

Checklist for Application for Surrender of Lease under s601AF

IMPORTANT INFORMATION FOR APPLICANTS

PLEASE READ CAREFULLY BEFORE STARTING YOUR APPLICATION

Timeframes

ASIC usually makes a decision within **60 days of receipt of all requested materials**. You need to take this timeframe into account and if necessary, re-schedule any transactions (e.g. settlement dates) to include this 60 day period. Delays occur when incomplete applications are submitted.

Please allow at least 30 days before enquiring about the progress of your application.

General Information

ASIC generally exercises its powers under the Act to deal with vested property as a last resort. If another remedy (e.g. ASIC reinstatement or State/Territory legislative provisions) is unavailable, then you may apply for ASIC to deal with the property. The cost of alternative remedies by itself is not a sufficient basis for ASIC to exercise its powers to deal with property.

Applications are considered by ASIC on a case-by-case basis and there is no guarantee the application will be successful. If ASIC requires information or material in addition to those stated in this Checklist, ASIC will advise you and allow you an opportunity to provide that information.

ASIC will not consider an application until all requirements have been satisfied. You should therefore read this Checklist very carefully and ensure you have completed it properly before submitting your application. This will minimise inconvenience and delay in receiving a decision on your application. ASIC can assist if you have any questions about the requirements. However, you need to engage a solicitor if you require legal advice.

Application Fee

A statutory fee of \$934 is payable to ASIC by EFT payment. This fee is required by law and payable regardless of whether the application is approved or not. Applications will not be considered until this fee is paid. EFT payment details will be provided to you once a complete application is submitted to ASIC and a case officer confirms it is in order to proceed.

Please note this is a non-refundable fee, therefore applicants should give thorough consideration (obtaining independent legal advice as appropriate) whether all requirements the checklist have been satisfied before paying the application fee.

Urgent applications

In very limited situations ASIC may consider the assessment of an application on an urgent basis (i.e. within a specific and shorter timeframe). However, ASIC will only do so in exceptional circumstances because this would give the urgent application priority over other applications lodged in a timely manner.

Applicants must therefore clearly demonstrate that the urgency results from factors beyond their reasonable control, that they could not have reasonably foreseen. Settlement of a contract is not a sufficient basis for urgent consideration.

APPLICANT DETAILS

Full name (if a company, include ACN):

Ph: Email:

Postal address:

1. I have read and understood the above section called "IMPORTANT INFORMATION FOR APPLICANTS"

No then do not proceed any further until you have read the important information above

Yes then proceed to Requirement 2

2. DEREGISTERED LESSEE/TENANT COMPANY DETAILS

NOTE: You can obtain relevant company details by purchasing an historical company extract via asic.gov.au. If that does not reveal the necessary information (e.g. due to the age of deregistration), then you need to enquire with the relevant State/Territory Archives Department.

a. Name of deregistered company:

b. ACN of deregistered company: c. Date of deregistration:

d. Was deregistration within the previous 10 years?

No then proceed to Requirement 3

Yes then do not proceed any further until you have enquired with ASIC's Registry Services team (online: asic.gov.au/question or ph: 1300 300 630) as to whether you are eligible to apply for ASIC reinstatement

e. Are you eligible to apply for ASIC reinstatement?

No then proceed to Requirement 3

Yes then do not proceed with this application. Instead, complete your application for ASIC reinstatement (with ASIC's Registry Services team). Upon reinstatement, the company itself can deal with the property.

3. LAND TITLES REMEDY

NOTE: Before applying to ASIC, you should contact the relevant land titles office to enquire about using the re-entry provisions. The re-entry remedy is still available despite deregistration of the lessee. Any default notice which is required to be served on the lessee can be served on the deregistered company, c/- ASIC's Property Law Group (property.law@asic.gov.au). ASIC has no objection to the land titles office removing the lease under State legislation. If required ASIC can provide you with a letter outlining its position.

Have you checked the relevant State/Territory legislation and/or enquired at the relevant Titles Office, as to whether there is a remedy/power for the Titles Office to remove the lease without ASIC's execution of a surrender of lease form?

No then do not proceed further until you have confirmed that no remedy exists under State/Territory legislation

Yes however there is no remedy under State/Territory legislation, then proceed to Requirement 4

4. SUPPORTING DOCUMENTS

Have you attached a copy, not the original, of all the following?

a. Where deregistration was in the previous 10 years, written confirmation from ASIC's Registry Services team that ASIC reinstatement is not available

No then do not proceed any further until document obtained

N/A because deregistration over 10 years ago, then proceed to Requirement 4b

Yes then proceed to Requirement 4b

NOTE: You can obtain a copy of relevant lease and title documents from the relevant State/Territory Titles Office.

b. Recent title search showing the lease registered in the deregistered company's name *NOTE: The document must be no older than 3 months*

No then do not proceed any further until document obtained

Yes then proceed to Requirement 4c

c. The lease and any variation to it

No then do not proceed any further until document obtained

Yes then proceed to Requirement 4d

d. Written confirmation by the company's former liquidator (or former director if there was no liquidator):

1) the company if it still existed would be bound to surrender the lease and

2) they have no objection to ASIC executing a surrender of lease on the company's behalf.

