

Future options for non-represented parties and certificates of title

Consultation Paper



Land Use Victoria – September 2021



Environment,
Land, Water
and Planning

OFFICIAL

Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



© The State of Victoria Department of Environment, Land, Water and Planning 2021



This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the

Department of Environment, Land, Water and Planning (DELWP) logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

Photo credit

Damien Stoikos

Accessibility

If you would like to receive this publication in an alternative format, please telephone the DELWP Customer Service Centre on 136186, email customer.service@delwp.vic.gov.au, or via the National Relay Service on 133 677 www.relayservice.com.au. This document is also available on the internet at www.delwp.vic.gov.au.

Contents

1. Overview of the consultation process	2
Key stakeholders	2
2. Call for submissions	3
How to make a submission	3
Use of submissions	3
3. Introduction	3
4. Non-represented parties	3
What is proposed?	3
Rationale for the proposal.....	4
Options.....	4
How it will work.....	5
Questions	6
5. Future of certificates of title	6
What is proposed	6
Rationale for the proposal.....	7
Options.....	8
How it will work.....	9
Questions	10

1. Overview of the consultation process

Land Use Victoria (LUV) is committed to open, accountable and responsive decision-making, informed by effective communication and consultation with key stakeholders.

This Consultation Paper sets out specific proposals related to possible changes to transaction types that can be lodged by non-represented parties and the possible phasing out of remaining paper certificates of title.

This paper is available at [Consultation papers \(land.vic.gov.au\)](https://land.vic.gov.au) and will be emailed to key stakeholders.

Stakeholders are invited to make written submissions to LUV by **1 November 2021** (details of how to make a submission are on page 3).

LUV may convene an information session depending on stakeholder submissions. Details of any information session (time, location and advice on how to RSVP) will be emailed to key stakeholders.

Following consideration of stakeholder feedback, LUV will respond to submissions.

The proposed policy changes outlined in this Consultation Paper reflect LUV's preferred approach. The Victorian Government will not reach a final position on these issues until after the consultation process has concluded.

The timetable for the consultation process is set out below:

Paper topic	Release date	Closing date for submissions from stakeholders	Information session
Consultation Paper (this paper)	1 September 2021	1 November 2021	Need and date to be confirmed
Response to submissions from stakeholders	3 December 2021	N/A	N/A

Key stakeholders

Relevant stakeholders include, but are not limited to:

- conveyancers including the Victoria Division of the Australian Institute of Conveyancers
- lawyers including the Law Institute of Victoria
- financial institutions and other mortgage providers including the Australian Banking Association, Australian Finance Industry Association, Customer Owned Banking Association and the Mortgage & Finance Association of Australia
- professional indemnity and fidelity fund insurers, including the Legal Practitioner's Liability Committee;
- information and search brokers
- real estate agents, including the Real Estate Institute of Victoria
- property developers
- Property Council of Australia
- owners corporation managers including the Strata Community Association (VIC), and
- government departments and agencies, including Consumer Affairs Victoria.

2. Call for submissions

Land Use Victoria invites your written comments on this Consultation Paper.

How to make a submission

Submissions should be emailed to luv.consultation@delwp.vic.gov.au.

There is no particular format that submissions need to follow. However, you may wish to address the consultation questions listed in this paper at sections 4 and 5.

The closing date for submissions is **1 November 2021**.

Use of submissions

Land Use Victoria will treat all submissions received as public documents, unless requested otherwise. Land Use Victoria reserves the right to make submissions (in part or in full) available to other parties and the general public.

3. Introduction

This Consultation Paper proposes options for the next step in the transformation towards 100 per cent digital lodgment of land transactions in Victoria. None of the options will require legislative changes.

In November 2013, LUV published the Consultation Paper *“Aligning paper and electronic conveyancing requirements”*. At the time, only a small percentage of conveyancing transactions were completed electronically. Today, 97 per cent of transactions are lodged electronically. This is expected to further increase as the final tranche of transactions become operational in the near future.

