



BERTH TRANSFER

FREQUENTLY ASKED QUESTIONS

Welcome to RQYS Marina

The Royal Queensland Yacht Squadron is home to one of Queensland's oldest and most prestigious recreational sailing and cruising clubs. Formed in 1885, the Squadron has a long history of supporting and encouraging sailing as a sport that continues on today.

The following FAQs are designed to provide preliminary information in relation to the process for the sale or purchase of a berth in our marina. The legal process for transfer of the berth interests is handled by our solicitors Thomson Geer. If you have queries that are not covered below, please contact the marina office on (07) 3393 3554 or at marinaadmin@rqys.com.au.

Marina structure and lease information

How is the marina structured?

The RQYS marina is actually comprised of two different marinas. Marina 1 comprises berths in rows A to P. Marina 2 comprises berths in rows R to Z.

What am I buying?

The tenure of berths at RQYS marina is leasehold tenure.

Title to berths in RQYS Marina 1 is based on the following lease interests:

1. A Head Lease of the overall water area from The State of Queensland (represented by The Department of Transport and Main Roads) (**DTMR**) to Manly Operations Pty Ltd expiring 31 December 2028 (registered lease 713488863);
2. A Sub-Lease of the area of each individual berth from Manly Operations Pty Ltd to the owner expiring 30 December 2028 (Sub-Lease 1);
3. A Head Lease of the overall water area from The State of Queensland (represented by The Department of Transport and Main Roads) (**DTMR**) to RQYS Nominees Pty Ltd commencing on 1 January 2029 and expiring on 31 December 2051 (registered lease 715984531); and
4. A Sub-Lease of the area of each individual berth from RQYS Nominees Pty Ltd to the owner expiring 31 December 2041 (Sub-Lease 2).

The purchaser takes a transfer of Subleases 1 and 2 from the Seller.

Title to berths in Marina 2 is based on the following lease interests:

1. A Head Lease of the overall water area from The State of Queensland (represented by The Department of Transport and Main Roads) (**DTMR**) to R.Q.Y.S. Nominees Limited; and
2. A Sub-Lease of the area of each individual berth from R.Q.Y.S. Nominees Limited to the owner.

The purchaser takes a transfer of the Sublease from the Seller.

How long does the lease go for? Is there an option?

Marina 1 berth leases expire in 2041. Marina 2 berth leases expire in 2035. There are no options. Once the subleases expire, RQYS may be offered the opportunity to take a further headlease of the marina 1 and or 2 water areas. At that time, RQYS Nominees Pty Ltd may offer further subleases to berth owners.

Sale and purchase process

What is the process for the transfer of the marina berth leases?

- 1 The Seller can request that RQYS list the berth for sale on the RQYS website. Interested parties contact the marina office and provide their details which RQYS will pass onto the Seller. Please note that the marina office does not operate as a brokerage and has no role in facilitating the sale other than providing contact details. The parties negotiate directly to reach agreement on the sale price and any other commercial terms.
- 2 Once the buyer and seller have come to agreement on terms of sale, a Berth transfer notification form should be completed by both parties and emailed to our solicitors Thomson Geer at rqys@tqlaw.com.au. The berth transfer notification form can be found here.
- 3 RQYS's solicitors, Thomson Geer, will then notify RQYS of the sale and confirm that all is in order for the berth transfer to proceed. Once confirmed, Thomson Geer will prepare the necessary documents to effect the transfer and send the forms to both the seller and buyer. It is the responsibility of the seller and buyer to arrange for the documents to be signed and returned to Thomson Geer.
- 4 Thomson Geer will arrange for the documents to be signed by RQYS entities where required.
- 5 Once fully signed, Thomson Geer will arrange for the documents to be stamped and lodged.
- 6 Once the transfer has been registered at the titles office, an original copy of each stamped original document will be returned to each party.

Do I need my own lawyer for this transaction?

You may appoint lawyers if you wish. Thomson Geer provides standard documentation for the transfer and RQYS consent which suits the vast majority of transfers. The documents provided are standard documents which have been approved by DTMR and required pursuant to the terms of the headleases. Of course, if you wish to add special conditions or have any particular requirements you should obtain your own independent advice.

What is the role of Thomson Geer?

Thomson Geer acts for RQYS.

It is a requirement under the terms of the berth subleases that the Seller obtain RQYS consent before the transfer of the interests in the berth sub subleases can be effected. RQYS is required to have the parties enter into certain covenants in favour of the State and also in favour of RQYS. Thomson Geer prepares the consent documents required.

