



**DEALINGS WITH INTEREST
(EXPLORATION LICENCE, EXPLORATION RETENTION LICENCE & MINING
TENEMENTS)
CAVEATS AND PLAINTS**

Introduction

These guidelines are designed to assist parties with statutory requirements for the preparation and lodgement of a dealing with interest in exploration licences, exploration retention licences or mining tenements, caveat or plaint.

Whilst these guidelines have been provided to assist applicants in their compliance with the *Mining Act and Mining Regulations*, it is incumbent on the applicant to acquaint themselves with the relevant provisions contained within this legislation and all other laws of the Northern Territory as are applicable.

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For further information, please contact:

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| In person | Titles Division Customer Service Desk NT Department of Resources 5th Floor, Centrepoint Building, The Mall, Darwin, NT 0800 |
| By post | Customer Services Titles Division, Department of Resources GPO Box 3000, Darwin NT 0801 |
| By fax | (08) 8981 7106 – Attention: Customer Services |
| By phone | (08) 8999 5322 – Customer Service Officer |
| By e-mail | titles.info@nt.gov.au |

Purpose

Section 173 of the Mining Act provides for the sale, transfer, encumbrance or disposal of mineral title. You should familiarise yourself with the specific requirements for different tenure discussed in this section.

A written instrument affecting an interest in a mineral title is referred to as a 'Dealing'. The various types of dealings are: Transfer, Agreement, Mortgage and Devolution.

Before a dealing with interest can have legal effect, it must be in writing, approved by the Minister, and registered. The requirement to obtain Ministerial approval is not applicable to a devolution – legal effect and registration take effect upon lodgement.

Section 174 of the Mining Act provides for the lodgement of a Caveat by a person claiming an interest in an exploration licence, exploration retention licence or a mining tenement (other than an extractive mineral permit).

The lodgement of a Complaint may commence proceedings in the Wardens Court. Matters that the wardens court has jurisdiction to hear are detailed at section 145 of the Mining Act. The process and requirements for lodgement of a complaint are discussed in the Mining Regulations.

Caveats and Complaints are often referred to as "dealings" but this is not derived from the Mining Act, merely an "in-house" departmental term given to the transaction.

Pre-requisites

Miners Right

A Miner's Right must be held by **all parties** to a dealing relating to a **transfer or agreement** except:

- where an agreement is to be entered into whereby a third party is yet to fulfil obligations to earn an interest in the title.

A perpetual Miner's Right costs \$100 and may be issued to an individual over the age of 15 or to a corporate body.

Individuals must provide a Driver's Licence, Birth Certificate, Passport or other form of evidence to establish proof of identity. A Certificate of Incorporation is necessary for a corporate body.

The holder of a Miner's Right is referred to as "a Miner".

Agreement

Cannot be lodged for applications **unless** the application is grouped with granted titles on one lodgement form. **No dealing lodged against an application can take effect until the application is granted.**

Cannot be lodged for an Extractive Mineral Permit nor a section 178 Authorisation to explore, mine or extract.

Pre-requisites to lodgement include:

- Signed by all parties to the agreement. (Individual, under Power of Attorney that has been lodged with the Department, or under requirements of Section 127 of Corporations Law);

- Original or Copy of agreement must accompany lodgement;
- Evidence of assessment of Northern Territory Stamp Duty (interstate stamp duty is not applicable in the Northern Territory) (**see Stamp Duty Section**);
- Fee of \$11 per title is paid at lodgement; and

If the agreement is a Joint Venture with the incoming party earning equity, that equity can only be registered by way of transfer.

Regardless of the contents of an agreement, the titleholder has the ultimate responsibility to ensure that all statutory requirements are met. (i.e. nothing can override the *Mining Act*.)

Agreements require Ministerial approval and registration. Registration is usually affected by the Mining Registrar.

Note:

Reference to applicable law must be references to Northern Territory laws.

Transfer

ALL TITLES MUST BE IN “GOOD STANDING” BEFORE ANY DEALING FOR A TRANSFER WILL BE APPROVED AND/OR REGISTERED. FOR THE PURPOSES OF LODGING A TRANSFER - GOOD STANDING MEANS ALL RENT AND REPORTING REQUIREMENTS UNDER THE MINING ACT HAVE BEEN MET.

A transfer cannot be lodged against a mineral title application unless the application is included with granted titles on the one instrument. **No dealing lodged against a mineral title application can take effect until the title is granted.**

A transfer cannot be lodged for Authorisations issued under s178(2) of the *Mining Act*. The provisions contained in S173 of the Act do not apply to these authorisations. The only way the holder of an authorisation can convey rights, obligations and interest is by way of assignment. A Deed of Assignment (together with an instrument of transfer) must be lodged. No additional fees apply to the Deed of Assignment.

