

Application for a Possessory Title form 04YA: Instructions for Completion

Fees: in addition to the lodgment fee, an hourly fee will be assessed for the investigation of the application. It must be paid prior to issue of the certificate of title.

1. Complete the form in dense black or dark blue ink. If handwriting, use block capitals only.
2. Do not use an eraser or correction fluid to make alterations: rule through rejected material and initial the left-hand margin.
3. If the space provided at any point is insufficient, insert “See Annexure” at that point and include the required material on sheets of white A4 paper at least 80gsm (ordinary copier paper satisfies these requirements) using one side only. Insert a heading beginning “Annexure to ...” and specifying the type of form, the date and the parties to the transaction. Identify the material included, where possible by referring to the relevant marginal heading on the form. In the case of signatures which could not be fitted in the space provided, reproduce the text and layout used on the form. Number all pages in sequence with the form using the format “Page ... of ...”; the number must be placed at the foot of each page and must be centred. The first and last pages must be signed by the parties and any witness. Securely attach the additional pages to the upper left-hand corner of the form: a Nalclip is preferred; stapling should be avoided.
4. Insert the total number of pages, including any additional pages (see above), in the space provided at the foot of the form.
5. Submit the completed form to the Office of State Revenue for assessment of stamp duty, then lodge it by hand at the Department of Lands, Land and Property Information Division, Queens Square, 1 Prince Albert Road, Sydney (adjacent to Hyde Park Barracks), together with the relevant certificate of title if available and a completed notice of sale. **Note:** Production of the certificate of title *may* be dispensed with in circumstances where it is clear that the applicant is in possession of the whole of the land, for example, in the case of—
 - an application by a co-owner in respect of the interest of another co-owner;
 - an application made in respect of a parcel of land which is wholly enclosed by other land of which the applicant is the registered proprietor.

6. The following instructions relate to the marginal letters on the form.

(A) FOLIO OF THE REGISTER

Insert the number of the folio of the Register for the land subject of the application. The application may be made only in respect of the whole or the residue of the land in: a folio of the Register, a parish portion or a lot in a current plan.

(B) LODGED BY

This section must be completed by the person or firm lodging the form at LPI (“the lodging party”). If the lodging party does not have a LPI document collection box, leave the relevant panel blank. If the lodging party has a Listed Lodging Party Number (“LLPN”) insert it as the first item of the first line in the relevant panel; use the following format: “LLPN: 123456. Provision of a reference is optional.

(C) PRESENT REGISTERED PROPRIETOR

Insert the full name. Address and occupation are not required. In the case of a corporation, the ACN or ARBN is required.

(D) APPLICANT

Insert the full name. Address and occupation are not required. In the case of a corporation, the ACN or ARBN is required.

(E) TENANCY

Where there is more than one applicant, insert the tenancy in which they wish to hold, i.e. “joint tenants” or “tenants in common”. In the case of tenants in common, specify the shares they wish to hold: if they wish to hold equal shares, add “in equal shares”; if they wish to hold unequal shares, specify the relevant share after each name.

(F) ESTATE

If less than an estate in fee simple, rule through “fee simple” and insert the appropriate estate.

(G) ENCUMBRANCES

If the land is subject to a registered lease, mortgage or charge which has been extinguished by operation of the Statute of Limitations, insert the number and furnish evidence of the extinguishment.

(H) EVIDENCE

While no precise rules regarding evidence can be laid down, the following may be used as a guide to the evidence required.

Statutory declaration providing evidence as to whether any person having a registered interest in the land is living or deceased; and—

- if the person is living, his/her full name and address;
- if deceased, whether or not a grant of representation has been made in the estate, and if such a grant has been made, the full name and address of the grantee or the grantee’s personal representative;
- if the above information cannot be provided, details of the steps taken to discover the whereabouts of the person or his/her executor or administrator.

Statutory declaration containing information sufficient to show that any person having an interest in the land, whether at law or in equity—

- was not under any of the disabilities mentioned in section 52 of the *Limitation Act* 1969 at the date of the commencement of the possession relied on (see also section 51 of that Act); or
- that such disabilities ceased sufficiently long ago; or
- that sufficient time has elapsed to enable a title by possession to have been acquired against them.

Statutory declarations by the applicant and as many disinterested witnesses as practicable—

- stating the declarant's age and means of knowledge;
- identifying the land by reference to a sketch, which must indicate the existing improvements; and
- providing any particulars known to the declarant in regard to the following—
 - the date or period at which the possession relied on commenced and the circumstances relating to it;
 - the extent to which the land has been occupied and the manner in which it has been used;
 - any act of ownership on which the possession is based;
 - the manner and extent to which the land has been enclosed or the boundaries marked, and when and by whom;
 - the nature of any improvement erected on the land, and when and by whom;
 - whether or not the declarant has heard of any claim adverse to the applicant or to any predecessor in possession;
 - whether or not the declarant knows of any litigation involving the land subject of the application, and if so, the nature and result of the litigation; and
 - whether or not the applicant or any predecessor in possession has acknowledged the title of, or paid rent to, any other person.

NOTE: a mere statement that the applicant or any predecessor has been in possession is not sufficient.

Letter from the local Council relating to the relevant period under the *Limitation Act* and stating—

- who was assessed for rates,
- who paid the rates, and
- when the rates were paid.

Certificate by a registered surveyor giving full details of —

- the nature of the buildings and occupations existing on the land, and
- their relation to the lot and title boundaries

This certificate is required only as evidence that the land as occupied corresponds with the land subject of the application, therefore normally a precise definition of the boundaries will not be required.

(I) STATUTORY DECLARATION

Insert the full name of the declarant, and the place and date of the declaration. The witness must be a justice of the peace, practising solicitor, notary public, commissioner of the court for taking affidavits or a person otherwise authorised to administer an oath. 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.

The declaration must be made by the applicant, the applicant's attorney, or in the case of a corporation, by an authorised officer of the corporation. An attorney must state his/her capacity and cite the registration number of the power of attorney; an authorised officer must state his/her capacity.

Clause 3 rule through the inappropriate words.

NOTE: As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment of the form at LPI Division.

SCHEDULE 1

Insert full details of all documents in possession or control of the applicant which evidence possessory title to the land subject of the application and lodge these documents with the application. If the applicant has not been in possession of the land for the full limitation period but is claiming through a succession of possessors, evidence of the devolution of the possessory rights to the applicant must be provided.

SCHEDULE 2

Insert full details of any lease, mortgage, charge or other subsisting interest which is not recorded in the Register. If the land is occupied by someone other than the applicant, insert full details of the occupier and his/her right to occupation.

If you have any questions about this form or privacy matters, please call Department of Lands, Land and Property Information Division, Client Services on 02 9228 6713 or visit our website at www.lands.nsw.gov.au.