ENC-01 Application – Remove Expired Encumbrance Section 184

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1 General

The removal of certain encumbrances from the register that have ceased to affect the title may be approved by discretion of the Commissioner for Titles on Application under s.184 of the Transfer of Land Act 1893 (TLA). Under s.184 of the TLA, the Commissioner must be satisfied that any rights or interests notified as an encumbrance on the certificate of title have been fully satisfied, extinguished or otherwise determined and no longer affect the land.

Application under section 184 of the TLA may be used to remove the following expired encumbrances (but not limited to):

- Leases
- Mortgages
- Tree Plantation Agreements
- Profits à Prendre
- Restrictive Covenants

The registered proprietor or an interests holder in the land can apply on an Application form, for the removal of the desired encumbrance on the grounds that it has expired.

The reason for the application must be clearly stated and refer to the relevant section of the TLA the applicant seeks to remove the encumbrance.

The duplicate certificate title (if any) is required to be produced where an application is made under s.184 of the TLA.
Lodgement Fees are payable upon lodgement of the application at Landgate.

Note:

An Application under section 184 of the TLA may also be used to modify an encumbrance where no other provision of the TLA exists.

Where the Application seeks to modify the encumbrance the application must clearly state what section is being modified.

2 Evidence supporting the Application

In most instance, the application should be supported by a statutory declaration made under the provisions of the Oaths, Affidavits and Statutory Declarations Act 2005 (WA) (OASD Act). Statements presented in the form of an affidavit or under other jurisdictions are not acceptable.

The supporting statutory declaration should be made by the applicant and cover at a minimum the following:

- Recites his or her ownership or interest of the relevant land.

- Identifies the land affected by the encumbrance by the legal land description (Lot on Plan and Volume/Folio)

- Quotes the encumbrance registration number.

- Refers to the term of the encumbrance by reference to the details or clauses in it, and thus the expiration of that term.

- Refers to any provisions in the encumbrance for any extension provisions, and whether it was so extended or transferred.

- Refers to the expiration of any such extension and negates any other form of condition of the encumbrance.

- What attempts were made to remove the encumbrance

- Who may be currently occupying the encumbered land, if any, and the current status of the land (vacant, leased, etc.).

- Requests the removal of the desired encumbrance as an encumbrance on the title.

and

- Any other relevant facts that strengthen the application.

Other forms of evidence may also be required to support the claim the encumbrance has been fully satisfied, extinguished or otherwise determined and no longer affect the land, such as related Deeds, evidence of payment, evidence of Death, letters/consent from other interest holders etc.

3 Also see

- DOC-04 Statutory Declarations and Supporting Evidence
- EAS-01 Easements
- EAS-02 Easements and restrictive covenants (strata companies)
- EAS-03 Easements - removal
- MT G-01 Mortgages
- MT G-02 Mortgages - variations
- MT G-03 Mortgages - document preparation
- MT G-04 Mortgages - discharges
- PAP-01 Profits à Prendre
- PAP-02 Profits à Prendre - various Acts
- TPA-01 Tree Plantation Agreements
- TPA-02 Tree Plantation Agreements - amendments and surrender