MTG-03 Mortgages - document preparation

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1 Mortgage Forms

Section 105(1) of the TLA provides that "...the proprietor of any land under the operation of this Act may mortgage the same...."

The manner in which this can be achieved is by the preparation of a statutory mortgage using the National Mortgage Form (NMF), and the registration of that mortgage. The duplicate certificate of title (if any) must be produced.

For convenience, the mortgage may be viewed in two parts: an operative conveyancing part and the contractual part.

The operative conveyancing part is the part of a mortgage form necessary to permit registration. It contains all of the following information:

- a description of the land
- the estate or interest in the land
- the name of the registered proprietor
- the name and address of the mortgagee and tenancy if more than one
- detail of repayments and interest
- the operative mortgaging part, which must contain the word mortgages
- the date of the document
- the signature of the mortgagor
and

- the signature, address and occupation of the witness.

The contractual part of the document consists of the covenants between the mortgagee and mortgagor.

If the contractual details are lodged as a Memorandum of Common Provisions at Landgate, any new mortgage can be completed as a short form containing the operative part and conveyancing detail, and a reference to the memorialised contractual details.

The contractual details can be inserted into the space provided for Terms and Conditions within the National Mortgage Form. Should the contractual details exceed the space provided, a Memorandum of Common Provisions will need to be lodged first. The new mortgage can be completed containing the operative part and conveyancing detail, and a reference to the memorialised contractual details can be made in the Terms and Conditions. If the National Mortgage Form is amended by hand to include the Memorandum of Common Provisions document number, the amendment must be acknowledged by the mortgagors.

From Monday 1 August 2016, addresses are no longer required in the mortgagor panel of mortgage forms lodged in paper. However, where addresses are provided, they will be accepted in any format on these forms.

Mortgage documents will not then be sufficient to effect a change of the registered proprietor’s address on a certificate of title. Clients are to be directed to the appropriate form, generally a Notification to amend address form, where necessary.

1.1 National Mortgage Form

Land Registries across Australia have collaborated to develop a National Mortgage Form for implementation in all states and territories.

The National Mortgage Form is available online as an electronic form at https://www0.landgate.wa.gov.au/for-individuals/forms-and-fees/land-tilting-forms. Users can complete the details and generate a printable PDF.

A transition period, during which mortgages could be lodged using either the National Mortgage Form (NMF) or current mortgage forms, applied until 31 December 2017. From 1 January 2018, all mortgages must be lodged using the National Mortgage Form (NMF).

The National Mortgage Form is a significant national initiative designed to standardise the common content and presentation of mortgages lodged for registration through all lodgement channels with land registries in all Australian states and territories.

The Australian Registrars’ National Electronic Conveyancing Council has published the National Mortgage Form specification and the WA addendum which is available its website at https://www.arnecc.gov.au/publications/national-mortgage.

1.2 Mortgage of Lease

A mortgage of a lease of Crown or freehold land can be prepared using the National Mortgage Form (NMF).
The estate and interest being mortgaged panel should read leasehold, and the land description of the mortgage must additionally refer to the lease being mortgaged.

For example:

‘As to Lease H123456 only’

or where the lease and mortgage are lodged together:

‘As to Lease ........ dated 0.0.2005 made between AB (lessor) and the mortgagor only’

2 Variation Requirements

2.1 Mortgage by a Tenant in Common of that Interest

The estate and interest being mortgaged panel should read fee simple as to one undivided half share or whatever share of the entirety the mortgagor is dealing with.

2.2 Mortgage by a Joint Tenant of that Interest

The estate and interest being mortgaged panel should read fee simple as to the interest of A as joint tenant with B.

2.3 Mortgage by a Life Tenant

The estate or interest being mortgaged panel of the form should read an estate for the life of A.

2.4 Mortgage by a Remainderman

The estate or interest being mortgaged panel of the form should read the estate in fee simple in remainder of A expectant upon the death of B.

2.5 Mortgage by a Life Tenant and Remainderman Together

This mortgage is of the entire interest in the land being mortgaged and no special words are required in the estate or interest being mortgaged panel beyond the words fee simple and the mortgagor panel need only show the names and addresses of the registered proprietors without special reference to their being life tenant and remainderman.

2.6 Mortgage by a Personal Representative

For mortgages by an executor or administrator who is described as such on the certificate of title the mortgagor panel of the form should read:
A of address as executor of the Will of B deceased or A of etc. as administrator of the estate of B deceased.

2.7 Mortgages – Double Interest

In a case where A and B own separate pieces of land and are obtaining a joint advance from a mortgagee in one mortgage the appropriate panels of three sections of the Land Being Mortgaged panel should (with amendments to suit the particular case), read:

"Description of land being mortgaged:
Firstly: ‘Lot 10 on Plan 12345’ ‘whole’ and ‘606 69’;
Secondly: ‘Lot 11 on Plan 12345’ ‘whole’ and ‘606 66’;

Mortgagor:
as to the land firstly above described A of address;
as to the land secondly above described B of address"

The printed operative mortgaging part should be deleted and initialled by the parties and the following operative mortgaging part drawn on an annexure sheet or on a page forming part of the mortgage where space permits:

"For the purpose of securing the payment in the manner aforesaid of the principal and interest the said A mortgages to the mortgagee the estate and interest herein specified in the land firstly above described subject to the encumbrances as shown hereon and the said B mortgages to the mortgagee the estate and interest herein specified in the land secondly above described subject however to the encumbrances as shown hereon."

2.8 Mortgages to a Trustee

Where the mortgagee is a trustee, no reference to the trust should appear in the mortgagee panel. However, the trust may be referred to in the contractual part of the document, as this will not be reflected in the entry made upon the Register.

2.9 Extension of Mortgage

In any extension of mortgage there is a special printed Extension of Mortgage form. (See LT RPM Form Examples - Example 17). The duplicate certificate of title (if any) must be produced.

Where a subject to claim caveat has been lodged against the land and it is not being removed, there must appear in the body of the document (above the signatures) a statement to the effect that:

"This instrument is subject to the claim of the caveator in Caveat ......., otherwise the extension will not be registered."

3 Also see
- **DOC-01 Document Preparation**
- **MTG-01 Mortgages**
- **SIG-01 Signing of Documents**