NOTE: Former liquidator or director details can be obtained by purchasing an historical company extract via asic.gov.au

No then outline in your statutory declaration (at Requirement 5) all your attempts to obtain their written confirmation and attach all correspondence sent

Yes then proceed to Requirement 5

5. COMMONWEALTH STATUTORY DECLARATION

a. Is your statutory declaration a Commonwealth declaration?

No then do not proceed any further until you have downloaded a template for a Commonwealth statutory declaration from the Australian Attorney-General's Department at ag.gov.au

Yes then proceed to Requirement 5b

b. Does your statutory declaration specifically:

- 1) identify the deregistered company and its ACN
- 2) confirm ASIC reinstatement is not available (if deregistration in the previous 10 years)
- 3) confirm when the lease was granted and the key terms of the lease
- 4) explain how the deregistered company defaulted under the lease and why it would have been bound to surrender the lease
- 5) confirm there are no remedies available at the Titles Office directly and the Titles Office requires a surrender of lease executed by ASIC and attach a copy of relevant advice from the Titles Office
- 6) provide the reason if any documents listed in Requirement 4a – 4d above are not attached
- 7) confirm no other party has an interest in the lease
- 8) show clearly that the urgency results from factors beyond your reasonable control that you could not have reasonably foreseen (if claiming your application is urgent).

NOTE: Please adopt the above numbering format as closely as possible

No then do not proceed any further until you have amended your statutory declaration to address all the above matters where applicable (otherwise another statutory declaration may be required)

Yes then proceed to Requirement 6

6. INDEMNITY

NOTE: The indemnity protects ASIC against claims brought against ASIC due to it surrendering the lease. If the applicant (or registered proprietor) is a company, the indemnity must be signed by each of the directors in their personal capacity and by the company either under its seal or according to s127 of the Act.

Have you fully completed and attached the indemnity signed by the applicant and the registered proprietor (if the registered proprietor is not the applicant)?

No then do not proceed any further until you have downloaded and completed the indemnity "Surrender of Lease" from asic.gov.au

Yes then proceed to Requirement 7

7. APPLICATION FEE

NOTE: This fee is required by law and payable regardless of whether the application is approved or not. Applications will not be considered until this fee is paid. This fee may increase on 1 July each year. Applications received from 1 July each year are subject to the new fee.

Have you received account details and EFT payment instruction to pay the application fee of \$934?

No please submit your application. A case officer will provide further instructions on payment once a complete application is submitted to ASIC

Yes pay application fee by EFT transfer as instructed. Please provide a copy of the EFT receipt to ASIC as evidence of payment (this is a copy of receipt/screenshot of bank transfer)

8. SURRENDER OF LEASE FORM

NOTE: If the application is successful then ASIC will execute and return the original surrender of lease form. The applicant is responsible for lodgement of the surrender of lease and payment of any registration/lodgement fees, any stamp duty or other associated costs.

a. Have you correctly inserted in the original surrender of lease form the following representative and sealing clauses:

| | |
|--|---|
| <u>Representative clause:</u> (i.e. description/name of lessee) | "The Australian Securities and Investments Commission acting under s601AF of the <i>Corporations Act 2001</i> on behalf of [<i>insert name and ACN of deregistered company</i>], a company deregistered on [<i>insert date of deregistration</i>]." |
| <u>Sealing clause:</u> (i.e. where lessee signs) | "The Common Seal of the Australian Securities and Investments Commission is affixed on behalf of [<i>insert name and ACN of deregistered company</i>] under s601AF of the <i>Corporations Act 2001</i> An Authorised Officer of the Australian Securities and Investments Commission Witness: Solicitor, ASIC, Level 20 240 Queen Street, BRISBANE QLD 4001" |

No then do not proceed further until both those clauses are inserted properly on the surrender of lease form

Yes then proceed to Requirement 8b

b. Have you enclosed an express-post envelope?

No I would like the executed surrender of lease to be returned by regular/standard post

Yes I would like the executed surrender of lease returned via a faster postal method

You are now ready to submit your application

HOW TO SUBMIT YOUR APPLICATION

All requirements outlined in the Checklist should be forwarded in digital format (i.e. PDF) as a single PDF attachment to property.law@asic.gov.au. If we require any further information or original documentation previously received electronically, we will advise you.

Please direct any initial questions to property.law@asic.gov.au ensuring the following information is included:

- name and ACN of the deregistered company
- evidence of vesting (eg. Title search, shareholdings/bank statements)