This Consultation Paper presents options to accommodate the small number of conveyancing transactions that may still need to be completed in paper in the future, where parties are non-represented. This paper also considers the options available to deal with certificates of title for all property transactions, both paper and electronic, so that the integrity of the Register of land is maintained.

4. Non-represented parties

What is proposed?

A non-represented party is a party to a conveyancing transaction who is not represented by a conveyancer or lawyer. Non-represented parties include individuals, commercial or government entities, owners corporation managers, non-bank lenders and property developers.

In order to transact with land, a non-represented party is required to have their identity verified, and the execution of their paper conveyancing transaction witnessed, by Australia Post. These measures ensure that the identity of the party transacting is verified by an approved third party and the risk of unauthorised activity is reduced.

Currently, applications lodged by individuals represent only 0.2 per cent of total volumes. In the majority of these applications there are significant technical flaws. Required documents are not lodged or are misplaced, forms are completed incorrectly, or verification of identity has not been carried out. Significant work and cost are required to either ensure an application is lodged in registrable form or further applications lodged to remedy errors.

To improve efficiency, the Registrar of Titles (Registrar) seeks to reduce the range of applications that can be made by a non-represented party. The types of applications are limited in complexity and do not necessarily require technical expertise.

Under the proposal, the following transaction types will continue to be available to be lodged by non-represented parties:

- Discharge of mortgage (must be lodged by the mortgagee)
- Survivorship application
- Transfer – non-monetary e.g. gift, change of manner of holding, devise under a will
- Legal personal representative application
- Caveat
- Withdrawal of caveat

These transaction types represent approximately 70 per cent of the current volume lodged by non-represented parties.

Legislative amendment will not be required to support this proposal. There are exceptions in the Registrar's Requirements for Paper Conveyancing Transactions that allow non-represented parties to lodge any transaction type. To implement this proposal, an amendment of the Registrar's Requirements for Paper Conveyancing Transactions will be necessary. The amendment will mean that non-represented parties will only be able to lodge the six transaction types listed above. The amendment will take effect from a specified date.

Rationale for the proposal

The proposed changes are needed to create greater efficiencies and to reduce the risk of unauthorised or inappropriate paper conveyancing transactions being lodged. Lodgments by non-represented parties tend to be more frequently refused or requisitioned (approximately 70 per cent), increasing the cost to customers and processing time taken by each application.

Options

Option 1 – Do nothing and continue to permit non-represented parties to lodge all transaction types

This option does not support a fully digital system for electronic conveyancing transactions, nor does it create any process efficiencies.

Advantages:

- no procedural changes to internal and external processes, and
- no business system changes.

Disadvantages:

- it does not support electronic conveyancing and removal of paper certificates of title
- ongoing resources will be required to maintain current levels of production, and
- there will likely be pressure to introduce high cost/low impact process improvements including increasing the amount of customer service provided to non-represented parties.

Option 2 – Remove the ability of non-represented parties to undertake their own transactions with land

This option supports a fully electronic system for electronic conveyancing transactions, creates efficiencies, reduces the risk of unauthorised or inappropriate transactions and addresses the resource impost on industry and the Registrar. However, it does not balance the needs of non-represented parties.

Advantages:

- it supports a fully digital system for electronic conveyancing
- the risk of unauthorised or inappropriate transactions is reduced, and
- it increases the efficiency in land transactions due to the involvement of professionals.

Disadvantages:

- anyone transacting with land must be represented by a conveyancer or lawyer for all transactions in land, and
- there will be an increase in cost for parties who would be required to use a conveyancer or lawyer.

Option 3 – Restrict the classes of transaction types that may be lodged by a non-represented party

This option creates efficiencies, reduces risk of unauthorised or inappropriate transactions and addresses the resource impost on industry and government. This option also balances the needs of non-represented parties by permitting them to lodge the most common transaction types.