Note – Authorisations issued under s178(2A) of the Act for Extractive Minerals are treated in the same manner as other mineral titles for the purposes of transfer. This means that you are only required to lodge an instrument of transfer.

In accepting the transfer of a title, the transferee (incoming party) accepts all privileges, obligations **and** responsibilities. This includes any outstanding rehabilitation, reporting and financial liabilities.

Pre-requisites to lodgement include:

- Signed by all parties. (Individual, under Power of Attorney that has been lodged with the Department, or under requirements of Section 127 of Corporations Law);
- The original or copy of transfer instrument is lodged;
- Evidence of assessment of Northern Territory Stamp Duty (interstate stamp duty is not applicable in the Northern Territory) (**See Stamp Duty section on page 6**);
- Fee of \$58 per title is paid at lodgement;
- All parties hold a Miner’s Right;
- Details of technical advice available to, and qualifications of, the incoming party or parties;
- Formal financial statements reflecting the financial details of incoming party or parties;

Pre-requisites to Ministerial approval and registration:

- There are no outstanding statutory obligations or conditions of title/s, including reporting (**refer “Reporting” below**). Alternatively, the incoming parties should give an undertaking to accept all obligations and responsibilities.
- Any title may be transferred with the exception of Authorisations, which have been issued under Section 178 of the *Mining Act*. These are not titles and cannot be transferred; however the “rights” of the Authorisation can be “assigned” to another party.
- The incoming party must honour all and any financial commitment the title/s may have. i.e. exploration covenant.
- If a title has a security, a replacement is to be lodged by the incoming parties. (**Refer “Securities” below**).
- A royalty clearance from NT Treasury for mineral leases and mineral claims (if applicable).

Securities

Where a mining title is subject to a security bond, then, prior to the approval and registration of a transfer of interest, a replacement security, in the form of cash or a bank guarantee, will be required to ensure the incoming party’s compliance with the conditions of the title and to cover any claim for compensation.

Reporting

All reporting requirements under the *Mining Act* must be current as at the date request to transfer is made. A transfer will not be approved and/or registered should any reports remain outstanding. Applicable reports may include: Annual Report and/or Relinquishment Report.

The incoming party (Transferee) should undertake normal “due diligence” procedures by requesting a Title Search to confirm that all reporting is current.

A Title Search (under Section 31(1) *Mining Regulations*) entitles you to view a full extract from the register. A fee of \$11.00 is applicable. A search request can be made via email (titles.info@nt.gov.au) or telephone (08) 89995322.

Mortgage

A mortgage cannot be lodged against a mineral title application unless the application is included with granted titles on the one instrument. **No dealing lodged against a mineral title application can take effect until the title is granted.**

A mortgage cannot be lodged against an exploration licence, Section 178 authorisation or an extractive mineral permit.

Pre-requisites to lodgement

- Signed by all parties. (Individual, under Power of Attorney that has been lodged with the Department, or under requirements of Section 127 of Corporations Law);
- Fee of \$11 per title is paid at lodgement;

No stamp duty is required. Mortgages require Ministerial approval prior to registration. Mortgages can only be discharged on advice from the Mortgagee

The Mortgagee is not required to hold a Miner's Right unless foreclosure of the mortgage is to occur.

Caveat

Legal Definition

"A warning. An entry made into the books of the offices with a registry or court to prevent a certain step being taken without previous notice to the person entering the caveat (who is called the Caveator)."

Pre-requisites for Caveat

- Form 4 of the Mining Regulations must be used;
- Signed by the Caveator (Individual, under Power of Attorney that has been lodged with the Department, or under requirements of Section 127 of Corporations Law) or their agent;
- Must be Original form unless emailed
- Fee of \$11 per title is paid at lodgement;
- Must specify the claimed interest in the title;
- **Cannot be lodged for applications;** and
- **Cannot be lodged for extractive mineral permits.**
- **Cannot be lodged for authorisations granted under S178 of the *Mining Act*.**

Note: A caveat may not be accepted if the claim of interest cannot be proven

Continuation of Caveat

When a dealing with interest is lodged against a title where a caveat is in force, the caveator is notified of the lodgement of the dealing.

The caveator has 30 days after this notification to either lodge a continuation of the caveat or take action to prevent the registration of the dealing. **A continuation will not prevent the dealing from being registered.**

A caveat that has lapsed or has been withdrawn cannot be renewed by or on behalf of the same person with respect to the same interest except by leave of the Warden.

