



LandTasmania

Guide to Title by possession

*Part IXB Division 5
Land Titles Act 1980*

LAND TITLES OFFICE

AUGUST 2022 (V2)

CONTENTS

INTRODUCTION	2
1. ELEMENTS TO BE SATISFIED	2
1.1 Period of possession – Section 138W(1) of the Act	2
1.2 Requirements for Title by Possession – Section 138V of the Act.....	4
1.3 Payment of rates – Section 138U of the Act.....	7
1.4 Avoidance of sub-minimum lot - Section 138Y of the Act.....	7
1.5 Notices – Section 138W(8) of the Act.....	8
1.6 Existing Easements etc – Section 138X of the Act	9
2. SUPPORTING EVIDENCE.....	9
2.1 Statutory Declarations.....	9
2.2 Necessity for Plan of Survey – Section 138W(7) of the Act	11
3. PROCESS OF AN APPLICATION.....	13
3.1 Lodgement.....	13
3.2 Examination	13
3.3 Objections (by way of Caveat)	14
3.4 Making an Order – Section 138X of the Act	14
GLOSSARY OF TERMS	15
ANNEXURE A – Notice.....	16
ANNEXURE B – Notice (Posting on Land).....	17
ANNEXURE C – VO Form.....	18
ANNEXURE D – VO Form Guide.....	19
ANNEXURE E – Statutory Declaration	20
APPLICATION CHECKLIST 138W(4)	21
DISCLAIMER.....	22

INTRODUCTION

This Guide sets out the process and basic requirements for preparing and lodging an Application for Vesting Order under section 138W(4) pursuant to Part IXB – Possessory Title of the *Land Titles Act 1980* (“the Act”).

Applications under section 138W are complex and appropriate professional advice may need to be taken. The Recorder of Titles (“the Recorder”) and the Land Titles Office cannot provide legal advice or pre-lodgement advice.

An application under section 138W of the Act only applies to registered land. The information in this Guide is only in respect of dealing with registered land.

I. ELEMENTS TO BE SATISFIED

A summary of the requirements that need to be satisfied under the Act are set out below.

I.1 Period of possession – Section 138W(1) of the Act

The relevant periods for claiming title by possession are provided for by the *Limitation Act 1974*.

In summary:

Crown land

- Should the land the subject of an application be registered Crown land, an applicant must substantiate a period of 30 years or more possession of such land: section 10(1) of the *Limitation Act 1974*.
- Circumstances in which a statutory corporation representing the Crown, or a public corporation is the registered proprietor of the relevant land are also considered to be subject to the requirement to demonstrate 30 years or more of possession.
- In certain circumstances, land held or set aside for a public purpose *cannot* be acquired by way of a claim of title by possession even in cases of 30 years or more possession (see sections 10(4) & (5) of the *Limitation Act 1974* produced below for convenience).

10(4) Subsections (1) and (2) do not apply to any action brought by the Crown to recover any land, or brought by any other person to recover any land held by him for a public purpose, if the land sought to be recovered –

(a) has at any time been –

- (i) reserved or set out as a road under any Act or in connection with the alienation of Crown land;
- (ii) reserved from sale under any Act relating to Crown lands or dedicated under any Act for any public purpose;
- or
- (iii) reserved in any Crown grant; or
- (b) forms any part of the foreshore or the bed of the sea or of any water referred to in subsection (5) .
- (5) For the purposes of subsection (4) foreshore means –
- (a) the shore and bed of the sea or of any tidal water below the line of medium high tide between the spring tides and the neap tides; and
- (b) where any Crown land has been reserved or excepted from sale as a reserve of any kind beside any lake, river, stream, or other water, any land lying between the reserve and that lake, river, stream, or other water.

Non-Crown land

- Should the land the subject of an application not be Crown land, then provided the [True Owner](#) of that land was not under a disability at the time that possession commenced, an applicant must provide evidence satisfactory to the Recorder of a minimum period of 12 years possession of such land (section 10(2) of the *Limitation Act 1974*).
- Where the [True Owner](#) was under a disability at the time possession commenced, section 26(4) of the *Limitation Act 1974* extends the required period of possession to be proved to a minimum of 30 years.

The period of possession required to be proved will depend on the facts and circumstances of the matter.

