LEA-03 Leases of Land - removal

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1 General

Where a lease has expired or no longer affects the land, it should be removed using one of the below options.

The Registrar of Titles will not make any assumption of expiry - please see above guide entitled 'LEA-1 Leases of Land'.

Fees are payable on the lodgement of the relevant document and each interest being removed will incur a fee. A Removal of Expired Term Lease of Crown Land document does not attract registration fees.

2 Surrender of Lease

A Surrender of Lease may be prepared using the electronic Remove Interest – Lease/Sub-Lease form (available at https://www0.landgate.wa.gov.au/for-individuals/forms-and-fees/land-tilting-forms) for a surrender of a lease/sub-lease of freehold land or a surrender of a lease/sub-lease of Crown land.

Alternatively, the following forms may be used:

- Surrender of a Lease form for a surrender of a lease/sub-lease of freehold land; or

- Surrender of Lease form for a surrender of a lease/sub-lease of Crown land.

It is desirable but not essential that the duplicate title (if any) be provided when a surrender is registered. There is no requirement for the duplicate lease to be provided.

Note: Where the lease to be surrendered is followed by a concurrent lease, the surrender must be made between the lessee and the concurrent lessee.
2.1 Description of Land

2.1.1 Whole of the Land in a Lease

Please see the standard document preparation guide DOC-01 Document Preparation.

2.1.2 Part of the Land in a Lease

Where only part of the lease is to be surrendered and that part relates to a portion of a lot or location, it must have a Land Description that is defined by a sketch or an Interest Only Deposited Plan. Please see above guide entitled ‘LEA-01 Leases of Land’.

2.2 Encumbrances

The surrender of a freehold lease or a lease of Crown land by a Management Body may only be registered when the lease is free from encumbrances. Encumbrances against the land may continue.

Where a sub-lease is to be promoted to a primary lease upon surrender of the existing primary lease, consent from all parties should accompany the surrender. (Please refer to s.75 of the Property Law Act 1969 and s.102 of the Transfer of Land Act 1893).

On the surrender of a lease of Crown land by the State of Western Australia, any sub-lease under that lease and any interest or caveat affecting the sub-lease may continue to subsist, whereas all other encumbrances affecting the lease must be removed. (Please refer to s.81 of the Land Administration Act 1997).

2.3 Executions

The Lessor and the Lessee must both sign the surrender form. Standard execution requirements apply, please see the document signing guides SIG-01 to SIG-13 inclusive.

Note: The execution page of the Surrender form should be signed/executed by the Lessor(s) and the Lessee(s). Whilst referring to the page number containing the original signatures within the deed of surrender has become common practice, it is not recommended.

2.4 Consents

2.4.1 Minister’s Consent

For transactions over Crown land, unless the Crown land is vested for purposes of another Act, consent of the Minister for Lands will be required under section 18 of the Land Administration Act 1997 (LAA) (see Paragraph 12.1.7 of the Land Titles Registration practice manual).

2.5 Alternative

An alternative to the above method of Surrender is to produce the registered duplicate lease endorsed with the word SURRENDERED, together with the date and properly attested signatures of
the lessee and lessor.

This will be accepted as a surrender of the lease in lieu of the printed forms specified above.

3 Removal of Expired Freehold Lease

An expired lease of freehold land can be removed by a Surrender of Lease (see Section 2 above) (preferred) or the registered proprietor/lessor of the land can apply to the Commissioner of Titles on an Application form, for the removal of the expired lease on the grounds that the term of the lease and any extensions and/or options to renew have expired.

For more information on removing expired leases under s.184, see ENC-01 Application - Remove Expired Encumbrances Section 184.

The duplicate certificate title (if any) is required to be provided where an application is made under s.184 of the TLA.

Lessors must be aware that no registered interests or encumbrances relating to an expired lease can be carried forward to a new lease. If any registered interest or encumbrance holder continues to have a valid claim against the leasehold interest, with the agreement of the lessor, the lessor should arrange for a new interest or encumbrance to be prepared and registered against the new lease.

4 Removal of Expired Term Lease of Crown Land

There is no legislative means to deal with the administrative need to remove Crown leases that have expired from the register. Where information relating to an expired Crown lease is not removed from the register, this may result in incorrect information being shown when searching Landgate records.

To overcome this problem a procedure was developed that enables the use of an existing power of the Commissioner under s.184 of the TLA (to remover certain encumbrances from the register that have ceased to affect the title). 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.

Where a lease granted over Crown land has expired, the lessor or sub-lessee, must apply to the Commissioner to remove the expired lease. This is done by lodging a Removal of Expired Term Lease document Removal of Expired Lease form completed by the lessor or sub-lessee.

Lessors must be aware that no registered interests or encumbrances relating to an expired Crown lease can be carried forward to a new lease. If any registered interest or encumbrance holder continues to have a valid claim against the leasehold interest, with the agreement of the lessor, the lessor should arrange for a new interest or encumbrance to be prepared and registered against the new lease.

The Removal of Expired Term Lease document is usually accompanied by a statutory declaration that clarifies the current status of the land, confirms that the term of the lease has expired and advises that any persons with interests or encumbrances affecting the leasehold interest endorsed against the land are aware that their interest or security in the leasehold interest has ceased to exist.
A number of alternative scenarios in relation to the removal of expired Crown leases from the Register are provided below.

4.1 When a Removal of Expired Term Lease Document is Lodged

-Simultaneously with a new Lease to the same lessee and no encumbrances exists, then no further evidence is required.

