VES-01 Vesting Orders

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1 Vesting Orders (Section 182 of the TLA)

1.1 Overview

Where land is held in trust by the registered proprietor, any person entitled to be registered may make an application describing the land being dealt with or, if applicable, the mortgage charge or lease, requesting the issue of an order vesting it in the applicant. If the desired result can be achieved by transfer a vesting order will not be granted. The facts relied upon to establish the applicant’s claim must be set out by statutory declaration and such documentary evidence as is necessary to support the claim should be made annexures to the declaration.

It is necessary to produce the duplicate certificate of title (if any) but if this is not possible, production of the duplicate certificate may be dispensed with under s.74 of the TLA and the intention of the Commissioner to make the order applied for will be advertised in a newspaper published in the City of Perth.

This type of application is particularly useful when an administrator breaks the chain of executorship as the administrator cannot apply for transmission in the ordinary way. It is also available to the personal representative of the last surviving trustee. The term personal representative in this case includes executors and administrators.

The personal representative of the last surviving trustee has a power of appointment of new trustees under s.7 of the Trustees Act 1962. The power of appointment is required to be exercised in writing and the appointor may appoint the appointor, or another person to be the trustee of the land, mortgage lease or charge being dealt with.

The new trustee so appointed may then apply for the issue of a vesting order. The form to use is blank application form describing the land affected in every case, and, if a mortgage, lease or charge is involved, the number of that instrument and requesting the granting of a Vesting Order under s.182 of the TLA.
1.2 Evidence Required

In support of such an application the following evidence is required:

- a statutory declaration of the applicant, the new trustee, setting out the facts and showing how that status was obtained. If applicable, there should be a statement, to the best of the declarant’s knowledge, that the person through whom the declarant claims (the most recently deceased personal representative) had completed the duties as executor or administrator and had continued to hold the land or interest being dealt with as mere trustee

- contract of sale or other document evidencing the acquiring of the land an asset of the trust

- an office copy of any Grant of Probate or Letters of Administration forming evidence of the appointers power to appoint a new trustee, and

- the Deed of Appointment of New Trustee referred to above, together with any other applicable trust deeds

Where possible, documentary evidence should be Landgate sighted or the equivalent. The duplicate certificate of title (if any) must be produced.

1.3 Preparation, Stamping and Processing of the Order

If the Application is granted, the Commissioner will instruct Landgate staff to prepare a vesting order and signs it when prepared.

Vesting Orders are subject to assessment of duty by the Office of State Revenue. The order may then be collected from Landgate by the applicant, or the solicitor for the applicant, or alternatively posted.

Once assessed and endorsed by State Revenue, the order is returned to Landgate staff, who arrange for final processing.

The procedure is then completed by entering the name of the applicant on the relevant certificate of title (without showing the nature of the trust if such is the case). The interests of persons entitled under the will or intestacy may be protected by a Registrar’s Caveat.

Where the land is the subject of a paper title, the Registrar will record the vesting on both the original and duplicate certificate of title (if any).

Where the land is the subject of a digital title, the Registrar will record the vesting in the digital register and cancel the duplicate title (if any) and create a new edition of the duplicate title.

2 Vesting Orders (Section 183 of the TLA)

2.1 Overview

Where a person has purchased land from the registered proprietor, completed payment, and has entered into possession with the consent of the vendor and no transfer has been executed because the vendor is dead or is residing out of the State or cannot be found, an application for a
Vesting Order may be made by the purchaser.

An application on the blank Application form describing the land and requesting the issue of a vesting order under the section should be made. The duplicate certificate of title (if any) should be produced or, if not produced, its production may be dispensed with under s.74 of the TLA.

Proof of each of the necessary elements set out in the section must be supplied. In particular proof of payment of the purchase price and interest (if any) in the contract of sale or other document of purchase is required. This should take the form of receipts, cheque butts or bank statements and must cover the entire purchase price.

2.2 Evidence Required

A statutory declaration by the applicant stating the facts with the above proof as annexures is required. Where possible, the annexures should be Landgate sighted or the equivalent.

If the Application is granted, the Commissioner will instruct Landgate staff to prepare a vesting order and signs it when prepared.

