

Claiming ownership of private laneways and passageways

In certain circumstances, a person who has occupied someone else's land for 12 years can claim the ownership of that land.

This fact sheet provides details on how to claim ownership of a private laneway or passageway. It sets out:

- the types of laneways and passageways that can be claimed
- how you can have your 12 years occupation formally recognised.

It also sets out the requirements for making a claim.

Land and Property Information (LPI) is responsible for investigating and granting applications for ownership of land based on possession.

If you want to claim land other than private laneways or passageways, you should contact the LPI Customer Service Centre on T:1300 052 637. You will need to specify whether the land is Torrens title or Old system.

Status of the laneway or passageway

Before claiming ownership of a laneway or passageway, you will need to find out about its:

- ownership (whether it is private land or government land)
- title status (whether it is Old System title or Torrens title).

You cannot claim land if it is owned by the government – the Commonwealth, State, local government or any other government body. (Section 45D(2A) of the *Real Property Act 1900*).

You will also need to find out whether the land is Old System or Torrens title as different rules will apply when you are making your application.

In addition, you will need to find out whether the land you occupy is part or whole of the laneway or passageway. Once again, different rules will apply if you are claiming whole or part of the laneway.

You can get information on the title for the laneway or passageway by doing a title search. You can carry out a title search:

- in person at LPI Sydney office,
- through the LPI Online Shop <http://shop.lpi.nsw.gov.au>
- through an approved information broker or
- employ a professional adviser (a solicitor, licensed conveyancer or law stationer).

In some circumstances, it might not be clear from our records whether the laneway or passageway is owned by the government or a private person. This could occur if there was a 'common law' dedication of private land to the government. If this had occurred, the laneway or passageway may belong to the local council. Where someone is claiming a laneway or passageway, LPI will send a notice of the application to the local council.

Alternatively, before you start your occupation or your claim, you could get a letter from the local council stating that they have no interest in the land. In the case where you are claiming part of a Torrens title laneway, you must provide a letter of non objection from the local council.

Possession of the laneway or passageway for 12 years

Meaning of possession

'Possession' of land means that you are occupying and using the land you are claiming as if it were your own.

Other people may already have a right to walk or drive across the land. If so, they could have the benefit of an easement (often called a 'right of footway' or 'right of carriageway') which entitles them to go across the land without your permission. This does not mean that you have stopped occupying the land. If other people have a legal right to go across the land you cannot stop them.

If you and your neighbours cannot agree you can contact your local council, a community justice centre, see the clerk of the local court or seek independent legal advice. They may be able to give you advice on how to settle the problem.

Any questions regarding dividing fences should be directed to Law Access (Attorney General and Justice), information is provided on their website www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist_fences.html

Cooperation between neighbours

You may wish to let your neighbours know what you are doing, as LPI will serve them with notice of your application. It is not essential, but it can avoid problems.

Claiming formal ownership of the laneway or passageway

Depending on the status of the land, you will need to make either a 'primary application' for Old System land or a 'possessory application' for Torrens title land.

Old System land - primary application

If the private laneway or passageway is Old System, you will need to make a primary application to claim ownership. You should see a solicitor or licensed conveyancer to help you fill out the application and gather any evidence of your claim.

You will also need to employ a registered surveyor. The surveyor has to prepare a plan of survey that shows the boundaries of the land you are claiming. When your claim has been examined and all the requirements satisfied, then the plan will be registered at LPI as part of the primary application.

In the case of Old System land, the requirements and rules are the same whether you have possessed the whole or only part of a private laneway or passageway.

Additional requirements

In addition to the primary application form and the

plan of survey, you also need to provide:

- a statutory declaration by you setting out the history of your occupation of the land
- statutory declarations by at least two persons who know about your occupation. Their statutory declarations need to set out the history of your occupation of the land (the statutory declarations need to show that you have occupied the land for at least 12 years. The 12 years can include the time that the person who sold your property to you or any previous owner who occupied the private laneway or passageway forming a chain of ownership which in total is 12 years or more prior to the date of the application).
- any documents that prove your ownership
- old rate notices showing that you have paid the rates on the land
- names and address of the neighbouring owners and
- payment of stamp duty (you will need to contact the Office of State Revenue).

For a more detailed list of the requirements for a primary application, please see the Registrar General's Direction website <http://rgdirections.lpi.nsw.gov.au> or our fact sheet *Preparing and lodging a Primary Application or a caveat against a PA*.

Torrens title land - possessory title application

You will need to make a 'possessory application' for ownership of the private laneway or passageway if it is Torrens title. Most of the rules and requirements are the same as for primary applications but there are a few variations, depending on whether you have occupied the whole or part of the private laneway or passageway.

The requirements for all possessory applications are:

- a possessory application form that you have filled out,
- a statutory declaration by you setting out the history of your occupation of the land
- statutory declarations by at least two persons who know about your occupation. The statutory declarations need to set out the history of your occupation of the land (the statutory declarations need to show that you have occupied the land for at least 12 years. The 12 years can include the time that the person who sold your property to you occupied the private laneway or passageway)

- any documents that prove your ownership
- old rate notices showing that you have paid the rates on the land
- names and address of the neighbouring owners
- payment of stamp duty (you will need to contact the Office of State Revenue).

Additionally, you will have to provide a plan of survey. This plan will show your land plus the land that is being claimed. It will consolidate your land and the land that you are claiming. This is called a 'plan of consolidation'.

If you have occupied part of the private laneway or passageway, you must provide a letter of no-objection from the local council.

Payment of rates

It is not essential for you to pay the rates on the land you occupy but it forms part of the evidence which shows that you are occupying the land.

If you are not currently paying rates contact your local council and tell them that you want to start paying the rates, or to inquire as to who is currently being assessed for rates.

If you have paid the rates and can show the old receipts, it will make it easier for LPI to register your claim when the 12 year period is complete.

For a list of requirements for a possessory application, see the Registrar General's Direction website <http://rgdirections.lpi.nsw.gov.au/>.

Notice to neighbouring owners and others

Before LPI registers your primary application or possessory application, we will send a notice to any neighbours. We generally give 30 days for your neighbours to object.

We may also require you to advertise your claim in a local newspaper and a metropolitan daily newspaper. If there are no objections and LPI is satisfied with your application, you will get a title for the land at the end of the notice period.

Fees and other costs

Contact the LPI Customer Service Centre on T: 1300 052 637 or visit our website www.lpi.nsw.gov.au for current lodging fees for:

- primary applications
- possessory applications
- plan of survey

For the cost of preparing the necessary documents, contact a solicitor or licensed conveyancer.

For the cost of preparing a plan of survey, contact a registered surveyor.

Legislation

For relevant legislation on primary applications, see section 14 of the Real Property Act; for possessory applications, see section 45B-45G of the Real Property Act.

All NSW legislation can be viewed and downloaded at www.legislation.nsw.gov.au a service provided by the NSW Parliamentary Counsel's Office.

Legislation can also be viewed and downloaded at www.austlii.edu.au the site of the Australasian Legal Information Institute (AustLII) which provides free access to Australian legal materials.

Disclaimer

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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