# LANDS TITLES OFFICE
# GUIDANCE NOTES

# SURRENDER OF UNDERLEASE

***These Guidance Notes are of a general nature and are not intended to, and cannot, replace the advice of a Legal Practitioner or Registered Conveyancer.***

Form S2 is to be used for the purposes of fully or partially surrendering an Underlease.

If fully surrendering an underlease, use a prefix of SU. When partially surrendering an underlease, use a prefix of PU.

All panels must be completed or struck through. If insufficient space, use approved annexure sheets. If more than one page is used, each must be numbered consecutively, eg. 1-10, 2-10; 1/10, 2/10 or 1 of 10, 2 of 10.

**All handwriting must be clear and legible in permanent, dense, rapid drying black or blue ink.**

The Registrar-General *may refuse* to accept for registration any instrument, annexure sheet or additional or inserted sheet that does not comply with the provisions of LTO panel form standards.

**UNDERLEASE BEING SURRENDERED**
Insert registered number of Underlease.

**LAND DESCRIPTION (OVER WHICH UNDERLEASE IS BEING SURRENDERED)**
Indicate whether the surrender is to operate over the whole or portion of the land comprised in the underlease over the whole or portion of the land comprised in CERTIFICATE OF TITLE (CT) or CROWN LEASE (CL). If portion only then identify the relevant portion by reference to the appropriate plan.

**WHOLE** - e.g."Whole of the land in CT Volume _____ Folio _____ "
or "Whole of the land in CL Volume _____ Folio _____ ".

**PORTION** - eg. "Shop 4 in FP54788 being portion of the land in CT Volume _____ Folio _____ ".

**UNDERLESSEE**
Full name and current address to be stated. If the name of the underlessee has been altered, state the new name followed by the name as it appears on the Certificate of Title or Crown Lease, e.g."[*New or correct name*] of [*insert address*] registered as [*old or incorrect name*] as a consequence of [*insert reason*]".

**UNDERLESSOR**
Full name and current address to be stated. If the underlessor's name has altered, you must lodge an Application to Note Change/Correction of Name prior to the surrender of underlease.

**OPERATIVE CLAUSE**
If the underlease is being fully surrendered, strike through the second listed clause. If the underlease is being surrendered only as regards the land mentioned in the withdrawal, but will remain over other land, strike through the first listed clause.

**CONSENTS**
The consent of all prior and subsequent mortgagees and encumbrancees of the underlease and headlease are required. (Section 123 *Real Property Act 1886*).

**CERTIFICATION**
Any inapplicable certification statement(s) must be deleted.

Certification statements must be made by a prescribed person, being one of the following:

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

All certifications apply where the Prescribed Person is a registered conveyancer or legal practitioner, signing on behalf of their client.

The first two listed certifications do not apply where the Prescribed Person is a self-represented underlessor. Self-represented underlessors 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 underlessee is exempt from the need to provide any certifications. In such instances, the underlease should include either on an annexure or the last page of the covenants:

- the properly witnessed signature of the underlessee, meeting the requirements of s 267 of the *Real Property Act 1886*; or
- the execution of the incorporated body in accordance with any prescribed formalities.

The underlessee's certification clause should then be struck-through and the text "Underlessee is self-represented" inserted.

Note: - An attorney or a body corporate cannot make certification statements.

The Registrar-General's Verification of Identity and Verification of Authority requirements must be complied with except where the underlessee is self-represented.

Penalties of up to $10,000 or 2 years imprisonment apply, where a prescribed person provides a false certification under section 273(1) of the *Real Property Act 1886*.

**ANNEXURE**

It will be necessary to use an annexure sheet (Form B1) if there is insufficient space in a panel for the text or to complete remaining certifications.

An annexure sheet to an instrument must:

(e) be in the format of Form B1 and identified therein as an annexure to the parent instrument;
(f) be referred to in the appropriate panel in the body of the instrument;
(g) be affixed securely and permanently to the top left-hand corner of the instrument. The annexure and instrument must not be bound;
(h) comply with the requirements in Form B1 Guidance Notes.