

Preparing and lodging a Primary Application (PA) or a caveat against a PA



LAND
REGISTRY
SERVICES

Info Sheet

www.nswlrs.com.au

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This document provides guidelines for preparing and lodging a primary application or a caveat against a primary application with NSW Land Registry Services (NSW LRS) under section 14 of the *Real Property Act*

1900. This information does not cover resumption applications by public authorities, pursuant to sections 31A(2) or (3) of the Act. A primary application may be made in respect of:

- 1 Old System land
- 2 the removing of the qualification from a qualified folio of the Register (the relevant Certificate of Title must be lodged)
- 3 An Ad medium filium claim see item 4.4.

1. General requirements for application and caveats

The approved form must be used.

- 1.1 A primary application must be prepared on *Primary Application* (form 00PA) see item 2.
- 1.2 A caveat against a primary application must be prepared on *Caveat affecting a Primary Application* (form 00PAX) see item 10.

The form must be completed clearly and legibly in permanent, dense, black or dark blue pen, not photocopied.

- 1.3 A primary application must be accompanied by the documents of title and other evidence, as outlined in item 3.
- 1.4 Any alteration to the application prior to lodgment must be verified by the initials of the signatories. Use of correction fluid or erasers is not permitted. Alterations made subsequent to lodgment also require verification by the Office of State Revenue.
- 1.5 If the space provided in the application is insufficient, additional sheets may be annexed. If an annexure is added, it must:

- be clearly identified
- make specific reference to the part of the application to which it refers
- be attested to by a witness on the first and last pages
- be of the same size, paper quality and colour as the application.

See the NSW LRS website www.nswlrs.com.au and the Registrar General's Guidelines website <http://rg-guidelines.nswlrs.com.au> for general standards regarding document preparation.

2. Primary Application - what can be converted?

A primary application enables conversion of land to the provisions of the *Real Property Act 1900* in respect of:

- 2.1 an estate in fee simple
 - 2.2 an estate in possession
 - 2.3 an estate for life
- in respect of old system, qualified or qualified/limited title

Easements

Applicants may claim the benefit of an easement based on a deed granting easement.

Claims can only be made when the land forming part or whole of the dominant tenement is:

- the subject of the application and the easement is additional to the claim
- currently under full Torrens Title and is held by the applicant, who wishes to have the right entered as a notification on the existing title.

3. Completing the application

The following instructions relate directly to the marginal lettering on the application form.

(A) Lodged by

This section must be completed by the person or firm lodging the form at NSW LRS and must include the full name and postal address of the lodging agent even if an applicant is the lodging agent (**the lodging party**).

If the lodging party does not have a NSW LRS document collection box, leave the relevant panel blank. If the lodging party has a Customer Account Number insert it as the first item of the first line in the relevant panel; use the following format: **Customer Acc. No 123456**. Also called LLPN - Listed lodging party number. Provision of a reference is optional.

(B) Applicant

Include the full name and postal address of the applicant. In the case of a corporation, insert the full name and address of the corporation and the ACN or ARBN.

(C) Land (description)

Show a description of the land(s) subject of the claim, adequate to identify it.

Land

- The description should include the name of the suburb or locality, county and parish and reference to the current deed in which the land is fully described and or current plan.
- Any current parcel identifier.
- Reference to a suitable plan of survey in which the land is defined.

Example of land description

"All that piece or parcel of land situated at Smythtown, County of Cumberland, Parish of Pitt being the land described in Deed Bk No. and shown in the plan lodged herewith/registered as DP"

If more than one parcel is involved number each parcel for reference in Clause 1 of the Statutory Declaration at **(F)**.

Land with appurtenant easement or easement only

- The deed creating the easement should be disclosed.
- An adequate description of the easement's location should be given.
- The site should be shown on the accompanying plan, if applicable, or

reference made to the registered plan on which it is shown (e.g. together with easement(s) created by Deed Bk..... No.....).

An application should include in Schedule 2 the devolution of title for the servient tenement, from the date of creation of the easement to the date of the application.

