and C of etc. of one undivided forty-eighth share, as tenants in common."

(3/48 being equal to 1/16 share).

The title, on the registration of the transfer will show all the current owners, and their share entitlement.

8 Transfer by a Tenant in Common of the Whole of His or Her Interest to the Other Co-Tenant or Co-Tenants

In transfers of this nature the appropriate panel of the form should read:

Estate or interest: fee simple in one undivided half share (or as the case may be)

Consideration: X dollars.

The title, on the registration of the transfer will show all the current owners, and their share entitlement. The share being transferred will generally be added to the existing share held by the co-tenant/s.

9 Transfer by a Tenant in Common of Part of His or Her Interest to a Co-Tenant

Transfers of this nature may be prepared in either of two ways:

The person disposing of part of his or her undivided share is joined by all the remaining proprietors and together they dispose of the entire interest in the land to the transferees. As an example, where a person is transferring one half of his or her third share to the other tenants the
appropriate panels of the form should read:

Estate or interest: fee simple

Transferor: A, B and C

Consideration: X dollars paid to A by B and C

Transferee: A of etc. of two undivided twelfth shares, B of etc. of five twelfth shares and C of etc. of five undivided twelfth shares as tenants in common.

The person disposing of part of his or her undivided share is the sole transferor.

Using the previous example, the appropriate panels of the form should read:

Estate or interest: fee simple in two undivided twelfth shares

Transferor: A

Consideration: X dollars

Transferee: B of etc. and C of etc. as tenants in common.

In both cases above, after the transfer is registered, the Title will show all the current owners, and their share entitlement.

10 Transfer by One Joint Tenant to a Stranger

In transfers of this nature the appropriate panel of the form should read:

Estate or interest: fee simple in (name of transferor's) interest as joint tenant with (name of the other joint tenant or tenants)

Consideration: X dollars (or as the case may be).

Such a transfer severs the joint tenancy formerly existing and creates a tenancy in common in respect of the interest transferred.

In the case where A, B and C are registered proprietors as joint tenants, and A transfers all his or her estate and interest to D in the above manner the result will be that B and C will remain joint tenants between themselves in two undivided third shares and D will be the registered proprietor of the remaining undivided third share. Between B and C, as to their interest, and D, as to his or her interest, a tenancy in common is created.

On registration of the transfer, the title will show all the current owners, their share entitlement, and tenancies.

Where it is intended that the transferee and the remaining joint tenants shall hold as joint tenants, then all the registered joint tenants must join in the transfer. For example, if A, B and C are joint tenants and C wishes to transfer to D so that A, B and D will be joint tenants the appropriate panels of the transfer should read:

Estate: fee simple

Transferor: A, B and C

Consideration: X dollars paid to C by D
Transferee: A of etc., B of etc., D of etc. as joint tenants.

11 Transfers Between Joint Tenants

Where A, B and C are joint tenants and C sells his or her interest to B, the sale may be effected by a transfer from C to B.

The appropriate panels of the transfer should read:

Estate or interest: fee simple in the interest of C as joint tenant with A and B

Transferor: C

Consideration: X dollars

Transferee: B of etc.

On registration of the transfer, the title will show all the current owners, their share entitlement and tenancies.

Note that where A, B and C are joint tenants and B and C wish to sever the joint tenancy but A does not, B and C may achieve their purpose by each transferring their estate or interest to the other.

Registration of the two transfers will result in A, B and C holding the land as tenants in common in equal shares (Wright v Gibbons (1949) 78 C.L.R. 313).

12 Transfer to Effect a Partition of Land

Where two or more proprietors hold land and desire to partition their land so that each holds a separate lot, location or subdivided part in severalty as their share of the land, the desired effect is obtained by mutual transfers lodged together. In the case of two proprietors owning Wellington Location 1 and 2 the appropriate panels of the first transfer should read:

Land: Wellington Location 1 being part of the land in Certificate of Title Volume 1600 Folio 400

Estate: fee simple

Transferor: A and B

Consideration: in pursuance of an agreement for partition of the land in the above certificate of title whereby A Takes Location 1 and B Takes Location 2 (no money passing) (X dollars paid) by way of equality of exchange

Transferee: A of etc.

The second transfer should be identical with the exception that the land description is changed to suit the case (i.e. Location 2) and the transferee is shown as the second person (i.e. B in the example above).

13 Transfer to Effect a Change of Tenancy

Where persons registered as tenants in common wish to hold as joint tenants the change is effected by transfer.
The appropriate panels of the transfer should read:

Estate: fee simple
Transferor: A and B
Consideration: the desire of the registered proprietors to hold the land as joint tenants
Transferee: A of etc. and B of etc. as joint tenants.
The reverse situation, joint tenants to tenants in common, is achieved in the same manner.

14 Transfer by Direction

Where there has been a series of sales of one piece of land and it is desired to transfer the land to the ultimate purchaser the appropriate panels of the form should read:

Estate: fee simple
Transferor: A (i.e. the registered proprietor) by direction of B
Consideration: (1) X dollars paid by B to A and (2) Y dollars on a resale paid by the transferee to B
Transferee: C of etc.

Although the execution of a transfer by a directing party may be desirable from the point of view of the transferee, the Registrar is not concerned to obtain the signature of the directing party.

15 Transfer Reciting an Assignment

Where an interest in an agreement to purchase land has been assigned prior to the purchase being completed, the subsequent transfer is not a direction transfer.

Transfers of this nature may be prepared in various ways. Two examples follow:

Estate: fee simple
Transferor: A
Consideration: first, the terms of an agreement dated (date) between the transferor as vendor and B of etc. as purchaser and secondly an assignment dated (date) whereby the said B assigned the purchasers interest to the transferee
Transferee: C of etc.
Estate: fee simple
Transferor: A
Consideration: (1) X dollars agreed to be paid to the transferor by B of etc. and (2) Y dollars paid to B by the transferee on assignment of B’s purchasers interest
Transferee: C of etc.
The Registrar is not concerned to obtain the signature of the assignor.
16 Transfer to Effect a Change of Trustee

Where persons/corporations registered on a title hold the interest as Trustee for a Trust the change is effected by transfer.

The appropriate panels of the transfer should read:

Estate: fee simple

Transferor: A

Consideration: pursuant to a Deed of Retirement and Assignment of Trustee dated (or as to relevant Deed that changes the Trustees)

Transferee: B of etc. or C and D of etc. as joint tenants.

Where the date of the Deed stated in the consideration panel matches the date of stamping, the Deed is not required to accompany the Transfer. Where the dates do not match, a Landgate Sighted or Australia Post certified copy will be required.

Where the Trust property is identifiable by way of Registrar’s Caveat, it is recommended that the Deed be produced with the Transfer. The presentation of the Deed for record keeping will assist with any future transaction where the caveat may need to be lifted.

17 Also see

- TFR-03 Transfers by or to an Executor/Administrator