Vesting Orders are subject to assessment of duty by the Office of State Revenue. The order may then be collected from Landgate by the applicant, or the solicitor for the applicant, or alternatively posted.

Once assessed and endorsed by State Revenue, the order is returned to Landgate staff, who arrange for final processing.

The procedure is then completed by having the name of the applicant endorsed on the first schedule of the relevant certificate of title.

3 Vesting Orders (Section 242 of the TLA)

3.1 Overview

Where the Family Court or other Court has made an order that:

- land jointly owned be vested in one of the parties,

or

- land owned by one of the parties be vested in the other party,

or

- expressly or impliedly severs a joint tenancy,

then both parties are bound to give effect to the order i.e. the necessary documents to give effect to the Order, whether the Order uses the term vest or transfers, must be signed by the parties.

In other words, it is anticipated that in most instances an Order of the Court vesting land will form the basis of the consideration of a transfer of the land.

In those cases, where one of the parties is unable to, or refuses to execute a transfer, or cannot be
found, or if for any other reason a transfer cannot be obtained within a reasonable time, an application to have the land registered in the name of the other party under s.242 (1)(b) of the TLA will be accepted.

The operative part of the Application, on an Application form, should read:

“The Applicant hereby applies to the Registrar of Titles to give effect (pursuant to s.242 of the Transfer of Land Act 1893) to the Order made in the Family Court of Western Australia on the ..........day of ............ 20...... in matter No. of 19 on the ground that (Here state nature of grounds).”

Where a court order severs a joint tenancy (e.g. there is an order that the joint tenancy property be sold and net proceeds divided between the proprietors) and one of the registered proprietors dies, then either the other proprietor(s) can lodge an application under s.242 of the TLA or the personal representative of the deceased proprietor can lodge a Transmission Application (instead of an Application under s.242 of the TLA).

Where a Transmission Application is lodged, the normal requirements for transmission applications and the requirements of Landgate toolkit Dec-03 will need to be met.

If there is a simple severance with no other orders applying to the property, then no other documents need to be lodged. However, if as is more likely, there is an order that a joint tenancy property be sold and net proceeds divided between the proprietors, then a Registrar’s Caveat will normally be lodged following a transfer or transmission application severing the joint tenancy on the register.

If the order indicates that the land is to be held in other than equal shares, then where a transmission application is lodged it must be followed by a transfer or an application under s.242 of the TLA so as to give effect to the order.

3.1.1 Mortgagee Vesting under Transfer of Assets

For bank integration matters, in all instances where a successor in law lodges a power of sale transfer and the former mortgagee’s name is shown on the title, the transfer is required to be preceded by an application by the successor in law asking that the mortgage vest to itself pursuant to Section 242 of the Transfer of Land Act 1893.

Applications of this nature are also made on a Form A5. The vesting application should be accompanied by a Certificate of Transfer pursuant to the Financial Sector (Business Transfer and Group Restructure) Act 1999 issued by the Australian Prudential Regulation Authority (APRA). A statutory declaration is not usually required to support an application of this type, unless needed for clarification purposes.

3.2 Evidence Required

A Statutory Declaration establishing the existence of the ground referred to in the Application must be filed with the application.

In respect of orders that state that the property vests or is transferred subject to or conditional upon the vestee indemnifying the divested person against any ongoing liability, the lodging party must file with the application a stamped copy of a Deed of Indemnity in the terms of the Order.

For example, a deed is required if the Order is worded:

“Subject to the wife indemnifying the husband from all outgoings, the property vests in the wife.”
A Deed of Indemnity is not required if the vesting order is made subject to a precondition (e.g. payment of a sum of money), but a statutory declaration with appropriate evidence of the satisfaction of the precondition will be necessary.

For example, a deed is not required, but evidence of payment is if the Order is worded:

“Subject to the wife paying $20,000 to the husband, the property vests in the wife.”

A deed is not required when the Order sets out in a separate paragraph that the vested is to indemnify the divested person from ongoing liabilities and does not limit the order vesting the property.

For example, where the paragraphs of the Order are so arranged to show:

paragraph (X) The property vests in the wife; and

paragraph (Y) The wife shall indemnify the husband from outgoings on the property;

a deed of indemnity is not required by the Registrar.