A claim to an easement, which is based on possession/usage (i.e. prescriptive easements) will not be accepted.

(D) Registered proprietor

The full name of the person(s) or corporation in whose name the certificate of title is to issue should be shown. If the name(s) differ from that on the deed, evidence of the change of name should be provided. If title is to issue in the name of the applicant, insert **The applicant**.

(E) Tenancy

The tenancy in the application should reflect the tenancy in the deed. Where the tenancy is not disclosed in the deed, the title(s) will issue to the applicant as tenants in common in equal shares. The shares must be specified for tenants in common.

(F) Statutory declaration and signatures

How to complete

The following clauses relate to the declaration.

Clause 1: Choose either (a), (b) or (c), whichever is applicable, and rule through the others. You may need to choose more than one option.

Generally, applicants should claim Fee Simple (item a) if they have documentary title e.g. a conveyance to them, if however the applicant does not have title to the land claimed then (item b) could be more appropriate.

More than one claim may be made, for example where the applicant has a qualified title but has other land fenced in with the property.

Clause 2: Rule through either (a) or (b) as applicable. An identification survey could be required e.g. if there is new fencing inside the plan see item 8.1.

Clause 3: Delete 'unoccupied' or 'occupied by the persons specified in Schedule 1', whichever does not apply.

Clauses 4 to 7 and 9: The Registrar General must be informed immediately when any of the

following occur subsequent to the date of the application, but prior to the creation of the title(s):

- any transaction affecting the land in the application
- any alterations made to buildings or fences.

Any documents evidencing such transaction(s) must be lodged.

Clause 10: The declarant is responsible for all information appearing on the form.

Clause 11: List all documents that cannot be located and/ or produced after searches and inquiries have been completed. These documents must be listed at item (I) Schedule 2 (a) **Whereabouts unknown**.

Each page of the application should be signed by the declarant and the attesting witness.

Any alterations to the application should be initialed by the applicant or their agent.

Signatures

The application must be signed by the applicant or the applicant's representative before a functionary prescribed by section 21(1) of the *Oaths Act 1900*.

If signed outside New South Wales, delete reference to the *Oaths Act 1900* and substitute the Act pertaining to the locality in which the declaration is signed. The full name and address of the declarant must be shown.

By an attorney

The power of attorney must be registered in the General Register of Deeds at NSW LRS. The execution must take the form:

'[Name] attorney for the applicant pursuant to Power of Attorney Book Number

Production of a power of attorney is not required.

By a corporation

Where the applicant is a corporation, the application must be signed by a natural person and not under seal. The declaration must be made by a representative of the corporation, e.g. director or secretary.

By a solicitor on behalf of the applicant

A solicitor may make the declaration on behalf of an individual or a corporation.

Capacity to act

In all the above cases the declarant must state the capacity in which they act for the applicant e.g. Fred Smith, under Power of Attorney, or company director, or solicitor for the applicant.

(G) Consent of mortgagee

Consent must be furnished for each subsisting mortgage. A consent may be lodged as an annexure to the application. Delete this section if inapplicable.

(H) Particulars of subsisting interests – Schedule 1

List all leases, mortgages, easements and other documents of the type referred to in clauses 4 to 7 of the declaration. Where the whole or any part of the land is occupied by persons other than the applicant, reference to the nature and duration of their tenancy should be shown.

(I) Schedule 2

(a) Location of documents

Separately list the item numbers for documents:

- **Lodged herewith** - list all the documents to be lodged with the application
- **Whereabouts unknown** - list any documents, lost or destroyed, these documents should also be listed in Clause 11 of the statutory declaration
- **Permanently lodged** - list any documents permanently deposited at NSW LRS, along with the deposited deed packet number
- **To be lodged** - list any documents either produced or to be produced at the NSW LRS production counter or to be lodged at the NSW LRS customer service counter subsequent to the lodgment of the application.

(b) List of documents

Schedule 2 (b) should list all the documents evidencing the claim. If there is more than one claim being made use headings to identify the separate chains of title. These include:

Documentary title

The collection of documents which prove the title to the fee simple of the land.