For example

- If the [True Owner](#) cannot be ascertained with certainty, cannot be located or no evidence can be provided that they were *not* under a disability at the time adverse possession commenced, that would be a situation where a period of 30 years possession must be proved.
- Therefore, where the claimed period of adverse possession has been *less* than 30 years (subject to satisfactory evidence of service of the application on the [True Owner](#) where notice of the application is given and the [True Owner](#) is provided a chance to make submissions), an applicant will likely need to provide evidence to the satisfaction of the Recorder that the [True Owner](#) was not under a disability at the time the adverse possession commenced.
- The applicant's evidence must explain the means of knowledge of the disability.

If the [True Owner](#) was under a disability at the time that adverse possession commenced, then the requisite period of possession required will be extended in accordance with section 26(1) and 26(4) of the *Limitation Act 1974* (up to a maximum period of 30 years).

- In doubtful cases, 30 years possession is likely to be required to be proved.
- Section 138G of the Act refers to when a person is taken to be under a disability.
- Death of the [True Owner](#) is not a 'disability' in and of itself. The period of possession to be proved is not automatically extended to 30 years simply for that reason.

Periods of possession may also be affected by the matters set out in section 1.3 of this Guide.

1.2 Requirements for Title by Possession – Section 138V of the Act

Section 138V of the Act provides that the Recorder must consider all the circumstances of any title by possession claim and the conduct of the parties who are affected by such claim and other specific matters.

Section 138V is produced below for convenience:

138V. Requirements for title by possession

In determining an application for title based on possession, the Recorder must consider all the circumstances of the claim, the conduct of the parties and in particular –

(a) whether, during the relevant period, the applicant enjoyed possession of the land as of right; and

(b) whether there is any reason to suppose that during the relevant period that enjoyment was by force or secretly or that that enjoyment was by virtue of a written or oral agreement made before or during that period unless the applicant can show that any such agreement terminated before that period; and

(c) the nature and period of the possession; and

(d) the improvements on the land and in particular –

(i) when they were made; and

(ii) by whom they were made; and

(e) whether or not the land has been enclosed by the applicant; and

(f) whether during the relevant period the applicant acknowledged ownership, paid rent or made any other payment in respect of the land –

and the applicant must produce evidence from at least one disinterested person in support of the application.

The Recorder requires the applicant's statutory declaration supporting any application for title by possession to address each of the criteria mentioned in section 138V (and which are set out below in summary form for convenience).

Applicants should consider the comments made below in respect of each criteria.

- **Whether, during the relevant period, the applicant enjoyed possession of the land as of right**

This fundamentally means that an applicant is enjoying such control over the land that every person who comes to the land can see what the applicant is possessing and assumes that the applicant is the owner. Examples should be given of how the land is used by the applicant.

- **Whether there is any reason to suppose that during the relevant period that enjoyment was by force or secretly or by written or oral agreement made before or during the relevant period**

The applicant's possession must have been open, peaceful, and adverse i.e., not by a verbal or written agreement. If there was an agreement the applicant must prove that agreement terminated before the relevant period of possession relied upon commenced.

Where an applicant has the benefit of an easement over the land the subject of an application, the applicant must show their actual possession was, in nature, 'adverse' and that the acts of possession were to exclude the [True Owner](#) rather than protect the easement.

- **The nature and period of possession**

The acts which demonstrate a sufficient degree of possession will depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Examples should be provided as to the nature of the possession. The relevant periods required are set out in sections 1.1 and 1.3 of this Guide.

- **The improvements on the land**

In particular, what improvements have been made on the land (if any), when (whether during the applicant's period of possession or earlier) and by whom. If improvements have only been made by or on behalf of the applicant (and no one else) during the period of possession, this will be of

assistance to the applicant's claim. The applicant should explain the improvements and when they were undertaken. Photographs may be attached to assist in explanation.

- **Whether or not the land has been enclosed by the applicant**

The act of erecting and maintaining fences around the land and/or enclosure by walls and buildings may be strong evidence of occupation to the exclusion of the [True Owner](#) and the world at large. The applicant should explain how and when the land was fenced or enclosed and whether the fencing has been changed or maintained after taking possession. If the land is unfenced or only partly enclosed the application should indicate how exclusive possession of the land was demonstrated.

