

Checklist for Application for Discharge/Release of Mortgage 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.

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 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. Are you a former director of the company?

No ☐ then proceed to Requirement 3

Yes ☐ then proceed to Requirement 2e

e. Was deregistration recent (e.g. 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 as that may be a more cost-effective and/or convenient remedy.

f. 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: In some jurisdictions it might not be necessary for a discharge/release of mortgage to be executed by ASIC. ASIC has no objection to the Titles Office Registrars using any of their powers to remove a mortgage registered in a deregistered company's name, without ASIC's execution of a discharge/release. If required by the Titles Office, ASIC can provide you with a letter confirming its position. If the property is in NSW, SA or TAS you must try the remedy listed below, before applying to ASIC for a discharge/release. If the remedy below is available then it will save you time and expense as you will not need to proceed with this application to ASIC.

- NSW – section 32(6) of the Real Property Act 1900 (NSW)
- SA – sections 147 and 148A of the Real Property Act 1886 (SA)
- TAS – sections 90(1) and 91 of the Land Titles Act 1980 (Tas)

a. Is the property in NSW, SA or TAS?

No ☐ then proceed to Requirement 4

Yes ☐ then proceed to Requirement 3b

b. Have you tried using the relevant remedy identified above?

No ☐ then do not proceed any further until you have attempted to use that remedy

Yes ☐ however it was not available because.....then proceed to Requirement 4

4. SUPPORTING DOCUMENTS

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

a. Where deregistration is recent (e.g. in the previous 10 years) and you are a former director of the company, 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 not recent (e.g. over 10 years ago), then proceed to Requirement 4b

Yes ☐ then proceed to Requirement 4b

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

b. Recent title search showing the mortgage 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 mortgage and any variation to it
 No ☐ then do not proceed any further until document obtained
 Yes ☐ then proceed to Requirement 4d
- d. Proof the obligation secured by the mortgage was fully satisfied (e.g. principal and interest fully paid) at deregistration
 No ☐ then explain why in your statutory declaration (at Requirement 5) and proceed to Requirement 4e
 Yes ☐ then proceed to Requirement 4e
- e. Original certificate of title *NOTE: this must be a certified copy*
 No ☐ then if land outside Queensland, do not proceed any further until a certified copy is obtained
 N/A ☐ then explain why in your statutory declaration (at Requirement 5) e.g. the land is in Queensland, the original is held by the first mortgagee, and proceed to Requirement 4f
 Yes ☐ then proceed to Requirement 4f
- f. Written confirmation by the company's former liquidator (or former director if there was no liquidator):
 1) the obligations under the mortgage have been fully satisfied
 2) the company if it still existed would be bound to discharge/release the mortgage and
 3) they have no objection to ASIC discharging/releasing the mortgage 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 why ASIC reinstatement is not available (if you are a former director of the company)
 3) confirm when the mortgage was granted
 4) confirm the obligation secured by the mortgage (e.g. how much is the mortgage debt)
 5) state when, to the best of your recollection, the obligation was satisfied (e.g. when was the mortgage repaid)
 6) confirm how the obligation was satisfied (e.g. the mortgage was repaid by monthly instalments/lump sum)
 7) explain why a discharge/release was not obtained from the mortgagee at the time the obligation was satisfied, or at least before the company was deregistered, to the best of your knowledge
 8) confirm there are no remedies available at the Titles Office directly and the Titles Office requires a discharge/release of mortgage executed by ASIC and attach a copy of relevant advice from the Titles Office
 9) state who is in possession of the original certificate of title
 10) provide the reason if any documents listed in Requirement 4a – 4f above are not attached
 11) 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 discharging/releasing the mortgage. 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 "Release or Discharge of Mortgage" 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 attached a cheque or money order payable to ASIC for \$934, being payment of the application fee?

No ☐ then do not proceed any further until you have attached payment of the application fee

Yes ☐ then proceed to Requirement 8

8. DISCHARGE/RELEASE OF MORTGAGE FORM

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

a. Have you correctly inserted in the original discharge/release of mortgage form the following representative and sealing clauses:

<u>Representative clause:</u> (i.e. description/name of mortgagee)	"The Australian Securities and Investments Commission acting under s601AF of the <i>Corporations Act 2001</i> on behalf of [insert name and ACN of deregistered company], a company deregistered on [insert date of deregistration]."
<u>Sealing clause:</u> (i.e. where mortgagee signs)	"The Common Seal of the Australian Securities and Investments Commission is affixed on behalf of [insert name and ACN of deregistered company] 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 discharge/release of mortgage form

Yes ☐ then proceed to Requirement 8b

b. Have you enclosed an express-post envelope?

No ☐ I would like the executed discharge/release to be returned by regular/standard post

Yes ☐ I would like the executed discharge/release returned via a faster postal method

You are now ready to submit your application

HOW TO SUBMIT YOUR APPLICATION

ASIC prefers to receive documents in digital format (i.e. PDF) except for the original discharge/release of mortgage form which requires ASIC to affix its seal and the application fee.

Please post the original discharge/release form, application fee and if applicable, an express-post envelope to:

ASIC Property Law Group
GPO Box 9827
MELBOURNE VIC 3001

Attach all other materials to this Checklist and email to property.law@asic.gov.au. If we require the original of a document previously received electronically, we will advise you.

Please direct any initial questions to property.law@asic.gov.au or ph: 1300 300 630.