Where an applicant claims an estate in fee simple by virtue of a documentary title, Schedule 2 (b) should commence with:

- a good root of title at least 30 years old

- a later deed, which has already been accepted by the Registrar General in an earlier primary application, this commencing point must reference the number of the prior application
- a conveyance by a resuming authority
- a conveyance from a council under either s.602 *Local Government Act 1919* or s.713 *Local Government Act 1993*.

Where an applicant claims land by possession, see item 4, please list as separate items:

1. the **documentary title** to the land subject of the claim of possession (that is the reference to the Grant, Deed or Qualified Limited title of the owner against whom the applicant is claiming possession)
2. a list of the **evidence relied** on to supporting the claim of possession see sections 4.1, 4.2 and 7.

Easement

Where the applicant claims the benefit of an easement, Schedule 2 (b) should contain reference to:

- the deed by which the grantor of the easement acquired title to the servient tenement
- the deed creating the easement
- chain of title for the servient tenement from date of creation to date.

Numbering documents

In all cases number each document in succession starting with **1**.

Only number a document once. Where a document is repeated simply repeat the documents number.

4. Possessory title claims

A primary application may be made, where title is claimed by possession adverse to the documentary owner, by proving facts sufficient to show the right of the owner to recover has been barred.

The *Limitation Act 1969*, which came into effect on 1 January 1971, reduced the limitation period from 60 years to 30 years against the Crown and 20 years to 12 years for anyone other than the Crown.

The Act does not apply retrospectively.

4.1 Evidence see paragraph 430-700 in Baalman & Wells, *Land Titles Office Practice New South Wales*

The application must be supported by written evidence detailing the circumstances of the claim including:

- a list of the documentary title, to the date of the application, in Schedule 2 (b)
- a statutory declaration detailing the name and address of the person(s), who may, by the documentary title, have an interest at law or in equity, in the subject land, at the date of the application
- a list of the devolution of the possessory title from the date of the claim to the date of the application
- statutory declarations, by the applicant and as many disinterested witnesses as practicable see item 4.2
- the names and addresses of all tenants should be listed in Schedule 1 of the application, all available leases and other documents evidencing a tenancy should be produced
- a letter from the council indicating who:
 - has been assessed for the purpose of rating
 - paid the rates during the period of possession.

4.2 Statutory declarations supporting a claim of possession

4.2.1 The declarants should state:

- their full name and address
- their age
- their means of obtaining knowledge of the contents
- of the declaration e.g. I have lived next door to for 40 years
- to the best of their information and belief, the circumstances under which, and the time at which, the possession relied upon commenced
- detailed particulars of the manner and extent to which the land has been used and occupied
- detailed particulars of any acts of ownership upon which the possession is based

- detail the extent, full or partial, and manner in which the land has been enclosed or the boundaries marked since the time the claim of possession commenced
- the nature of any improvements existing on the land, e.g. sheds, dwellings, internal fencing, pens, paddocks, gardens, dams
- the time when such fences and improvements were erected or constructed, and by whom
- whether they have heard of any claim adverse to the applicant or his/her predecessors in possession i.e. a claim over the land by some other person
- whether they know of any litigation with reference to the subject land ever having occurred, and if so, the nature and result of such litigation
- whether they are aware of any restrictive covenant, or easement affecting the subject land
- whether, to their knowledge, the applicant or their predecessors in possession have at any material time acknowledged the title of, or paid rent to any person
- that the disabilities referred to in the Limitations Act 1969 will not prohibit a possessory title being acquired against the persons interested in the land at law or in equity.

4.2.2 The declarations should make reference to a plan, which clearly identifies the land and indicates the nature of existing improvements and occupations erected thereon.

The plan may be:

- a registered deposited plan of survey (include plan number)
- an unregistered plan of survey, an identification survey plan or a sketch plan annexed to the declaration.

4.3 Advertising

The Registrar General may require the applicant to advertise the application in a state-wide paper and the local press. The form of notice will be provided for the applicant, who should arrange for the placement and payment for the advertisements. A statutory declaration and copy of the advertisements from the newspapers should be

provided to NSW LRS, as evidence of the placement.