- **Whether during the relevant period, the applicant acknowledged ownership, paid rent or made any other payment in respect to the land to another party**

The applicant should state specifically whether or not the applicant has done any of the above during the relevant period.

Where there has been a sequence of adverse possessors, a documentary assignment of their possessory rights must be furnished. Such assignment may be in the manner of a devise in a will for example.

If periods of possession of past adverse possessors is relied upon, evidence needs to be provided, including how the applicant has now come to be in possession (e.g., a contract for sale of the past possessors' claimed interest in the land etc.) and statutory declarations from past possessors or from those who can depose to such matters.

In addition to evidence in the form of a statutory declaration by the applicant (and by previous adverse possessors (if any)) which covers the relevant period of possession and addresses the above criteria to support an application, a statutory declaration by one or more [Disinterested Person](#)(s) is required to cover the entirety of that same period of possession.

This evidence should, amongst other criteria, specify how long the declarant has known the applicant, their means of knowledge of the possessory land and attach a survey plan or other plan or sketch to identify the possessory land.

If a [Disinterested Person](#) cannot be found to provide such a statutory declaration, evidence by way of a statutory declaration from a relative or a business associate may be acceptable, but the weight of that evidence is a matter for the Recorder's discretion.

1.3 Payment of rates – Section 138U of the Act

Under sub-section 138U(1), if during the relevant claimed period of possession council rates have been or are paid by or on behalf of the owner, this period is to be disregarded in determining how long the applicant has been in possession for the purposes of section 138V of the Act (taking into account the matters set out in section 1.1 of this Guide).

However, subsection 138U(1) does not apply if the relevant council certifies in writing that it is unclear who has paid, or is paying, the relevant council rates (subsection 138U(2) of the Act).

An applicant may provide evidence for consideration as part of their application as to whether they (or previous adverse possessors, if any) have paid rates for the land, for how long and annex evidence of receipts of those payments if available.

1.4 Avoidance of sub-minimum lot - Section 138Y of the Act

If the land subject to an application is only part of a folio of the Register, a certificate from the relevant council must be produced as part of the application that states either that the application will not result in the continuation or creation of a sub-minimum lot or that council consents to the application.

The certificate should refer to the relevant plans and section 138Y of the Act under which it is issued.

A sub-minimum lot is a lot that does not have the qualities of a minimum lot as provided by section 109 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

In some cases where the land for which title by possession is sought would create a sub-minimum lot, section 138Y may be satisfied by registration of an adhesion order made under section 110 of the *Local Government (Building & Miscellaneous Provisions) Act 1993*, adhering the land claimed with the applicant's adjoining land.

In the event such certificate or adhesion order is not produced allowing for satisfaction of section 138Y of the Act, the Recorder is not required to proceed with assessing an application in such circumstances.

Subsections 10(6) and 10(7) of the *Limitation Act 1974* should be read together with section 138Y of the Act.

1.5 Notices – Section 138W(8) of the Act

If a person decides to proceed with an application under this section, then prior to lodgement of the application and all supporting evidence (including statutory declarations), notices must be given, posted and advertised as set out below.

The notices are available via the Tasmanian Online Land Dealings (TOLD) system (accessed via www.thelist.tas.gov.au)

The notices available on TOLD are in a form approved by the Recorder for the purposes of section 138W(8) of the Act and must not be altered.

The only information to be inserted is the applicant(s) name(s), description of land which includes area, address, folio reference and registered proprietor of the land subject to the application and the solicitor's details.

The applicant must then (in respect of those notices):

- advertise the notice in the newspaper that is published and circulating generally in the locality in which the subject land is situated, which will be either The Mercury, The Advocate or The Examiner (if in doubt the applicant may ask the Recorder to instruct which newspaper is appropriate);
- give a copy of the relevant notice to any and all persons who, as endorsed on the folio of the Register relating to the land the subject of the proposed application, has an interest in that land or in any mortgage or encumbrance as recorded on the folio of the Register to that land;
- give a copy of the relevant notice to any person who has an unregistered interest in the land which may have been lodged with the Recorder; and
- cause a copy of the notice to be posted on the subject land in a conspicuous place and to be kept so posted for not less than 30 days.

