MTG-04 Mortgages - discharges

Version 1 - 14/07/2017

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1 Discharge of Mortgage Form

There is a Discharge of Mortgage form for use in most cases. (See Land Titling Forms page.)

If only some of the Mortgagees are discharging, a Discharge of Mortgage (part of moneys and some of the mortgagees) form - available from the Land Titling Form page - should be used. This is an alternative to lodging a transfer of mortgage.

A discharge may be:

- total as to both land and money, see Form Example 14

- partial as to money over the whole of the land i.e. the principal sum is reduced, see Form Example 15

- partial as to land from the whole of the money i.e. the security is reduced, see Form Example 16

and

- partial as to money over the whole of the land by some of the Mortgagees i.e. the number of Mortgagees is being reduced, see Form Example 17.

A discharge may not be partial as to land and partial as to money for the reason that no particular piece of land would be entirely released from the mortgage. The land to be discharged must be properly identified, and discharged from the whole of the money.

The D1 form does not provide for a consideration but should it be desired to show a consideration for the release of any land from the mortgage the space to use is immediately below the panel ‘If portion only of the money being discharged’ as shown in Form Example 15.

All mortgagees must join in and sign a discharge (Drake v Templeton 1913 16 CLR P153 at 158). Where one of the mortgagees as a tenant in common is dead, then the executor or administrator must enter transmission and join in the discharge in that capacity. If the deceased mortgagee was
a joint tenant, then the other tenants must apply to be entered by survivorship as the proprietors of the mortgage before a discharge by the survivors may be accepted. (Refer Application by Personal Representative form and Application by Survivor form.)

It is desirable but not essential that the duplicate title (if any) be produced when a Discharge of Mortgage is registered, and it becomes even more desirable when the mortgage being discharged is the only remaining mortgage on the land.

Landgate introduced the ability to electronically lodge a Discharge of Mortgage in June 2014.

2 Electronic Lodgement of Stand Alone Discharges or Mortgages effective 1 August 2016

Industry bodies were notified of Landgate’s intention to introduce changes to the lodgement process for discharges of mortgages which will affect mortgagees, conveyancers, lawyers and lodging agents commencing 1 August 2016.

2.1 What is Changing?

A discharging mortgagee, their conveyancer, lawyer or lodging agent must lodge all stand-alone discharges of mortgages with Landgate. The practice of providing discharges of mortgages to registered proprietors to lodge will no longer be acceptable. If the mortgagee is an authorised deposit-taking institution (ADI), all stand-alone discharges of mortgage must be lodged through an Electronic Lodgement Network (ELN) such as Property Exchange Australia (PEXA). This requirement would not apply if the ELN is unavailable for one business day.

Landgate’s definition of a stand-alone discharge of mortgage is:

any discharge of mortgage that is not lodged with a transfer of land, mortgage or any other document for the same Certificate of Title.

2.2 Why are the changes being introduced?

The changes introduced will enhance efficiencies within an electronic conveyancing ecosystem. As a member of the Australian Registrars National Electronic Conveyancing Council (ARNECC), Landgate is aligned with other Australian jurisdictions in supporting the accelerated take-up of electronic conveyancing because it provides a more secure and robust environment for all transactions.

A significant national consultation process including bodies such as ARNECC, the Australian Bankers Association and the Customer Owned Banking Association, has been led by Land Victoria. This consultation revealed a national appetite for digital transformation within a 2016 timeframe. To maintain consistency and continuity for reform, Landgate is aligning with the Land Victoria approach (leveraging the consultation scope) with an implementation date of 1 August 2016.

2.3 Preparing for the Change
Landgate recommends that all ADIs, their conveyancers, lawyers or lodging agents apply as soon as is practical to become registered users of the PEXA system. Please refer to http://www.pexa.com.au for details.

For further information, please contact Landgate’s Customer Service team on +61 (0)8 9273 7373 or email customerservice@landgate.wa.gov.au.

3 Discharge - Where Mortgagee is Absent from WA

Where a registered proprietor wishes to repay the mortgage and the mortgagee is absent from Western Australia and there is no one authorised to give a receipt for the mortgage money at or after the date appointed for payment, then the mortgage money and interest to date may be paid to the Treasurer of the State and upon production of the receipt of the Treasurer, the Commissioner, on being satisfied that the correct amount has been paid, will direct the Registrar to remove the mortgage as an encumbrance (s.126(1)).