Advantages:

- it facilitates a move towards a completely electronic environment
- it reduces the risk of unauthorised or inappropriate transactions
- it creates efficiencies as a conveyancer or lawyer will need to be used for more complex transactions, and
- inquiries, refusals and requisitions will reduce.

Disadvantages:

- parties must be represented by a conveyancer or lawyer for the remaining transactions types, and
- increased cost for parties who would be required to use a conveyancer or lawyer for the remaining transactions types.

Preferred option – option 3

Option 3 is the Registrar's preferred option. Legislative amendment will not be required to support this option. The exceptions in the Registrar's Requirements for Paper Conveyancing Transactions will need to be amended to limit the transaction types that a non-represented party can lodge, from a specified date. A suitable grace period will be provided during which non-represented parties will be able to lodge any transaction type.

How it will work

A non-represented party will continue to need to have their identity verified, and the execution of their paper conveyancing transaction witnessed, by Australia Post. For example, in a survivorship application, the applicant (the surviving proprietor) will be required to have their identity verified at Australia Post, execute the survivorship application and have their signing witnessed by Australia Post before lodging the survivorship application for registration.

Questions

- 4.1: Are the proposed transaction types for non-represented parties appropriate? If not, why not?
- 4.2: Will the proposed requirements for non-represented parties assist conveyancers and lawyers in dealing with non-represented parties? If not, why not?
- 4.3: Are there any other requirements that should be placed on non-represented parties? If so, what?

5. Future of certificates of title

What is proposed

It is the Registrar's preference to phase out paper certificates of title and replace them with electronic certificates of title. It was proposed in the [2013 Consultation](#) that this would occur when other safeguards including verification of identity, client authorisation, certifications and priority notices were fully implemented, and the majority of conveyancing transactions are being completed electronically. These conditions have now been met.

The preferred solution is already supported by legislation.

The *Transfer of Land Act 1958* currently enables the Registrar to not produce a certificate of title under certain circumstances, as set out in sections 27B and 44O and to declare certain classes of certificate of title void under section 27BAA:

27B Certificates of title

(7B) *The Registrar is not required to produce a certificate of title for a folio of the Register if satisfied that it is appropriate in the circumstances to not produce a certificate of title.*

44O Powers of Registrar

(3) *Nothing in section 27B requires the Registrar to produce a certificate of title in respect of the registration of a registry instrument.*

27BAA Declaration voiding certificates of title

- (1) *The Registrar, by notice published in the Government Gazette, may declare certificates of title or classes of certificate of title to be void and of no effect.*
- (2) *A declaration published by notice under subsection (1) takes effect from the date specified in the notice that is not earlier than the date of publication of the notice in the Government Gazette.*
- (3) *Any certificate of title, or a certificate of title in a declared class of certificates of title, inexistence immediately before the date specified in the notice referred to in subsection (1) is, on and after that date, void and of no effect.*

The following declarations have been gazetted under section 27BAA:

23 March 2019	Voiding of paper certificates of title held by AMP Bank Limited, HSBC Bank Australia Limited and Credit Suisse AG.
24 February 2018	Voiding of paper certificates of title held by Gateway Credit Union Ltd, Community CPS Australia Ltd, Credit Union Australia Ltd, Bank of Queensland Ltd, Macquarie Bank Ltd and Suncorp-Metway Ltd.
22 July 2017	Voiding of paper certificates of title held by Auswide Bank Ltd, Bendigo and Adelaide Bank Limited, Rural Bank Limited and Teachers Mutual Bank Limited.
15 January 2017	Voiding of paper certificates of title for common property folios as defined in section 3 of the <i>Owners Corporation Act 2006</i> .
22 October 2016	Voiding of paper certificates of title held by Australia and New Zealand Banking Group Ltd, Commonwealth Bank of Australia, National Australia Bank Ltd and Westpac Banking Corporation.