The notices used for advertising, giving and posting on the land approved by the Recorder are provided at Annexure A and Annexure B of this Guide and are in the form approved as at the month this Guide is published as stated on the cover.

The Recorder has discretion to determine if notice has properly been given in each circumstance and the above comments are offered by way of guidance only.

As part of the above obligations, notice of the application must be served or attempted to be served on the [True Owner](#) of the land subject to the application.

Evidence/results of the appropriate searches made (which may include searches with the Probate Registry and Tasmanian Archives and Heritage Office) by or on behalf of the applicant to determine and/or locate the [True Owner](#) or those entitled to notice on behalf of the [True Owner](#) if the [True Owner](#) is deceased (for example, the personal representative), must be provided as part of the applicant's statutory declaration in support of the application.

1.6 Existing Easements etc – Section 138X of the Act

An order made under this section will only be freed from an existing:

- mortgage or encumbrance which could be discharged under section 91 of the Act, if evidence satisfactory to the Recorder is produced as part of the application; and/or
- registered easement or *profit a prendre* if it has been proven to the Recorder's satisfaction to have been abandoned. With reference to section 108 of the Act, if the Recorder is satisfied on the evidence before him of failure to use an easement or a *profit a prendre* for a period of not less than 20 years, that is taken to be conclusive evidence of abandonment.

However, an exception is an easement or a *profit a prendre* created by a sealed plan under Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

An easement or *profit a prendre* created by sealed plan cannot be disposed of by an application to the Recorder under section 108 of the Act. An easement or *profit a prendre* created by a sealed plan requires a request to amend pursuant to section 103 of that *Local Government (Building and Miscellaneous Provisions) Act 1993* to extinguish.

Note: An order made under section 138X of the Act, when registered, that completely disposes of the estate of the registered proprietor in the land to which a caveat relates and the caveat lapses and ceases to have any effect.

2. SUPPORTING EVIDENCE

2.1 Statutory Declarations

The applicant's statutory declaration in support of their application must (if made in Tasmania) be in accordance with Schedule 1 of the *Oaths Act 2001** and bear the heading: "In the matter of an application by (applicant(s)) for Vesting Order pursuant to section 138W of the *Land Titles Act 1980*". *A statutory declaration must be made under the relevant law of the place it is made. See [Annexure E](#) for an example.

All statutory declarations must be signed or initialled on each page then signed by the declarant and witnessed by a Justice of the Peace, Commissioner for Declarations, or an authorised person before whom the declaration was made.

(Further information on the requirements for a statutory declaration in Tasmania can be located at www.justice.tas.gov.au/forms/statutory_declarations.)

The applicant and [Disinterested Person](#)(s) should address and provide for the following matters as may be applicable in their statutory declaration, and also refer to any other matters which are considered pertinent to the claim (noting in particular the matters set out in section 1.2 of this Guide):

- age of declarant;
- relationship to applicant;
- their means of knowledge of the matters to which he/she is declaring;
- whether they understand the [True Owner](#) of the land to be under a disability or not (and the means of how such knowledge was obtained);
- the circumstances under which and the time at which possession commenced to the best of the declarant's knowledge and belief;
- the manner and extent to which the land has been occupied and used;
- the manner and extent to which the land has been enclosed;
- what improvements (if any) exist on the subject land, when and by whom (or on whose behalf) they were constructed and who has maintained and repaired them during the relevant period;
- what fences (if any) exist on the subject land, when and by whom (or on whose behalf) they were constructed, where exactly they are located and who has maintained and repaired them during the relevant period;
- whether or not there was any acknowledgment of ownership, or payment of rent or of any other payment in respect of the land, to any person by the applicant (or the applicant's predecessors in possession if relevant) during the relevant period (which matters may be negated as relevant by the declaration);
- whether or not enjoyment of the land by the applicant was by force or secretly or by written or oral agreement made before or during the relevant period (which matters may be negated as relevant by the declaration);
- detail who has been paying council rates for the subject period (with documentation from the relevant council being annexed to the declaration); and

- provide exact details of the land being claimed (with an appropriate plan of the subject land to be annexed to the declaration) and relevant evidence (and annexing of Council documentation) as to the matters set out in section 1.4 of this Guide. Note also, that a survey plan must be lodged in support of the application as provided by section 138W(7) of the Act, unless the Recorder otherwise directs – see below at 2.2.

