

Policy & Guidelines

Guidelines for Survivorship Applications in relation to the Aboriginal Lands Trust Estate

Introduction

Under Western Australian law there can be more than one interest in property such as land, either by holding the Freehold title to the land or holding a Lease over the land.

It is generally through a Lease from the Aboriginal Affairs Planning Authority (AAPA) or Aboriginal Lands Trust (ALT) that more than one person can hold an interest in a portion of the ALT estate. Where there are multiple owners of a Freehold title or of a Lease, they can be either:

- ***Tenants in Common***: where each tenant has a distinct share in the land or Lease, which can be sold, transferred or left in a will to somebody else; or
- ***Joint Tenants***: who each own the entire property together. Each owner has the same right to the whole of the property as the other individual owners. A joint tenancy cannot generally be left in a will to somebody else.

What is Survivorship?

Joint tenancy creates a right of survivorship. If any one of the joint tenants dies, the remainder of the property is transferred to the remaining joint tenants, otherwise known as survivors.

The registration and changing of tenancy details on a land title is governed by the *Transfer of Land Act 1893*, which is administered by Landgate. When one of the joint tenants dies, the process for changing tenancy details is known as a Survivorship application, with the applicant needing to:

1. Conduct relevant title searches and obtain a copy of a Certificate of Title from Landgate.
2. Prepare an application to change the Certificate of Title through Landgate.
3. Obtain a Death Certificate from the Office of the Registrar of Births, Deaths and Marriages.
4. Lodge the documentation directly with Landgate.
5. Advise relevant government authorities of the change e.g. local government, utilities, the ALT.

The Role of the Aboriginal Lands Trust

There is no legal role for either the ALT or the Department of Planning, Lands and Heritage (DPLH) in processing or approving a survivorship application. However, when requested, DPLH will generally assist individuals holding Leases on the ALT estate as joint tenants by undertaking the preparation and lodgement of the necessary survivorship documents with Landgate.

Good governance and record keeping requirements mean it is important for the ALT to know who holds an interest on the Lease. Therefore, it is important that where DPLH assistance is not required for the completion of a Survivorship application, you advise the ALT of changes in tenancy arrangements. Further information on Guidelines for Survivorship Applications can be obtained from DPLH on (08) 6551 8002 or emailing ALT@dplh.wa.gov.au.