

## 4.11 Witnessing Titles Registry forms

### What are Titles Registry forms?

These are approved forms under the *Land Act 1994*, *Land Title Act 1994* and *Water Act 2000*. They deal mainly with the ownership and use of real estate property and water allocations in Queensland.

Forms under the *Land Act 1994* relate to non-freehold land titles such as state leasehold land and reserves and unallocated state land.

Forms under the *Land Title Act 1994* (LTA) relate to freehold land titles, while documents under the *Water Act 2000* relate to water allocation titles.

### Why are Titles Registry forms treated differently from other documents?

These Acts have specific requirements you must satisfy when you witness these forms, particularly in relation to transfer of ownership and mortgage-related documents such as a *Form 1 – Transfer* and a *National Mortgage form*.

These Acts have eligibility criteria for witnesses which, as a JP or Cdec, you fulfil. They impose a strict onus on you to take reasonable steps to verify the identity of the person signing the form and ensure they are entitled to do so (e.g. they are the registered owner or about to become the holder of that interest) and, by implication, they understand the nature and effect of the document they are signing. You are required to print your full name on Titles Registry forms where you sign it as a witness – your initials are not acceptable.

If you do not provide your full name, we may disclose your full name to relevant third parties in order to verify the validity of the document(s) you have certified or witnessed.

In other respects, forms coming under these Acts must be witnessed in accordance with the usual rules, such as ensuring the signatory signs in the presence of the witness and the witness is not a party to the transaction covered by the document.

The legislative requirements are spelled out in the following extract.

#### Section 162 of the *Land Title Act 1994*

##### *162 Obligations of witness for individual*


*(1) A person who witnesses an instrument executed by an individual must –*

- a. first take reasonable steps to verify the identity of the individual and ensure the individual is the person entitled to sign the instrument; and*
- b. have the individual execute the instrument in the presence of the person; and*
- c. not be a party to the instrument.*

...

*(3) The person must, for 7 years after the person witnesses the signing of the instrument–*

- (a) keep a written record of the steps taken under subsection (1)(a).*

 **Note:** Section 173 of the *Water Act 2000* provides that section 162 of the *Land Title Act 1994* also applies to documents under the *Water Act 2000*. Section 311 of the *Land Act 1994* contains provisions similar to section 162 of the *Land Title Act 1994*.

The Registrar of Titles can also request to inspect a copy of your written record for a period up to seven years after witnessing. Failure to comply with a request without reasonable excuse carries a maximum penalty of 20 penalty units.

## Your obligations when witnessing a Titles Registry form

### Statutory obligation 1

**Take reasonable steps to verify the identity of the individual and ensure they are entitled to sign the instrument (the form).**

'Reasonable steps' could be defined as steps an ordinary person would consider prudent and fair in the circumstances.

### Verification of Identity

Unlike most cases when you witness a document, under this legislation there is a mandatory requirement for the signatory to prove their identity to you before you can witness the execution of the form.


You must confirm the person signing the form is who they say they are by sighting a combination of acceptable standard identity documents.


Under the legislation, if you elect to follow the Verification of Identity Standard (the VOI standard) to verify the signatory's identity, you are considered to have taken 'reasonable steps' in fulfilling that aspect of your statutory obligation. Verifying identity in accordance with the VOI standard involves an in-person interview between yourself (as the witness) and the signatory, where they supply original identity documents from one of the categories listed in the VOI standard. Each category includes a different combination of identity documents to cater for different situations, and you must be reasonably satisfied that a prior category cannot be met before using a subsequent category.

In circumstances where the VOI standard cannot be strictly adhered to, you would generally be regarded as meeting the section 162(1)(a) 'reasonable' requirement to verify the identity of the person signing the form if you have diligently sighted and compared evidence comprising of several established identity documents (equivalent to those mentioned in the VOI standard) and are fully satisfied the person is one and the same as named in the Titles Registry form.

Only after the signatory's identity is satisfactorily confirmed and the other statutory obligations are fulfilled should the Titles Registry form be signed and witnessed.

Prior to witnessing, you may question the signatory to confirm they understand the nature and effect of the form.

 **Note:** If you are not satisfied the signatory has this capacity, you should decline to witness the Titles Registry form and record the details in your logbook.

 **Note:** The VOI standard only applies to individuals (including Attorneys) executing Titles Registry forms. Companies do not require their signature to be witnessed.

## How do I ensure the signatory is entitled to sign?


You have a legal responsibility to take reasonable steps to ensure the person signing the form is entitled to do so – that is, they are the holder (registered owner or registered proprietor) or about to become the holder of the relevant interest in the property. This is to prevent fraud and other improper dealings.