-Separately and a new Lease to the same lessee is to be lodged later and no encumbrances exists, then a Declaration in support is required from the lessor stating that the lessee is:

- still in occupation of the Land;

- aware and has been advised that the lease has expired and a new lease is currently being negotiated with the lessee; and

- free of encumbrances or interests (see LTRPM Form Examples - Example 26)

-Where the lease is subject to encumbrances or interests (mortgage, caveat or other interest):

- the lessor must give the interest holder 21 days' notice that the Commissioner is to be requested to remove the expired leasehold interest from the register; and

- upon removal, any encumbrance or interests against the lease will be removed as well; (See LTRPM Form Examples - Example 27)

- A declaration in support is required from the lessor stating who is in occupation of the land, the lessee is aware and has been advised that the lease has expired and a new lease is currently being negotiated with the lessee or that the lessee no longer has a leasehold interest, the encumbrances or interests that are against the lease, details of the notices sent including to whom and what date, and what replies, if any, to the notices have been received (See LTRPM Form Examples - Example 28);

- A copy of all notices and any replies must be attached to the declaration;

- The Commissioner requires some form of acknowledgement from a mortgagee, caveator and any other holder of an interest against the lease as to their awareness that their interest ceases to exist, whether they agree with the removal of the expired lease and whether their interest is intended to be renewed against a new replacement lease lodged simultaneously with the removal of the expired lease.

-A former lessee no longer occupies the land:

- A declaration in support is required from the lessor stating the lessee is no longer in occupation of the land and has no ongoing tenancy arrangement, and the lessor is no longer collecting rent from the lessee;

- Where encumbrances exist the same notice provisions and additional declaration statements as above apply.

- A lessee option to renew is not exercised the standard requirements as above apply as if the lease has expired.

- Copies of any evidence that the lessee has not exercised their option to renew are to be attached
to the declaration. This may include evidence of a new tenant in occupation of the premises.

- Where the lease includes a termination of lease upon death clause proof of death of the lessee is required by producing a certified copy of either the death certificate or probate:

- A declaration of identity is required and should state the land, lease, lessee, date of death and that the person shown on the death certificate is one and the same as the lessee;

- Where encumbrances exist the same notice provisions and additional declaration statements as above apply.

Note: There is no document registration fee payable for the lodgement of a Removal of Expired Term Lease document.

5 Recover of Possession by the Lessor (Section 96)

Where the lessor has recovered possession of the leased land from the lessee by Court order, application may be made to the Commissioner of Titles ("the Commissioner") to have the lease determined. Upon satisfactory proof the Commissioner may direct that an entry be made on the Register determining the lease.

The application is made on an Application form, with the Court Order provided as evidence and supported by a statutory declaration reciting the facts and explaining any differences in the details of the lease shown on the title and the details shown in the Court Order.

It is desirable but not essential that the duplicate title (if any) be provided.

6 Re-Entry by Lessor or Sub-Lessor (Section 104)

Where it can be proved to the satisfaction of the Commissioner that the lessor or sub-lessee has re-entered into possession of the leased premises in strict conformity with the provisions of re-entry contained in the lease or sub-lease or that the lessee has abandoned the lease premises and the lease, the lessor having re-entered undisturbed, the Commissioner may direct the Registrar:

- in the case of a lease, to make an entry on the certificate of title for the land the subject of the lease;

- in the case of a sub-lease of land that is the subject of a digital title, to make an entry on that certificate of title; or

- in the case of a sub-lease of land that is the subject of a paper title, to make an entry on the sub-lease.

The application is made on an Application form, with supporting evidence such as notices introduced by a statutory declaration setting out the circumstances of the re-entry.

It is desirable but not essential that the duplicate title (if any) be provided.

Note: The documents in the preceding two paragraphs are Applications however, as they are exclusive to Leases are included in this guide.
7 Merger of Lease

Where the lessee of freehold land purchases the fee simple of the land being leased, it is office practice not to effect a merger unless requested. The request to merge the lease should be endorsed on the transfer document and should be signed by the lessee or the lessee’s agent. Suitable words for the request are:

"The transferee requests that Lease F987654 be merged and extinguished in the fee simple on this transfer".

In order to effect a merger, the Transferees/Lessees must be the same parties and must hold the same tenancies/shares.

The merger may not be effected while the lease is encumbered or subject to a caveat. The encumbrance or caveat must be removed.

There is no requirement for the duplicate lease to be provided.

8 Forfeiture of Lease of Crown Land

Where a lessee of a lease of Crown land granted by the State of Western Australia is in breach of the lease conditions, the Minister must give the lessee notice of the nature of that breach if it is intended to forfeit the lease. On expiration of the appeals period or on determination of any appeals, the Minister may lodge a Forfeiture Order to forfeit the lease.

The Forfeiture Order removes the lease from the register, however, may allow an existing sub-lease or caveat to continue despite the forfeiture of the lease.

There is no requirement for the duplicate lease to be produced.

Where a mortgage of the lease or where an existing sub-lease has not been identified to continue, the Registrar of Titles pursuant to s.81F of the TLA will delay the registration of the forfeiture order until notice of the proposed forfeiture has been given to the mortgagee and/or sub-lessee of the land. The mortgagee or sub-lessee then has the option to complete the outstanding requirements and/or pay the outstanding rent, to preserve the lease as a security, and apply to the Minister to waive the forfeiture.

9 Also see

- DOC-01 Document Preparation
- LEA-01 Leases of Land
- LEA-02 Leases of Land - variations of and to