TFR-02 Transfers - Document Preparation

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1 Overview

The form of transfer in use provides that the information required to complete the form be placed in panels in a set pattern. It is important to realise that the marginal heading adjacent to each panel and the accompanying notes on how to complete the form are an integral part of the form. The forms are designed for ease of preparation and for ease of examination. Repetition is kept to an absolute minimum.

2 Choose the Correct Form

It is essential that the correct form is used to achieve the desired change to the register (Certificate of Title). A transfer by a mortgagee exercising a power to sell will not be registered in any other form than on a Transfer of land by mortgagee form. Conveyancers should be similarly careful not to choose the wrong form when preparing a survivorship application, or a transmission application, for the same reason.

A transfer of land with additional pages form must be used in all cases where the parties desire not only to transfer land but also to create at the same time reservations or grants of easements, or restrictive covenants. This form type should also be used where there are many endorsements in the Second Schedule. While a transfer of freehold land is prepared on either a Transfer of Land Form or Transfer of Land form with additional pages, a transfer of a lease must be prepared on a Transfer of mortgage, changes or freehold lease form.

Since it appears to be usual practice for the transferee/buyers’ agent to choose which form to use, it is important for this agent to decide, with the agent acting on behalf of the transferor/seller, as early in the transaction as practicable, which way they will go so that the correct form is used.
2.1 Transfer Forms

Landgate introduced the T1A, T2A and T4A Transfer Forms in June 2013. These form types had two significant differences to the Transfer of land form, Transfer of land form with additional pages form and Transfer of land by mortgagee:

- Verification of Identity Statement incorporated into the form.

- The Limitations, Interests, Encumbrance and Notifications panel has been removed.

From 1 August 2016, Transfer of Land forms (T1 and T2) which contain the ‘Limitations, Interests, Encumbrance and Notifications’ panel were no longer accepted for lodgement by Landgate. Forms containing an execution date that is prior to 1 August 2016 are considered for lodgement on a case by case basis.

On 31 January 2018, the Commissioner of Titles and Registrar of Titles updated their Joint Practice for Verification of Identity and Authority (VOI Practice) for paper-based transactions. The updated VOI Practice more closely aligns to the requirements for national electronic transactions. The key changes to the VOI practice include extending the requirement for verification of identity to property buyers. These changes came into effect on 12 February 2018. To give practitioners time to adjust their processes and procedures, they were not required to fully comply until 5 June 2018. The T1A, T2A and T4A paper form templates incorporating the VOI statement for Transferors, will not be updated to include a VOI Statement for Purchasers, and cannot be used on or after 5 June 2018. Transfers dated prior to 5 June 2018 will be acceptable for lodgement on the old T1A, T2A or T4A forms, provided a VOI statement is presented for the transferee.

3 Completion of the form

Refer to DOC-01 Document Preparation in addition to the below information:

3.1 Describe the Land Being Transferred

This should be a full description with reference to either the location, or lot and plan or diagram and whether it is the whole or part of a certificate of title (volume and folio reference), Crown land title (volume and folio reference) or Crown Lease number.

3.2 Describe the Estate or Interest Being Transferred

ESTATE AND INTEREST (Note 2)

The words fee simple should be used where the land is freehold and the word leasehold where the land is leasehold. Where the land transferred is both fee simple and leasehold the fee simple lands should be grouped as firstly and the leasehold grouped as secondly in the Land being transferred panel. The estate or interest panel should then read fee simple in the land firstly
above described and leasehold in the land secondly above described. An undivided half share or other interest should also be indicated in this panel, i.e.: one undivided half share of the fee
simple.

3.3 Set Out Limitations, Interests, Encumbrances and Notifications

LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS (Note 2)

Any limitation, interest, encumbrance or notification to which the land is subject to (burdened) must be noted, if the form selected has this panel (see also COT-01 Reading a Certificate of Title in our Policy and Procedure Guide).

The documents shown are to be identified by nature and number. The plan/deposited plan/diagram encumbrances shown are to be identified by nature and relevant plan/deposited plan/diagram. Strata/survey strata plan encumbrances are to be described as Interests notified on strata/survey strata plan (state the number). If none, show NIL.

For example, an encumbrance such as a mortgage or lease should be shown as Mortgage B12121 or Lease B12122. An encumbrance such as an easement or a restrictive covenant contained in a transfer (that burdens the land) should be shown as Transfer B12123.

The endorsement This Edition Was Issued Pursuant to s.75 of the TLA is not required to be shown.

3.4 Describe the Transferee(s)

This is usually the registered proprietor but, in some cases, can be the Sheriff selling land taken in execution under a writ, or a mortgagee exercising a power of sale. The name of the registered proprietor must be identical to that shown on the title. It is not necessary to show the address of the transferor. Where the name of the proprietor differs on the transfer and certificates of title (NAM-01 Name Amendment). Tenancy should not be shown in the transferor panel. If the title is held in capacity, this should be reflected in the transferor panel, such as "as executor of the will of...with leave being reserved to come in and prove".

3.5 Show the True Consideration

CONSIDERATION (Note 4)

If the consideration for the transfer is a sum of money, then the amount should be shown in figures. If the consideration for the transfer is not a sum of money, then the true consideration must be stated concisely. NIL is not an acceptable consideration, but GIFT is.

If a group of proprietors are adjusting the shares held between them, or selling a share to new partners, the consideration must specify who is paying the consideration, and to whom.

If the statement of the true consideration involves a reference to a document (e.g. an agreement or
court order) the document must be clearly identified by making reference to the date it was made or executed. Unless the document referred to is a Will or a Deed of Family Arrangement, (varying the terms of a Will or the terms of the Administration Act) it need not be lodged with the transfer for registration.

However, if the details of the document do not match to details shown by the Office of State Revenue (Stamp Duties Division), Landgate will require the document to be produced. If the document is a court order, a sealed copy or a Landgate sighted copy of it is required, unless a digital order has been made, and then a printout is sufficient.

3.6 Straightforward Transfer of Land

The below specimen form of transfer (shows the simplest type of transaction- a transfer by a sole proprietor to a sole purchaser of an estate in fee simple of the whole of the land in a single title free from any limitations, interests, encumbrances or notifications.

4 Further information

Please refer to the related document titled TFR-01 Transfers - Common Scenarios which provides details of some of the more common variations to a straightforward transfer and the related variables to be adhered to.

Also see:

- Form Example: T 1
- TFR-03 Transfers by or to an Executor/Administrator
- TFR-04 Transfer - Land of Deregistered Company
- TFR-05 Transfers – of Mortgage, Charge or Lease