4.4 Ad Medium Filum Viae (to the middle line of a road)

A landowner, who claims entitlement to an adjoining road by virtue of the ad medium filum viae rule, may make application to the Registrar General to be recorded as registered proprietor of the land. Under this common law rule, it is presumed that if a road bounds or passes through a property, the title to the property extends to include the fee simple of so much of the traversing road enclosed within the property, or to include the fee simple up to the middle thread of the boundary road for the length of its frontage.

An applicant for title, which includes the site of a road is required to produce:

- a letter from the local council confirming that the site is not a public road
- a statutory declaration by the registered proprietor that he/she is not aware any rebuttal of the presumed extension ad medium filum
- a certificate by his/her solicitor or by some other qualified person stating that he/she has examined all relevant documents of title from the date of creation of the road, and has found nothing therein to indicate that the rule of construction has been rebutted.

The documents searched should be listed.

The land being claimed should be included in the adjoining lot(s).

Further information can be obtained from Baalman and Wells, *Land Titles Office Practice New South Wales* paragraph 310.800 Ad Medium Filum Viae(Roads).

For Ad Medium Filum Aqua (to the middle thread of a stream) see Baalman and Wells paragraph 206.700.

Also reference Abuttals, Baalman and Wells paragraph 427.100 and Hallmann, *Legal Aspects of Boundary Surveying as apply in New South Wales* paragraph 7.46.

5. Stamp duty

The application must be presented to the Office of State Revenue, Stamp Duties Division, for assessment and marking.

6. Delivery of documents lodged with the application

After the issue of the Certificate(s) of Title, the Registrar General will return all documents, except documents specifically prepared in support of the application.

7. Searches

Any searches in the applicant's possession should be lodged. Additionally where:

- the application is based on possession, the search or searches should include the devolution of the documentary title, which may need to be traced from the Crown grant, and also include the result of searches against the applicant and his/her predecessors in possession see item 4
- an easement is claimed and the land is not held under full Torrens Title, the search or searches should include the devolution of title for the dominant and servient tenements, from the date of creation of the easement see item 2. Easements.

8. Plan requirements

All primary applications should be accompanied by a new plan of survey, unless exempted for the reasons set out in item 8.1. The plan should be lodged concurrently with the application and will be registered as a deposited plan. In addition to the fee for the primary application, the lodgment fees will apply.

Where the plan includes Torrens title land the Certificate(s) of Title must be listed on the plan lodgment form and lodged or produced. The normal requirements for council's approval and signatures on plans and section 88B Instruments apply to plans lodged with primary applications.

For more detailed information on plan lodgment see the Registrar General's Guidelines website <http://rg-guidelines.nswlrs.com.au>.

8.1 Exemptions from new plans of survey

Subject to the written approval of the Manager, Old System Plans, a new plan of survey is not

required where the subject parcel is a lot in:

- a registered deposited plan of survey made within 12 years of the date of lodgment or the land is surrounded by registered deposited plans of survey made within 12 years of the date of lodgment, there must be no conflict between the surveys represented in these plans
- a registered deposited plan of survey more than 12 years old and evidence is furnished that the land and adjoining lands are vacant and unfenced
- a registered deposited plan of survey more than 12 years old, the land is fenced and the

consents of all adjoining owners to the plan and the position of the occupations/fencing shown thereon are furnished

- a registered compiled deposited plan based on a prior registered deposited plan of survey made within 12 years from the date of lodgment
- a registered compiled deposited plan and is surrounded by registered deposited plans of survey made within 12 years of the date of lodgment, there must be no conflict between the surveys represented in these plans.

9. Lodgment

The primary application should be lodged at the Plan Lodgment counter NSW LRS, Sydney and the prescribed fees paid. It should be accompanied by a deposited plan of survey see item 8.

Other information to be lodged includes:

- all deeds and other documents evidencing the devolution of title from the selected commencing point
- searches of the General Register of Deeds, including causes, writs and orders, see item 7
- other appropriate evidence see item 4.1.

