

PROPERTY LAW PRACTICE

This information has been taken from Schedule 3 of the Legal Profession (Admission) Rules 2008. Each applicant for admission to the legal profession is required to provide evidence that the applicant has achieved the requisite competence in each element.

Descriptor:

An entry level lawyer should be able to convey, lease and mortgage real property. The lawyer should also be able to provide general advice in standard matters arising under local government, planning, environmental or other legislation regulating land use in that State or Territory.

Element. 1. Transferring title

Performance criteria

The lawyer has competently:

- identified the nature of the interest being dealt with properly, having regard to the applicable title system.
- prepared an appropriate contract of sale or other type of agreement and had it executed according to law and good practice.
- undertaken sufficient searches and inquiries to investigate title, any issues about land use and responsibility for outgoings.
- drafted an appropriate instrument of transfer or conveyance and had it executed and (if necessary) stamped and registered, according to law.
- obtained or given any consents to, or notifications of, the transfer or conveyance according to law.

Element. 2. Creating leases

Performance criteria

The lawyer has competently:

- made and obtained all searches and consents required by law and good practice.
- drafted a lease in a form allowed by law, reflecting the agreement between lessor and lessee and protecting their respective interests.
- arranged for the lease to be executed and (if necessary) stamped and registered, according to law.

Element. 3. Creating and releasing securities

Performance criteria

The lawyer has competently:

- made and obtained all searches and consents required by law and good practice.
- drafted an effective instrument to create or release the security, reflecting the agreement between the grantor and grantee and protecting their respective interests.
- arranged for the instrument to be executed and (if necessary) stamped and registered, as required by law.

Element. 4. Advising on land use

Performance criteria

The lawyer has competently:

- identified any legislative scheme regulating the relevant use.
- advised the client generally about processes to be followed to obtain permission for, or to object to the use, as the case requires.

Element. 5. Advising on revenue implications

Performance criteria

The lawyer has competently:

- identified the revenue implications of any transactions and advised the client accordingly.

Explanatory Note

This competency standard applies to dealings with interests in real and leasehold property, land use and securities. It must include:

- contracts for sale of land including special conditions;
- transferring title (or equivalent interest under the scheme of land title that exists in the particular State or Territory);
- creating standard commercial leases;
- creating standard residential tenancies or leases;
- creating and releasing of mortgages;
- some aspects of land use.

The competency standard includes dealings under the main system of land title operating in the jurisdiction in which the lawyer practises. For example, in Queensland it would include dealings in respect of freehold title under the *Land Title Act 1994*.

Aspects of land use might involve issues arising out of:

- town planning schemes;
- local government by-laws;
- environment and heritage legislation;
- revenue and tax legislation.

This competency standard is limited to:

- any one system of land title operating in a State or Territory;
- transactions which an entry level lawyer would be expected to perform.