A statutory declaration from or on behalf of the applicant must be provided which declares when and by what means notices were given and include:

- the original of the full page of the newspaper containing the advertisement;
- a copy of the dated notice posted on the land; and
- copies of any other notices given.

Such statutory declaration may comprise a separate declaration from that referred to above or form part of an overall single statutory declaration by the applicant.

Note: the applicant's legal practitioner may provide a statutory declaration where they have made enquiries to Council or acted on behalf of the applicant in giving notices, advertising or searching for the [True Owner](#).

2.2 Necessity for Plan of Survey – Section 138W(7) of the Act

A plan of survey of the subject land is required in support of an application.

Cases where an application might be accepted without survey **are exceptional** and at the discretion of the Recorder.

Dispensation may usually only occur in the following situations:

- when there is sufficient recent registered survey information to establish that the whole of an existing folio or existing surveyed lot is occupied by the applicant; or
- when the subject land is the whole of a folio or existing surveyed lot surrounded by registered land of which the applicant is registered proprietor; or
- when the subject land is surrounded by roads, railways or reserves of the Crown.

The Recorder does not consider LISTmap extracts and aerial photography as sufficient evidence by itself of occupation, or as to the age and nature of any relevant fencing and improvements, nor are mapped cadastral boundaries taken as authoritative by themselves.

If the applicant's surveyor determines that the prospective applicant is in possession of the whole of the land in the subject folio, although that of itself does not determine assessment of the application and its potential success, then dependent upon the information provided in support of the application, the Recorder may (at the Recorder's discretion) be prepared to dispense with the need to lodge a plan of survey provided that a report is furnished from a registered land surveyor.

The report must be in the form of Survey Information Only (SIO) Survey Notes based on field inspection, or as part of the report comprised in the survey notes of a plan of survey of any other parts of the land claimed.

The report must verify that the land of which the applicant claims to be in possession is in fact the whole of the land comprised in the relevant folio. The report should provide information as to enclosure of the land, fencing or boundary demarcation along or in the vicinity of the boundaries of the land comprised in the folio, confirming that any such features do in fact define the boundaries of the land comprised in that folio, and that there is no evidence on the ground of use by others.

The report should also provide information as to the nature and location of any improvements on the land and the access to the subject land.

Dispensation from the need to lodge a plan of survey in that instance would be subject to review as the facts of the case are established.

Where the application is for only *part* of the land in a folio, the new boundaries must be established by survey. The plan of survey evidences the boundaries of the land actually adversely occupied, defining the extent of the land to which the estate of the registered proprietor is claimed to be extinguished.

The plan needs to define the land to which title will issue if the application is successful.

Where an application will result in a residue of registered land remaining, a balance plan must be lodged with a plan of survey.

Dispensation from the need to lodge a plan of survey may be requested by addressing a letter to the Section Manager, Plan Services, detailing the circumstances in which the applicant believes a survey is not required. **This should be done before a formal application is lodged.**

Any advice received regarding dispensation is subject to review as the facts of the case are established throughout the entire application process.

3. PROCESS OF AN APPLICATION

3.1 Lodgement

The application must be made on the approved VO form (see [Annexure C](#) for form and [Annexure D](#) for form Guide).

The VO form is available upon request from the Land Titles Office or via the Tasmanian Online Land Dealings (TOLD) system (accessed via www.thelist.tas.gov.au) and must not be tampered with including alteration. Annexure page(s) can be used if required.

The original application must be lodged **not later than 60** days after the date of the *last* notice given (see section 138W(9) of the Act) together with the supporting evidence, the plan of survey (unless dispensation granted), a completed Notice of Change to Ownership form and the **prescribed fees**.

Current Land Titles Office Fees can be located at <https://nre.tas.gov.au/land-tasmania/land-titles-office/forms-and-fees/land-titles-office-fees>.

To assist in an efficient process for all parties it is suggested the [checklist](#) annexed to this Guide be completed and produced at time of lodgment.

The application may be rejected if the examination process reveals significant deficiencies.

3.2 Examination

Once an application is lodged, the office of the Recorder will examine the evidence presented to determine whether a claim for title by possession can proceed.