In either situation, to prove the signatory is entitled to sign, they should be able to provide you with one or more of the following documents in relation to the property.

If a person is selling property or are only refinancing	<ul style="list-style-type: none"> <li>• a current local government rates notice</li> <li>• a current title search statement</li> <li>• a current land tax assessment notice.</li> </ul>
The person is buying property and/or financing the purchase	<ul style="list-style-type: none"> <li>• a copy of the contract of sale</li> <li>• official loan documentation from their lender</li> <li>• a letter from a solicitor confirming they are entitled to sign the form.</li> </ul>

Each of these types of supporting evidence contains details about the property, such as the real property description (lot on plan or title reference) that should be compared to the Titles Registry form you have been asked to witness. If the details do not match, you should decline to witness the form.

Importantly, the real property description (lot on plan or title reference) must be shown on the form. However, in some cases (such as a purchase off-the-plan) the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

 **Note:** A new purchaser presenting a transfer and/or mortgage form for witnessing may not be able to provide the supporting evidence listed as they would not yet be recorded in the Titles Registry. In such cases, they should provide a copy of the contract of sale or a letter from a solicitor that includes the real property description, confirming their entitlement to sign the form(s).

## Statutory obligation 2

### Have the individual execute (sign) the instrument in your presence.

Be mindful of the requirements of the form(s) you are witnessing. Most Titles Registry forms provide spaces for each signatory to sign separately. The *Form 1 – Transfer*, *Form 3 – Release* and *National Mortgage Form* require each signature to be witnessed separately. The date of execution must also be included in the space provided. Where only one space is provided and there are multiple signatories for the party (e.g. *Form 9 – Easement*), but the signature of only one of them is being witnessed, it is good practice to include the following statement:

*‘Signature of (name) only witnessed’*

## Statutory obligation 3

### The witness must not be a party to the instrument.

Any person with a vested interest in the transaction cannot also be a witness to the signing of the form. For example, if person A and person B own the land together and A is a JP or Cdec, then person A should not witness B’s signature if they are both signing the form.

Care should also be taken when someone is signing under a power of attorney. For example, person A and person B own the land together and person C is both an attorney for B and a JP or Cdec. If A signs in their own right and C signs on behalf of B, then C cannot witness A’s signature.

## Statutory obligation 4

### Record keeping

When witnessing Titles Registry forms, it is mandatory you keep for a period of seven (7) years from the date of witnessing, a written record of how you verified:

- the signatory's identity
- their entitlement to sign the form.

After that time has elapsed, you may securely destroy the record (see chapter 2.4 for more on the retention and destruction of records).


## How do I witness Titles Registry forms?

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

1. Ensure you are not a party to the transaction. This is a requirement of the *Land Title Act 1994*.
2. Take reasonable steps to identify the signatory. A combination of identity documents issued by a government agency is ideal.

This is a requirement of the *Land Title Act 1994*.

3. Ensure the signatory is the holder of the relevant interest in the property by sighting evidence they are the holder (registered proprietor) or about to become the holder of the relevant interest in the land. This is a requirement of the *Land Title Act 1994*.
  - Sight a current rates notice, utilities bills, title search, loan documentation or a sale contract for the land in question.
  - Compare the details on that evidence (lot on plan, title reference) with those on the form.
4. Check the signatory understands the contents of the document and they are making the document freely and voluntarily.

 **Note:** If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily decline to witness the document and explain why.

5. Ensure the form is fully completed with no blank panels or items.
  - Decline to witness the form if there are incomplete items, especially the lot on plan description.
  - Do not complete or rule through any blank spaces yourself.
6. Ensure the form is signed in front of you. This is a requirement of the *Land Title Act 1994*.
  - The signatory should use a permanent pen with dense blue or black ink.
7. Place your signature and print your full name on the form.
  - Use a permanent pen with dense blue or black ink.
  - Be careful with the application of your seal of office to avoid obliterating other information on the form.
  - Your qualification, registration number and execution date must all be included.
8. Record all relevant information in your logbook as outlined in chapter 2.4.

It is a requirement of the *Land Title Act 1994* that you keep a written record of the steps taken to verify the signatory's identity and they are entitled to sign the form for a period of seven years.

- While not mandatory, we strongly recommend you also keep a record of the real property description and/or title reference of the property.

## Things to bear in mind

The Registrar of Titles has extensive powers of formal inquiry and, in particular circumstances, may require you to produce records about Titles Registry forms you have witnessed.