Most commonly, parties are not represented by a lawyer. Unless the parties intend to have their own lawyers involved, Thomson Geer will also prepare a short Contract and transfer form to facilitate the transaction and will attend to stamping and lodgement of the transfer on the title on behalf of the parties.

It is important to note that Thomson Geer acts for RQYS and so cannot provide you with any legal advice in respect of the transaction.

The purchaser (assignee), will be responsible for payment of Thomson Geer's costs.

Transaction costs

What are the costs associated with the transaction for the purchaser?

Apart from the purchase price payable to the Seller, the purchaser will also be required to pay the following costs:

1. Thomson Geer's legal fees for drafting the documents and attending to the legal aspects of the transfer.
Currently the standard fee for the transfer of one berth is \$1,250 plus GST and disbursements.
There are additional fees for deceased estate matters or where Sublease 2 is unregistered. For more information please ask at the Marina office.
2. Transfer duty (also called stamp duty) on the purchase price.
Duty is calculated on the purchase price. The current rates of duty are as follows:

| Dutiable value | Duty rate |
|----------------------------------|---|
| Not more than \$5,000 | Nil |
| More than \$5,000 up to \$75,000 | \$1.50 for each \$100, or part of \$100, over \$5,000 |
| \$75,000 to \$540,000 | \$1,050 plus \$3.50 for each \$100, or part of \$100, over \$75,000 |

3. Registration fees and lodging fees to lodge the transfer with the Titles Office.
The registration fees are currently \$394.00 for berths in marina 1 or \$197.00 for berths in Marina 2.
The lodging fee is currently \$40 plus GST.

What are the costs associated with the transaction for the Seller?

RQYS charges an administration fee of \$375.00 including GST for facilitating the administrative aspects of the berth transfer process. This amount will be invoiced to the Seller once the transaction has been finalised at the time when RQYS conducts an adjustment of the half yearly levies.

When does the purchaser pay the purchase price to the Seller?

This is to be determined between the parties, however we see most commonly that the payment is made at the time that both parties have signed the documentation. The manner and timing of payment is a matter between the parties.

What about GST?

That is a matter for the parties to determine. The Seller should advise the purchaser as to whether GST is applicable. The parties are encouraged to obtain their own legal or accounting advice for those concerns.

What are the ongoing costs of holding the berth?

There are annual levies payable by berth lessee. The levies cover costs of upkeep of the marina, headlease rent, dredging, running costs and other costs as outlined in the lease. Levies are rendered in April and September each year.

For an estimate of levies that apply to the berth you propose to purchase, please contact the marina office.

Purchasing entity

What is the difference between a joint tenancy and tenancy in common?

If the purchaser is two or more individuals, you will be asked to advise whether you wish to hold the berth sublease interests as joint tenants or tenants in common.

Where two people hold their interests as joint tenants, upon one person's death, their interest in the berth automatically passes to the other person. However in the same circumstances for tenants in common, the deceased's interest in the leases would form part of their estate and be dealt with in accordance with their will.

When is a guarantor required?

A guarantor is required if:

1. The purchaser/assignee is a company;
2. The purchaser/assignee is an individual or corporate trustee acting on behalf of a trust or superannuation fund; or
3. Where the purchaser/assignee is an individual who is not a fully paid member of RQYS.

It is a requirement of the headlease that a berth is held by, or guaranteed by a person who is a fully paid member of RQYS.

Do I need to be an RQYS member?

Yes. It is a requirement that berth holders must be a fully paid RQYS member or if the berth holder is not an individual (i.e. a company or trustee) the obligations of the berth holder must be guaranteed by a person who is a fully paid member.

The purchase is on behalf of a trust – is there anything extra required?

Yes, Thomson Geer will need a copy of the trust deed (and any variations).

General use of the berth

What rules apply to the use of the berth?

In addition to the terms of the subleases, you will also need to abide by all club and marina rules and regulations.

How do I go about putting my berth in the letting pool?

Please contact the marina office and they will provide you with all of the relevant information.

Are there any restrictions on my use of the berth?

Yes, there are maximum beam and length restrictions on any boat that can be moored in the berth. You should check those restrictions prior to proceeding. The metes and bounds of the berth and vessel are listed in the individual subleases.

You may not use the berth for commercial purposes – i.e. you may not run a business from the berth. Berths are for mooring of boats for private recreational use only.

There is a prohibition on living aboard your boat.

Do I need to have insurance?

Yes, you should have public liability insurance and also coverage for damage to the boat and your property.