Guidance Notes – Underlease

These guidance notes are of a general nature and are not intended to, and cannot, replace the advice of a Legal Practitioner.

The purpose of this application is to register an underlease on title. This is when a sublessee gives a further lease on the leases area to another party. This application can only be used if a headlease is registered on title and is still current. If the head lease has expired, a underlease cannot be registered.

This guidance note is to be read in conjunction with the Verification of Authority Guidelines and Verification of Identity Rules on the Access Canberra website.

All panels must be completed in full. If an annexure is required, use form ANN-Annexure. If more than one page is required in the annexure these pages shall be numbered consecutively and bound to this document by staples along the left margin.

All handwriting must be clear, legible and in black ink.

Any alteration to information provided on this form must be struck through with a black pen. Substitute information must be clear, and all parties must sign in the margin. Do not use correction fluid or tape.

The Registrar-General may refuse to accept any instrument that does not comply with the *Land Titles Act 1925* or these notes.

PRIVACY NOTICE

The collection of personal information in this form is required by law under the *Land Titles Act 1925*, to ensure accurate and legal transfer of title or registration of other interests relating to land and for maintaining publicly searchable registers and indexes. Personal information collected on this form will be handled in accordance with the Territory Privacy Principles in Schedule 1 of the *Information Privacy Act 2014*. More detailed information about how Access Canberra handles this personal information is available at: https://www.act.gov.au/acprivacy

LODGMENT INFORMATION

Access Canberra - Dickson Service Centre, 480 Northbourne Avenue Dickson ACT
Opening hours – Monday to Friday 9:00am to 5:00pm
(excluding public holidays)

Lodgment fees apply.

CONVEYANCE DUTY

Please contact the ACT Revenue Office for the requirements of Conveyance Duty (commonly known as Stamp Duty)

A Buyer Verification Declaration or Seller Verification Declaration is not required for this form.

COMPLETION OF FORM

LODGING PARTY DETAILS

The lodging party needs to complete all fields. The Customer Reference Number is only required for approved subscribers who have a lodgment account to the ACT Land Information System. If the lodging party does not have a lodgment account, this field can be left blank. The lodging party will receive a Registration Confirmation Statement by email upon registration of the document to the provided email address.

LAND DESCRIPTION

Legal identifier of the land is to be supplied. To assist with suburb, section, and block, visit actmapi.act.gov.au. The instrument number this application is associated with is to be included. Once registered this application will appear on current and historic title searches.

REGISTERED SUBLEASE NUMBER

Registered instrument number of the head sublease

FULL ANME AND ADDRESS OF LESSOR/S

Full name and address of the lessor/s as stated on head sublease. If the lessor is a company, the ACN is required.

FULL NAME AND ADDRESS OF LESSEE/S

Full legal and address name of lessee/s. If the lessee is a company, the ACN is required.

TENANCY OF LESSEE - TENANT

Complete if more then one lessee. For more information on tenancy, see the ACT Land Titles Practice Manual.

COMMENCEMENT DATE

Must be completed and correspond with the annexure leased

TERMINATION DATE

Must be completed and correspond with the annexure leased. Termination date cannot be after the termination date of the head sublease.

AREA BEING LEASED

One option must be ticked.

If the area being leased is not the whole of the land, list the tenancy description of the area to be leased from a registered underlease plan and state the registered underlease plan number.

CONDITIONS

Select whichever box is applicable.

CONSENTING PARTY – SUPPORTING DOCUMENT

Mortgagees consent is not required for an underlease

CERTIFICATION

Certifications are statements made by a Certifier that they have undertaken a specific action prior to lodging the Registry Instrument to the Land Titles Office. A Certifier must provide the required Certifications when signing Registry Instruments or other Documents and provide the Certifications required for the role they are undertaking.

All parties must execute the document under certification.

Certification statements (dot points) must be made by the certifier, being one of the following:

   a. **A legal practitioner**
   b. **If the applicant is not represented by a legal practitioner – the applicant (i.e. self- represented party)**
   c. **If a party to an instrument is not represented by a legal practitioner – that party (i.e. self-represented party)**

Any inapplicable certification statement(s) must be deleted.

All certification statements apply where the certifier is a <u>legal practitioner</u>.
By certifying this form, the legal practitioner acknowledges they have taken reasonable steps to verify that their client or his, her or its administrator or attorney is a legal person and has the right to enter the conveyancing transaction.

The first two listed certification statements do not apply where the Certifier is a self-represented party. Self-represented parties are only required to make certifications relating to retaining evidence to support the registry instrument or document and ensuring the registry instrument or document is correct and compliant with relevant legislation and any prescribed requirement.

A self-represented party must have their identity verified and certified by an Identity Agent, Justice of the Peace, Legal Practitioner, or Notary Public and provide evidence to be able to transact on the land as outlined in the self-represented party pack found [here](). Self-represented parties must sign in the certification panel and have that signature witnessed by the authorised person completing the verification of or by an adult over the age of 18 who is not a party to this document. A completed self-represented party pack is to accompany the application at time of lodgment.

 Note: - An attorney, body corporate or a corporation cannot make certification statements. They are required to complete the form as a self-represented party. See ACT Land Titles Practice Manual for requirements.

EVIDENCE TO BE LODGED FOR SELF-REPRESENTED

If you are a self-represented party, satisfactory evidence is to accompany this application. Evidence may include but not limited to:

   • A completed Self-represented party pack including identity certification, documents used to verify identity, and documents linking the applicant to be able to deal on the property; and
   • Annexures or attachments supporting the lodgment.

EVIDENCE TO BE RETAINED BY LEGAL PRACTITIONERS AND MORTGAGEE CORPORATIONS

Any evidence to support verification of identity carried out by a legal practitioner or mortgagee corporations, must be retained:

   (a) by the Legal Practitioner for at least 7 years from the date of lodgment of the Registry Instrument in the Land Titles Office;
   (b) by the mortgagee until they cease to be mortgagee in respect of the mortgage.

Evidence is required to be retained in order to demonstrate that the transaction was completed in accordance with legislative and other requirements and the certifications required were accurately made. Evidence may be required to be provided to the Registrar-General for the purpose of monitoring compliance with legislative and other requirements. The evidence must be legible, stored safely and securely, and accessible and may include:

- Client Authorisation
- Verification of identity
- Right to deal
- Other Prescribed Requirements; and
- Any evidence required by the Duty Authority.

Have a question or need assistance? Click the Contact us form button at the end of the ACTLIS home page or you can call this office on (02) 6207 0491