Along with creating a record when you witness a Titles Registry form, it is also prudent to record information any time you decline to witness a form, and if the circumstances warrant it, consider advising the Registrar of Titles accordingly – for example, if you consider there are suspicious circumstances involved.

If you decline to witness a Titles Registry form because you believe it is not a legitimate transaction, notify the Titles Registry so the title records can be checked for any potential impropriety. Ideally, details such as current owners, lot on plan description and title reference should be provided. These details and why you declined to witness should also be recorded in your logbook.

## Further information on witnessing Titles Registry forms

### Witness certificates and identification forms

When witnessing a *National Mortgage Form*, you may also be presented with a document called a witness certificate or client identification form, which is drafted by the lender (mortgagee).

Such certificates sometimes ask the witness to certify the identity of the signatory (mortgagor) and to also provide personal information regarding their own identity and contact details. Some have fields for your personal information such as driver licence details, home address or telephone number. You are not required to supply any information of a personal nature. In this instance, you can provide the address details of the Justices of the Peace Branch as outlined in chapter 1.2.

Some financial institutions have created certificates in an endeavour to meet their obligations under section 11A of the LTA in relation to confirming the identity of borrowers (mortgagors). These financial institutions usually give the borrower a witness certificate and instruct them to ask a JP or Cdec to complete it. The obligations are quite distinct from and separate to the obligations under section 162 of the LTA that do apply to witnesses such as JPs and Cdecs.

The Registrar of Titles provides practice guidelines in the *Land Title Practice Manual* to assist mortgagees to meet their section 11A requirements. The level of verification of identity required by these practice guidelines is more stringent than the level of verification of identity a JP or Cdec is required to follow under section 162.

Under section 11A of the LTA, it is the responsibility of the mortgagee to verify the identity of the mortgagor. If a mortgagee seeks to utilise the services of JPs and Cdecs to perform an identification check of a mortgagor, this does not remove the mortgagee's obligations under section 11A.

We can confirm you are not acting as agents or representatives of financial institutions by completing an identification form. Rather you are simply an independent 'identity verifier'. If you decide to complete an identification form you should insert this disclaimer on the identification form only:

*The Justice of the Peace/Commissioner for Declarations who has signed this identification form is unpaid and is not acting at the direction of, or as the agent for any party to any financial transaction, including any financial institution or entity requesting this identification form.*

 **Note:** Never apply this disclaimer to any Titles Registry forms.

Ensure you record details of the ID check and of the mortgaged property in your logbook and retain for a period of seven (7) years.

Should a mortgagee wish to confirm the authenticity of an attestation clause on a Titles Registry form, they may contact the JP Branch with their inquiry.

## Alterations to Titles Registry forms

Changes to information on the face of Titles Registry forms are categorised as either alterations or corrections.

**Corrections** are where minor typographical errors are corrected and do not affect the outcome or intent of the form. Examples include:

- changing a minor part of a name or detail – such as Ann to Anne
- changing RP to SP in the plan description field
- adding an Australian Company Number (ACN) to a company name.

**Alterations** are more significant changes that potentially alter the outcome and/or intent of the Titles Registry form. Examples include:

- changing the interest being dealt with
- adding or removing a lot on plan description
- adding or removing a party to the transaction (including a person's middle name)
- changing the tenancy type.

Where alterations (not corrections) are made and they impact upon your witnessing obligations under section 162 of the LTA, you and the parties affected by the alteration are required to initial the alteration. Alternatively, the Registrar of Titles will accept the alteration being initialled by an authorised person (being one of the affected parties, their legal representative or an appropriate person under a power of attorney) provided a statement of alteration is received from the authorised person that sets out who made the change, under what authority and the details of the actual alteration.

 **Note:** In this context a JP and Cdec is not an authorised person.

## Witnessing signatures on a *Form 7 – Lease*

For the registered owner granting the lease (lessor), you will need to be satisfied the usual proof of ID, proof of ownership and entitlement to sign requirements are fulfilled before witnessing their signature. The owner(s) should be able to provide a copy of a written lease agreement and a current title search/rates notice matching the details provided on the *Form 7 – Lease*.

For the person taking out the lease (lessee), there are the usual proof of ID requirements. However, evidence of entitlement to sign is not as readily available as the only basis is usually the lease agreement itself. The details of the lessee and real property description shown within the lease agreement should be compared to that shown on the *Form 7 – Lease* and any attached sketch of the leased area.

Where the description of the leased premises in the agreement is a street address only, the parties may have other documentation (e.g. a letter from their solicitor) which has both the street address and real property description information in it.