If dispensation from the need to lodge a plan of survey had been granted, it will be reviewed in light of the updated cadastral search and the documentation lodged in support of the application.

Where a plan of survey or Survey Information Only (SIO) Survey Notes have been lodged in support of the application they will be examined for compliance with plan and survey requirements including the basis of boundary determination and/or re-establishment and to interpret the evidence they provide.

Any balance portions of folios will be identified and the way they are to be dealt with will be considered.

Note: even though an applicant may appear to satisfy formal requirements of an application, each application is examined on its facts and evidence.

If the evidence is not sufficient the Recorder may reject the application or make such requisitions as the Recorder thinks fit. Failure to comply with requisitions within the period stipulated may result in the application being refused.

The application and all documents (including statutory declarations) lodged, deposited or filed in support are a public record (section 36 of the Act).

Any information in a public record shall be made available at the prescribed times, in the prescribed manner, and upon payment of the prescribed fee (if any).

3.3 Objections (by way of Caveat)

After an application has been made, objections, by way of caveat forbidding the granting of an application (sections 138Z and 138E of the Act) may be made on the approved form (CF2) available on TOLD by a person claiming an estate or interest in the land subject to an application at any time before a vesting order is made.

Once a caveat is lodged the caveator has **30 days** to lodge the grounds for the caveat in the approved form (NG2) available on TOLD. The timeframe is subject to strict legislative compliance and failure to lodge the grounds for the caveat results in the caveat lapsing (section 138E of the Act).

Note: A caveat that has lapsed or been removed under section 138E cannot be renewed by or on behalf of the same person in respect of the same interest, unless an office copy of an order extending its operation is made by the Supreme Court of Tasmania (section 138ZA of the Act).

When the grounds for the objection are lodged, they are forwarded to the applicant for a response. Once the response is provided, a determination will be made by the Recorder on whether the application can proceed.

3.4 Making an Order – Section 138X of the Act

If all formal requirements are met and the Recorder determines from the evidence provided that the application is made out, the Recorder will make an order to vest the land in the applicant's name pursuant to section 138X of the Act.

Once the order has been made it will be forwarded to the lodging party for the assessment and payment of duty (if any) to the State Revenue Office. Following the return of the stamped order to the Land Titles Office by the lodging party, a folio of the Register will issue in the applicant's name and the Certificate of Title (if any) will be sent to the lodging party of the application.

GLOSSARY OF TERMS

Disinterested Person	is one who is impartial and unbiased towards an applicant or predecessor in possession and has no interest in the land or in the outcome of the application. Note: what a 'disinterested person' means is not explicitly defined in the Act. This explanation is used in this Guide to assist in explaining the policy position of what 'disinterested person' means.
True Owner	This is not necessarily the <i>registered proprietor</i> of the land. True Owner means the person(s) who would, but for the adverse possession, be entitled to bring an action to recover the land or the person with an estate or interest in the land. Note: the term 'True Owner' is developed for the purposes of this Guide and is not a defined term in the Act.

ANNEXURE A – Notice

**DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT
TASMANIA
LAND TITLES OFFICE
NOTICE OF INTENTION TO LODGE WITH
THE RECORDER OF TITLES AN APPLICATION UNDER SECTION
138W OF THE *LAND TITLES ACT 1980* FOR A VESTING ORDER**

NOTICE is hereby given of my intention to lodge with the Recorder of Titles an Application under section 138W for an order pursuant to section 138X of the *Land Titles Act 1980* vesting title to the land below mentioned in (*applicants*)

Pursuant to section 138Z of the *Land Titles Act 1980* a caveat may be lodged by a person claiming an estate or interest in the land subject to this application before the order under section 138X is made.

AN APPLICATION for title by possession is to be lodged with the Recorder of Titles not later than 60 days after the date of the last notice given as required under section 138W(8) of the *Land Titles Act 1980*.