See also Baalman and Wells paragraph 427.700 Documents to be lodged.

10. Caveat affecting a primary application

A person claiming an estate or interest in land the subject of a primary application may lodge a caveat against the application, at any time before the application is granted.

Warning

Care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court. Damages may be awarded for lodging a caveat without justification and penalties could be imposed for a breach of the *Oaths Act 1900* and section 117 of the *Real Property Act 1900*.

Furthermore failure to observe the requirements of section 117 of the *Real Property Act 1900* and Schedule 4 of the *Real Property Act Regulation 2014* and Schedule 3 in the *Lodgment Rules* may make the caveat invalid.

10.1 Form

The caveat must be in the approved form OOPAX see item 1 General requirements.

The following instructions relate to the marginal letters on the form:

(A) Lodged by

This section must be completed by the person or firm lodging the form at NSW LRS and must include the full name and postal address of the lodging agent even if an applicant is the lodging agent **(the lodging party)**.

If the lodging party does not have a NSW LRS document collection box, leave the relevant panel blank. If the lodging party has a Customer Account Number insert it as the first item of the first line in the relevant panel; use the following format: **Customer Acc. No. 123456**. Also called LLPN - Listed lodging party number. Also called LLPN - Listed lodging party number. Provision of a reference is optional.

(B) Primary application

Insert the number of the relevant primary application and the full name of the applicant.

(C) Land affected by caveat

Rule through the panel which does not apply. If the caveat affects part of the land, describe the part. The description must be precise enough to enable the part to be identified.

(D) Caveator

Insert the full name and postal address of the caveator. Ensure the postcode is included. In the case of a corporation, include the ACN or ARBN.

(E) Name and address in Australia for service of notices on the caveator

This is the name and address to which notices regarding the lapsing (i.e. removal) of the caveat will be sent, and to which court documents may be sent. The address must be adequate for the purpose.

The address provided must be a street address in Australia (ensure the postcode is included).

A post office box is not acceptable. If desired, a Document Exchange box in New South Wales may be included in addition to the street address.

(F) Schedule estate or interest claimed

The caveator must have an estate or interest in the land specified in the caveat or some other interest recognised by the court as a caveatable interest. If the caveator does not have such an interest the caveat will be invalid. A simple debt owed to a person by a registered proprietor of the land would not, of itself, entitle that person to lodge a caveat against the land. Describe the estate or interest fully, clearly, accurately and unambiguously (see Schedule 3 *Real Property Act Regulation 2014*).

(G) Statutory declaration

Declarant may be the caveator, or where the caveator is a corporation an authorised officer of the corporation, or the caveator's solicitor, attorney or licensed conveyancer. Insert the full name. If the declarant is not the caveator, insert the capacity in which the declarant made the declaration in the appropriate location. In the case of an attorney for the applicant, add the registration number of the power of attorney.

Witness must be a justice of the peace, practising solicitor, notary public, commissioner of the court for taking affidavits, or any person authorised to administer an oath. Where the declarant's signature is witnessed by a justice of the peace, the justice of the peace's registration number or details of appointment must be stated.

If signed outside New South Wales rule through Oaths Act 1900 and substitute the local Act; the witness must be a person qualified by that Act to administer an Oath.

If clause 2 is ruled through the caveat must be accompanied by an order of the Supreme Court authorising lodgment or be consented to by the primary applicant.

1. Fee

The standard dealing fee is payable.

2. Lodgment

The completed form must be lodged by hand at:

NSW Land Registry Services
Plan Lodgment Counter
1 Prince Albert Road, Queens Square
Sydney

If the caveator claims an estate or interest pursuant to an unregistered mortgage, loan agreement or deed of charge, the form must first be submitted to the Office of State Revenue for assessment of stamp duty.

Further information

Further information can be obtained by visiting our website: www.nswlrs.com.au.

Or contact the NSW LRS Customer Service Centre on **T: 1300 052 637** or email GeneralEnquiry@nswlrs.com.au.

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