Pre-requisites for continuation of Caveat

- Form 5 of the Mining Regulations must be used;
- Fee of \$11 per caveat is paid at lodgement; and
- A caveat must have been lodged previously by the caveator.

Note:

No stamp duty is required.
A caveat does not require Ministerial approval and is effective on and from the time it is lodged and accepted.

Plaint

As a Plaintiff may commence Wardens Court proceedings, you should obtain your own legal advice prior to lodgement.

Pre-requisite to lodgement

- Instrument is lodged in triplicate; and
- Fee of \$23 is paid at lodgement.
- Form 7 of the Mining Regulations must be used;
- Signed by Plaintiff or their attorney or solicitor ;

Devolution

“Devolution” is the legal term used for the transmission of property consequential upon the death of a person, the bankruptcy of a person or the receivership, bankruptcy and/or liquidation of a company who are the holder of a title or of an interest therein. The title will devolve onto the trustee or representative.

Pre-requisites include

- A copy of ‘Grant of Probate’, issued by order of the Supreme Court, accompanied by a copy of the Will or Authority under Section 35 of the Public Trustee Act, or certified copy of appointment as Liquidator/Receiver in Bankruptcy is required
- Cannot be lodged for mineral title applications;
- Fee of \$23 per title is paid at lodgement;

If the trustee or his/her representative intends to explore or mine the tenements or hold the interest for more than 6 months, a Miner’s Right must be held. Applications for exemption from this requirement (if no exploration or mining activity is being conducted) can be made to the Minister (Section 173(10) of the *Mining Act*).

A devolution **does not** constitute a transfer – however the devolvee has all of the rights etc to deal with the title/interest as did the holder **but must do so** in accordance with the terms of the Will or order of the Court.

Once the devolution is registered, a transfer should then be lodged from the devolvee to the new owner.

Note

A devolution does not require stamp duty.

Dealings of Authorised Holdings

Authorised Holdings (commonly referred to as Holdings) are titles that were granted under the 1939 *Mining Act* and were saved pursuant to section 191(19) of the 1980 *Mining Act*.

Under the Mining Act a mining tenement is defined as “a mineral lease, mineral claim, extractive mineral lease or extractive mineral permit and includes an area of land the right to occupation of which is conferred by section 61(2) or 104(2) or is continued by or under section 191(19) or (20)”.

It is a general principle of statutory interpretation that where a new Act seeks to preserve the whole or part of any historical legislation it will expressly state this in the relevant savings and transitional provisions. This is interpreted as preserving the right, title or interest only, in this case a Holding, but not the processes under that Act.

Accordingly, section 173 of the Mining Act provides the process, including registration for the creation, assignment or dealings of mining tenements, as defined in the Act.

All applications for dealings on Authorised Holdings are to be made on the prescribed forms under the Mining Act.

Fees for dealings on Authorised Holdings are those outlined at Mining Regulation 24 - Schedule 1.

Stamp Duty

Before lodging an instrument of transfer or agreement with the Department, it must be submitted to the office of the Northern Territory Commissioner of Territory Revenue for assessment under the Stamp Duty Act.

The Commissioner has offices at:

Darwin

4th Floor Cavanagh House
Corner Knuckey and Cavenagh Streets
GPO Box 154
Darwin Northern Territory 0801

Telephone(08) 8999 7949

Facsimile (08) 8999 6395

Alice Springs

C/- Department for Business and Employment
Top Floor, Alice Plaza
Todd Mall
PO Box 4037
Alice Springs Northern Territory 0871

Telephone(08) 8951 6500

Facsimile (08) 8951 6459

If no duty is payable, you must ensure that the Commissioner's office endorses the instrument accordingly, otherwise it will not be accepted by this office. If duty is payable, the Commissioner's office will not release the document until that duty is paid.

Should you be unable to personally attend at the Commissioner's office or arrange for another person to do so, you may submit the instrument by post with a request for its assessment.

Duty could then be paid by return mail and the instrument subsequently released for lodgement with this Department. However, you must make your own arrangements with the Commissioner's office in that regard.

Not only are there severe penalties for failure to pay duty on a dutiable instrument, but the purported approval and registration of same will be null and void by virtue of Section 9A of the Stamp Duty Act.

Disclaimer

Whilst these Notes have been provided to assist title holders and third parties in their compliance with the *Mining Act*, it is incumbent on them to acquaint themselves with the provisions of the *Mining Act* and all other laws of the Northern Territory as are applicable. Fees are subject to change without notice.