

Easement FAQs for Dealings

Creating Easements

How do I create a new easement?

Easements may be created by any of the following electronic dealing forms:

1. Transfer Granting Easement (with stamp duty)
2. Transfer Granting Easement (without stamp duty)
3. Transfer Granting Easement in Gross (with stamp duty)
4. Transfer Granting Easement in Gross (without stamp duty)
5. Transfer Granting Easement over own land
6. Transfer Including Easement

Easements may also be created by a Deposited Plan lodged together with a Section 88B Instrument.

For the requirements and further information to assist with preparation of each of these dealings, please refer to the [Registrar General's Guidelines](#).

NOTE: A [Transfer of Easement in Gross](#) form cannot be used to create a new easement. This form is used to transfer the benefit of an existing easement in gross.

Do I need a plan to accompany my Transfer Granting Easement form to show the site of the easement I wish to create?

Where the easement site is intended to affect only part of the servient tenement, a plan to define the site is required. A description of the site in words is not acceptable. The plan may be either:

- Annexed to the Transfer Granting Easement dealing;
- Filed as an annexure to a registered dealing; or
- Registered as a Deposited Plan.

Where the easement site is to affect the whole of the servient tenement, a plan will not be required. The easement description must clearly state that the easement affects the whole of the servient tenement.

What do I need to include in the description of my easement?

The description of the easement must:

- State the type of easement;
- State the width of the easement (where applicable);
- State how the easement site is designated in the plan showing the site;
- Make reference to the plan showing the site; and
- Refer to any annexure setting out the terms and conditions related to the easement (if applicable).

e.g. Easement to Drain Water 1 wide as shown designated (A) in the plan annexed and marked 'A' subject to the terms and conditions set out in Annexure 'B'

Are terms required for my easement?

All non-statutory easements must either include the terms of the easement in an annexure to the dealing, or the dealing must refer to the terms contained in a registered Memorandum. For statutory easements see:

| | |
|---------------------------------|---|
| Easement benefiting land | Schedule 8 Conveyancing Act 1919 |
| Easement in gross | Schedule 4A Conveyancing Act 1919 |

The terms for statutory easements may be varied by way of addition, exception or qualification as set out in the dealing creating the easement. If being varied, the entirety of the varied terms must be set out. It will not be acceptable to only list the amendments to the terms for statutory easements, e.g. the word “x” is replaced with the word “y”.

Who needs to sign the plan attached to the dealing?

Schedule 3 of the Lodgment Rules requires the plan to be signed (or initialled) by all parties to the dealing. This does not include a mortgagee, lessee or chargee.

Can I create more than one easement on a form?

Yes. An extra fee will be payable per additional easement being created.

I have multiple dominant and/or servient tenements and some are owned by different parties, can this be lodged on the one form?

No. A separate dealing will be required for each differing owner. For example:

- Dealing 1 – Bob Smith as regards the dominant tenement 1/12345
- Dealing 2 – Jane Smith as regards the dominant tenements 5/54321 and 6/54321

I have multiple servient tenements (all owned by party A) and multiple dominant tenements (all owned by party B), how do I clearly set out which dominant tenement relates to which servient tenement?

Where it is intended to create an easement that affects more than one servient and dominant tenement, a table should be annexed to the dealing clearly setting out which lots are to be specifically burdened and benefited by the easement e.g.

| Servient Tenement | Dominant Tenement |
|--------------------------|---------------------------------|
| 1/123456 | 2/123456, 3/123456 and 4/123456 |
| 2/123456 | 3/123456 and 4/123456 |
| 3/123456 | 4/123456 |

How do I create an easement in gross?

A Transfer Granting Easement in Gross (with Stamp Duty) or a Transfer Granting Easement in Gross (without Stamp Duty) dealing is required.

The prescribed authority owns the servient tenement and the authority wants to be listed as the dominant tenement in gross. Can I lodge a Transfer Granting Easement over own land?

No. A Transfer Granting Easement in Gross (with Stamp Duty) or a Transfer Granting Easement in Gross (without Stamp Duty) must be lodged, as applicable.

Does my Transfer Granting Easement require stamp duty?

Amendments to the Duties Act 1997 by the *State Revenue and Fines Legislation Amendment Act 2022*, now require duty to be assessed by Revenue NSW on certain additional dealing types. From 3 August 2024, the following e-dealings are able to be assessed for duty in the electronic workspace:

- Transfer granting easement
- Transfer granting an easement in gross
- Transfer creating a profit à prendre
- Transfer creating a forestry right

A Duties Assessment Number (DAN) is required where monetary consideration is paid (e.g. consideration of anything other than \$0.00 will require a DAN).

I ordered a copy of a cross-easement and received a Transfer form. Is this an error?

This is not an error. Section 181B *Conveyancing Act 1919* provides for the automatic creation of cross-easements for support of buildings in respect of party walls where an assurance (i.e. disposition or transfer) of land, executed on or after 1 January 1931, results in the lots on either side of the party wall being held:

- In different ownership; or
- In different tenancy or shares; or
- In a different fiduciary capacity.

NOTE: This does not apply to party walls shown in deposited plans registered after 1 August 1996.

For further information, please see Section 181B *Conveyancing Act 1919*.

A title benefits from a Book and Number easement but the easement isn't recorded on title. How do we have it added?

One of the following dealings must be lodged and you must determine which is relevant for your scenario:

- [Record a Subsisting Interest on a Qualified Title](#) form 17QS where the title is qualified and the easement should have been brought forward on conversion; or
- Request form 11R together with an Old System Search confirming that the land does benefit from the easement.

We highly recommend using the services of an information broker who specialises in this type of searching.

Removing Easements

What are the differences between the Transfer Releasing Easement form and the Cancellation of Easement form?

| Transfer Releasing Easement | Cancellation of Easement* |
|---|--|
| <ul style="list-style-type: none"> • Agreement/deed between the burdened and benefited parties to release • Stamp duty required • The servient and dominant tenement owners are parties to the dealing | <ul style="list-style-type: none"> • Dominant tenement deciding to release the benefit • No stamp duty required • The dominant tenement is the only party to the dealing |

* **NOTE:** This does not apply to an Extinguishment of Easement. These are reliant on a Supreme Court Order which must be annexed to the dealing.

Do I need consent from any interest holders to register a Transfer Releasing Easement form or a Cancellation or Extinguishment of Easement form?

The consent of every lessee, mortgagee or chargee of the dominant tenement must be annexed to the dealing.

Varying Easements

Can I lodge a Variation of Easement to add a dominant tenement?

No. A Variation of Easement can only be used to vary the site or terms of an easement. If you wish to add a dominant tenement, you will need to create a new easement benefiting the new dominant tenement. You can refer to the easement site shown in a registered plan or dealing (provided the plan still complies with current guidelines) in a new Transfer Granting Easement form.

Further Information

Registrar Generals Guidelines

https://rg-guidelines.nswlrs.com.au/land_dealings/dealing_requirements/easements

<https://rg-guidelines.nswlrs.com.au/e-dealings/elodgment/Residual-Documents>

https://rg-guidelines.nswlrs.com.au/deposited_plans/plans_annexed_dealings

https://rg-guidelines.nswlrs.com.au/deposited_plans/compiled_plans/compiled_easement

Lodgment Rules

<https://www.registrargeneral.nsw.gov.au/publications/lodgment-rules>

Conveyancing Act 1919

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1919-006>

Real Property Act 1900

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-025>