Leases are not usually a target for fraudulent transactions and in this respect, unlike the *Form 1 – Transfer* and the *National Mortgage form*, there is no requirement on the form for individual signatures to be separately witnessed. If there are multiple individuals acting either as lessor or lessee and you are witnessing only one of them, it is recommended you take the precaution of adding 'Signature of (name) only witnessed'.

## Powers of attorney


There are two additional key checks you will need to make if you have been asked to witness a form being signed under the authority of a power of attorney (POA).

The first is to see either the original or certified copy of the POA to verify the person's entitlement to sign as attorney on behalf of the principal as you will have already confirmed the principal's involvement in the transaction. The name of the attorney shown in the POA should match the identity of the person signing the Titles Registry form.

The second step is to ensure reference is made to the POA in the execution clause on the Titles Registry form being witnessed. At a minimum, include this notation (or similar) above the signature:

*[Name of Principal] by their duly constituted attorney [Name of attorney and/or designation attorney] under Power of Attorney (dealing number of the registered power of attorney).*

It is not unusual for a Titles Registry form and a POA form to be lodged for registration at the same time. Therefore, the dealing number – the number assigned to POA documents when they are lodged for registration with the Titles Registry – does not have to be completed when the form is presented to you for witnessing. A POA document that has been lodged for registration in the Queensland Titles Registry will usually display a label containing information such as the date and time of lodgement as well as the unique dealing number.


 **Note:** You do not need to determine if the POA document grants the attorney the authority to sign the particular form being presented to you. Titles Registry examiners will determine this when the form is lodged for registration.

## Deceased estates

### When the owner is deceased

The administrative process and Titles Registry form applicable for registering dealings after the death of a property owner and dealing with their estate will depend upon:

- how they held their ownership of the property e.g. as joint tenants or as tenants in common
- where an executor of the estate is involved, the intention of the personal representative in dealing with the property.

 **Note:** It is not your role or responsibility to advise parties about which Titles Registry form to use in the different circumstances.

You must still be satisfied the person signing the form is who they say they are and they are entitled to deal with the property. Therefore, you should establish:

- who is presently the registered owner of the property (using a rates notice, title search or similar)
- the name of the deceased and the name on the evidence of the death (e.g. death certificate or grant of probate) agrees with the rates notice or title search
- a link between the name of the executors/beneficiaries in the supporting evidence and the person signing the form.

### Witnessing a Form 4 – Request to Record Death [joint tenants]

A death certificate or grant of probate is usually satisfactory evidence. The surviving joint tenant(s) must still provide you with the usual proof of ID and proof of entitlement/ownership before signing the Form 4.

### Witnessing a Form 5, 5A or 6 – Transmission by Death [tenant in common]

Review the evidence of death – such as death certificate plus original will, grant of probate bearing a court seal or letters of administration – to confirm who is entitled to act as executor or be the beneficiary. You will require proof of identity that the person named as executor/beneficiary is the person signing the form:

- Form 5 – signed by the person(s) listed in the grant of probate
- Form 5A – signed by the executor(s) (personal representative) listed in the original will
- Form 6 – signed by the beneficiaries listed in the original will.

## Finalising a deceased estate

Where an executor has already transmitted the property into their name in their capacity as personal representative and then wishes to transfer ownership, a title search will show the registered owner as the executor 'as personal representative', and a rates notice will show either 'the estate of (deceased's name), deceased' or '(name) as personal representative'.

Usual proof of identity requirements apply to witnessing the *Form 1 – Transfer*. As they have already established the death of the previous registered owner, they do not need to produce a copy of the will or death certificate when signing a transfer form as transferor. The will may still be needed if the purchasers/transferees are acquiring the land pursuant to the terms of the will as this is their entitlement to enter into the transaction.

## Original wills

You should not pin, staple or make any markings on an original will and you should not remove any existing staples, clips, pins or attachments from an original will. Any residual marks left on the will may indicate a page has been removed and could raise concerns or affect the administration of the estate.

## Frequently asked questions

### Can a Titles Registry form be signed and witnessed outside Queensland?

Yes. Schedule 1 of the LTA provides that you may witness a Titles Registry form at any place in Australia or outside Australia.

### What if a Titles Registry form is pre-signed?

As Titles Registry forms must be executed in your presence, pre-signed pages are not acceptable. If someone approaches you with a document already signed, ask them to draw a line through the one already there and sign the document again. Ensure both you and the person initial the alteration to the unwitnessed signature.

If there is insufficient room on the front of the page for the fresh signature, then a *Form 20 – Schedule* should be used with the item number and heading from the original form repeated in full on the Form 20. The title reference should also be included on the Form 20.