The document by which this procedure is achieved is an application by the registered proprietor on an Application form A5, applying to remove the mortgage as an encumbrance from the certificate of title. It is not strictly a discharge but has the same effect. The application must be accompanied by a statutory declaration of the registered proprietor in which is set out an accounting of the amount owing to the mortgagee at a given date. As an annexure to the declaration there must be a receipt of the Treasurer.

The following is an example of a suitable form:

Received from .......... as Solicitors and Agents for A of etc. the registered proprietor of the land hereinafter described the sum of .......... being the principal sum secured by Mortgage No. ........ together with the sum of .......... being interest to the date hereof which sum is paid in satisfaction of all moneys due under the said mortgage to C of etc. the said C being unable to give a discharge of the said mortgage the said C being absent from Western Australia. The sums are paid under the provisions of s.126 of the Transfer of Land Act 1893. The said A is registered as proprietor of all that piece of land being (correct land description).

Dated this day of ____ 20____.

Treasurer

4 Discharge – Payment to Absent Mortgagee

Where money paid on behalf of an absent mortgagee to the Treasurer of WA is claimed by the mortgagee and upon receiving a request in writing, the Registrar will make a request to the Treasurer in the following form:

The Honourable Treasurer

In the terms of s.126(1) of the Transfer of Land Act 1893 I hereby require you to pay to A of etc. (the mortgagee) or (to L M Legal & Co the mortgagee’s solicitors) the sum of (the amount paid to the Treasurer) together with any interest accrued thereon paid to you on the (date of payment) on account of principal and interest

due under Mortgage 12121/1966 given by C of etc. (the mortgagor) to the said A which said moneys were paid to you by Messrs Law Book & Co, Solicitors of Perth solicitors for the said C.
Dated this ___ day of ______ 20 ___.

Registrar of Titles

5 Discharge – Where the Mortgage Money has been Paid and the Mortgagee is Dead, Absent from the State or Cannot be Found

Again this document is an Application and strictly, not a discharge, although it has that effect. The application, to have an entry made on the title discharging mortgage (Number) pursuant to the provisions of s.126(2), is made by the registered proprietor on an Application form.

Where the registered proprietor has paid the mortgage debt and is unable to obtain a discharge, because the mortgagee is dead and there is no personal representative or the mortgagee is absent from the State or cannot be found and there is no person authorised to sign a discharge of the mortgage the registered proprietor may make an application to the Commissioner for the mortgage to be removed as an encumbrance. Very strict proof of payment of the money is required by the Commissioner before granting such an application.

The statutory declaration of the registered proprietor should set out a strict accounting of the payments of principal and interest and be accompanied by proof of payment, by way of annexures to the declaration, of receipts, cheque butts, bank statements, etc. Other supporting declarations by agents, bank managers or accountants from whom further proof of payment can be obtained, should be supplied.

When satisfied that the money has been paid in full and that the provisions of s.126(2) have been met the Commissioner directs the Registrar to discharge the mortgage as an encumbrance.

6 Merger of Mortgage

Where land is transferred to a person who is the mortgagee of that land there is a merger at law.

However, it is not the practice to merge the mortgage automatically. The mortgagee/transferee will be asked to request a merger of the mortgage. This request should be endorsed on the transfer and signed by the transferee or the transferee’s agent as follows:

"The transferee requests that mortgage F345678 be merged and extinguished in the fee simple."

When the transfer of land is registered, the mortgage ceases to have any effect.

7 Discharge – Where Annuitant is Dead and there is No Personal Representative

The document by which this is achieved is an application on an Application form with the effect of a discharge. Application may be made to the Commissioner under s.125 of the TLA to remove the charge as an encumbrance.

Proof to the satisfaction of the Commissioner, is required as to the death of the annuitant or the occurrence of the event by which the annuity ceases to be payable and as to the payment of the annuity during the lifetime of the annuitant and up to the date of death, before a charge may be
removed as an encumbrance. A charge remains an encumbrance on the land until discharged or removed.

8 Also see

- **DOC-01 Document Preparation**
- **MT G-01 Mortgages**
- **MT G-02 Mortgages - variations**
- **MT G-03 Mortgages - document preparation**
- **SIG-01 Signing of Documents**