LAND AFFECTED:

Address:

Title Reference:

Part of Land Description (if applicable):

Area of Land:

Registered Proprietor Name(s):

SOLICITORS FOR THE APPLICANT:

(*name and address*)

ANNEXURE B – Notice (Posting on Land)

**DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT
TASMANIA
LAND TITLES OFFICE
NOTICE OF INTENTION TO LODGE WITH
THE RECORDER OF TITLES AN APPLICATION UNDER SECTION
138W OF THE LAND TITLES ACT 1980 FOR A VESTING ORDER**

NOTICE is hereby given of my intention to lodge with the Recorder of Titles an Application under section 138W for an order pursuant to section 138X of the *Land Titles Act 1980* vesting title to the land below mentioned in (*applicants*)

Pursuant to section 138Z of the *Land Titles Act 1980* a caveat may be lodged by a person claiming an estate or interest in the land subject to this application before the order under section 138X is made.

AN APPLICATION for title by possession is to be lodged with the Recorder of Titles not later than 60 days after the date of the last notice given as required under section 138W(8) of the *Land Titles Act 1980*.

LAND AFFECTED:

Address:
Title Reference:
Part of Land Description (if applicable):
Area of Land:
Registered Proprietor Name(s):

AND BEING THE LAND UPON WHICH THIS NOTICE IS POSTED

This Notice was posted on the land onday of20.....

SOLICITORS FOR THE APPLICANT:

(*name and address*)

ANNEXURE C – VO Form

TASMANIAN LAND TITLES OFFICE

Application for Vesting
 Order (Title by Possession)



Section 138W(4) Land Titles Act 1980

DESCRIPTION OF LAND		
Folio of the Register		Lot & Plan of Survey Number
Volume	Folio	

I/We
 apply for an order vesting in me/us an estate in fee simple, free from encumbrances (other than any special reservation, exception or condition in the Crown grant) in the land mentioned above and included in the above folio/s of the Register and I/we solemnly and sincerely declare that

 being the registered proprietors of that land hold the land in trust for me pursuant to section 138W(2) of the Land Titles Act 1980.

In support of my/our application I/we lodge herewith the following evidence:

Date:

Signed by the Applicant

Signed:

Witness:

.....

.....

.....
(signature, name & full postal address)

Land Titles Office Use Only

VO
 Version 1 (TOLD)

THE BACK OF THIS FORM MUST NOT BE USED
Created 01-Oct-2019 10:30AM

ANNEXURE E – Statutory Declaration

IN THE MATTER of an application by
(applicant(s))
for a Vesting Order pursuant to
Section 138W *Land Titles Act 1980*

STATUTORY DECLARATION

I, *(name, address and occupation)* do solemnly and sincerely declare that:

I make this solemn declaration under the *Oaths Act 2001*.*

Declared at *(place)*

on *(date)* before me

.....
(Justice of the Peace, Commissioner for Declarations
or authorised person)

Note: Full name, full address and the capacity (i.e. occupation title and whether signing as a Justice of the Peace or Commissioner for Declarations etc of the qualified witness must be included).

*The declaration must be made under the relevant law of the place it is made.

APPLICATION CHECKLIST I38W(4)

Lodged by: _____ **Date:** _____

It is suggested this checklist be completed, signed and produced at lodgement. The application may be rejected if the examination process reveals significant deficiencies.

- Reviewed sections 1.1-1.4 & 2.2 of this Guide.
- Notice advertised in newspaper.
- Notice posted in a conspicuous place on the land and kept so posted for not less than 30 days.
- Notice given to all persons considered to have an interest (registered or unregistered).
- Completed VO form.
- Completed lodgement form.
- Completed Notice of Change to Ownership form.
- Statutory Declaration by Applicant(s).
- Statutory Declaration(s) by disinterested person(s) which cover the entire period.
- Statutory Declaration(s) by predecessors in adverse possession (if applicable).
- Statutory declaration with full page newspaper, copy of notice posted on land and copies of notices given (either as separate declaration or as part of Applicant's other declaration with notices annexed).
- Evidence from Council pursuant to s.138U of the Act.
- Certificate from Council pursuant to s.138Y of the Act (if part of land).
- Plan of survey, survey notes, or SIO survey notes, or letter from Land Titles Office granting dispensation.
- Prescribed Fees

Signed:

DISCLAIMER

This publication may be of assistance to you but the State of Tasmania and its employees do not guarantee that it is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

The Recorder of Titles and the State of Tasmania take no responsibility with regard to any transaction that any member of the public undertakes. Seek professional advice in completing the required form(s) or making an application. Legal advice cannot be provided by the Recorder of Titles or the State of Tasmania.