

Disclosure obligations: Leases and Subleases recorded on common property folios

The Office of the Registrar General has been asked to provide clarification for conveyancing practitioners about vendor disclosure obligations for strata properties where leases are recorded on the common property folio. In particular, this issue has arisen in relation to strata schemes affected by electricity substations on common property that are the subject of leases and subleases.

The *Conveyancing (Sale of Land) Regulation 2022* requires certain documents to be attached to the contract for sale of land. Those documents are set out in Schedule 1 to the Regulation ('Prescribed documents').

For contracts relating to strata or community lots, **Item 5 of Schedule 1** requires copies of all registered deeds, dealings and instruments that **create** (or purport to create) an easement, profit à prendre, restriction on the use of the land or positive covenant that burdens or benefits all or any part of the common property or association property to be annexed. Copies of all memoranda referred to in these instruments must also be annexed.

Leases (and subleases) of common property are generally not required to be annexed to the contract as part of the vendor disclosure obligations unless they *create* any of the interests noted in Item 5 of Schedule 1. (This is distinct from any *contractual requirement* to annex a copy of a lease of a lot, such as where that lot is being sold with a tenant in occupation and the lease is being assigned).

Example:

The following is an example of the way substation leases are commonly recorded on common property titles:

6	E123XY LEASE TO THE ELECTRICITY CO PTY LIMITED OF SUBSTATION PREMISES NO. XXXX WITH AIR DUCTS SHOWN IN PLAN WITH E123XY TOGETHER WITH RIGHT OF WAY. EXPIRES 31-12-2030
*	AK9XXX LEASE OF LEASE E123XY TO SAMPLECO PTY LTD EXPIRES: SEE DEALING. CLAUSE 2.3 (b) (ii)
*	AK9YYY LEASE OF LEASE AK9XXX TO ANOTHER SAMPLECO PTY LTD EXPIRES: SEE DEALING. CLAUSE 2.3 (b) (ii)

In this example, Lease E123XY creates an easement (a right of way shown in a plan annexed to that dealing). Lease E123XY (and the plan annexed to it) would be a prescribed document under Item 5 of Schedule 1 to the Regulation and should be attached to a contract.

Sublease AK9XXX and Sub-sublease AK9YYY would only require disclosure under Item 5 of Schedule 1 if these instruments **create** (or purport to create) any of the interests referred to in that section. They would not need to be disclosed if the terms merely entitle parties to exercise rights under the existing easement (created by E123XY). Where an interest is created by a lease the interest will be identified in the lease notification recorded on the common property folio.

Note: This statement is provided for general information purposes only and should not be construed as legal advice. In all instances contracting parties are reminded to consider each of the dealings recorded on the folio of the register to determine whether these are items which require disclosure under the Regulation either as a prescribed document under Schedule 1 or to satisfy a warranty obligation under Schedule 2.