### Can I witness more than one copy of a Titles Registry form?

Yes. Some financial institutions may provide two or more copies of Titles Registry forms to their client for witnessing. One copy will be lodged with the Titles Registry. The financial institution will retain the others in case anything happens to the first copy before the land title is registered.

### What should I do if I am asked for legal advice?

As Titles Registry forms are legal documents, only a qualified legal practitioner should provide legal advice on their preparation or content. You cannot provide legal advice about the validity of a document.

### When can I accept electronically downloaded evidence?

You can accept electronically downloaded evidence if it is being used to help verify a person's entitlement to sign a document (e.g. rates notice or a contract of sale).

While the evidence presented this way is equally as valid as the paper format, it is up to you to satisfy yourself as to the validity and reliability of its source before accepting it.

For example, observing the signatory opening their email on an electronic device, checking the email and attachment came from a legitimate source (e.g. local council or solicitor's office) could be more satisfactory than if it was on a pre-prepared desktop icon. Similarly, if the signatory telephoned their solicitor/bank in your presence and requested a scanned copy of the document be sent through to their email, this may also be acceptable.



## Can I witness the document if the title reference is missing?

Only if the lot on plan is shown on the form. For example, if the title reference is missing from Item 2 in the *Form 1–Transfer* or the Land panel in a *National Mortgage Form*, but the lot on plan is shown in that section it may be the case that this is a purchase off-the-plan and so the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

Acceptable – documents can be witnessed		
<b>TRANSFER</b>		
2. Lot on Plan Description	Title Reference	
LOT 16 ON RP 32336	154320991	
<b>MORTGAGE</b>		
Land Title Reference	Part Land Affected?	Land Description
12348019		LOT 16 ON RP188963

**Acceptable** if evidence is provided to demonstrate why the Title Reference has not been completed. (e.g. for a lot purchased ‘off the plan; where the survey plan has not been registered yet and a title reference not assigned to the proposed lot. A copy of the contract or a letter from a solicitor which confirms a purchase off the plan).

<b>TRANSFER</b>		
2. Lot on Plan Description	Title Reference	
LOT 16 ON RP 32336		
<b>MORTGAGE</b>		
Land Title Reference	Part Land Affected?	Land Description
		LOT 16 ON RP188963

Not Acceptable – documents cannot be witnessed		
<b>TRANSFER</b>		
2. Lot on Plan Description	Title Reference	
<b>MORTGAGE</b>		
Land Title Reference	Part Land Affected?	Land Description

## Where can I get more information?

Titles Queensland  
[www.titlesqld.com.au](http://www.titlesqld.com.au)

Land Title Practice Manual  
[www.titlesqld.com.au/land-title-practice-manual/](http://www.titlesqld.com.au/land-title-practice-manual/)

Queensland legislation  
[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

Record of Titles Registry Forms Logbook  
[www.qld.gov.au/jpslogbook](http://www.qld.gov.au/jpslogbook)

## Forms

Title Registry forms  
[www.titlesqld.com.au/titles-registry-forms/](http://www.titlesqld.com.au/titles-registry-forms/)

## 4.11 Quick guide

### Witnessing Titles Registry forms

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

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- ① Confirm you are not a party to the transaction. This is a requirement of the *Land Title Act 1994*.

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  - ② Take reasonable steps to identify the signatory. This is a requirement of the *Land Title Act 1994*.
    - Preferably a combination of identity documents including photographic and government-issued.

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  - ③ Check the signatory is the holder of the relevant interest in the property. This is a requirement of the *Land Title Act 1994*.
    - Sight a current rates notice, title search or sale contract for the land in question.

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  - ④ Check the signatory understands the contents of the document and they are making the document freely and voluntarily.

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  - ⑤ Check all parts of the form are filled out.
    - Along with signatory, initial any corrections/alterations that have been made.
    - Do not complete or cross out any blank spaces yourself.

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  - ⑥ Have the signatory sign the form in front of you. This is a requirement of the *Land Title Act 1994*.

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  - ⑦ Place your signature and print your full name on the form. Include the execution date and your qualification and registration number. Be careful with the application of your seal of office to avoid obliterating other information on the form.

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  - ⑧ Record all relevant information in your logbook as outlined in chapter 2.4.

It is a requirement of the *Land Title Act 1994* that you keep a written record of the steps taken to verify the signatory's identity and they are entitled to sign the form for a period of seven years.

    - While not mandatory, we strongly recommend you also keep a record of the real property description and/or title reference of the property.
-