Rationale for the proposal

Function of the paper certificate of title in the conveyancing transaction

For a typical paper conveyancing transaction to proceed, the relevant certificate of title must be produced. The certificate of title must also accompany the instruments lodged for registration at Land Use Victoria.

In the past, the paper certificate of title was seen to perform a number of functions including:

- a means of authenticating the relinquishing party in a transaction
- evidence of the right to deal with the land
- acting as a baton to pass control of the paper certificate of title from one party to another at the time of settlement (possession of this unique baton served to protect the interests of the incoming purchaser and mortgagee between settlement and lodgment by ensuring that another dealing transferring that estate or interest does not gain priority)
- acting as a safeguard against multiple sales of the same parcel of land, and
- acting as a confirmation of registration of a conveyancing transaction.

With the implementation of mandatory requirements for verification of identity and right to deal, client authorisations, certifications and the availability of priority notices, the paper certificate of title is no longer required for the above functions. The use of these safeguards has created far greater certainty and security for the Victorian community and has effectively overridden the need for paper certificates of title.

Fraudulent transactions have typically involved someone with access to the paper certificate of title who purports to be the registered proprietor producing the paper certificate and forging the proprietor's signature. Without the safeguards, disproportionate reliance is placed on production of the paper certificate of title to demonstrate authentication of the relinquishing party and evidence of an entitlement to deal with the land. With the safeguards in place, the only function the paper certificate of title serves is to demonstrate that the person holding the certificate of title has access to it.

In numerous instances, transactions have been impeded because the person who is supposed to be holding the paper certificate of title cannot find it. They are then required to make an application to the Registrar to seek a new certificate of title before transacting with the land. This requires evidence to the satisfaction of the Registrar that the paper certificate of title has been lost. Depending on the circumstances, these assessments can take a significant amount of time and can delay transactions.

On average, 150,000 paper certificates of title are printed each year equating to 1,125 kilograms of paper and 42,750 kilograms of carbon to produce, print and transport paper certificates of title to the intended recipient.

At present, electronic certificates of title make up approximately 60 per cent of all live certificates. This indicates that there is widescale industry acceptance of electronic certificates of title.

Process efficiencies

Removal of paper certificates of title will create the following efficiencies:

- a fully digital system for electronic conveyancing can be implemented
- conversion of paper certificates of title to electronic will not be required before parties are able to transact with land
- it eliminates industry's transportation, storage and retrieval costs for paper certificates of title
- it eliminates government's production, transportation and storage costs for paper certificates of title, and
- it eliminates the costly process of replacing lost paper certificates of title.

The Registrar's view is that the removal of remaining paper certificates of title will create significant efficiencies for industry and Land Use Victoria and bolster the integrity of the Register as a result of the additional safeguards implemented, as described above.

Options

Option 1 – Do nothing and retain the paper certificate of title

This option does not support a fully digital system for electronic conveyancing transactions, nor does it create any process efficiencies.

Advantages:

- no procedural changes to internal or external processes, and
- no business system changes.

Disadvantages:

- it is not practical for electronic conveyancing
- the environmental impact of production and transportation of paper continues
- ongoing resources will be required to maintain current levels of production
- continued dual processes for paper and electronic conveyancing, and
- there will likely be pressure to introduce high cost/low impact process improvements.

Option 2 – Remove both paper and electronic certificates of title

The nomination of certificates of title to transactions will no longer be required. The onus will be on the subscriber to ensure that transactions are appropriate.

Advantages

- it supports a fully digital system for electronic conveyancing
- it simplifies the conveyancing process
- only known and verified parties will be able to transact with land
- it eliminates industry's transportation, storage and retrieval costs for paper certificates of title
- it eliminates government's production, transportation and storage costs for paper certificates of title, and
- it eliminates the costly process of replacing lost paper certificates of title.

Disadvantages

- new business rules would be required to replace nomination and control of electronic certificates of title
- significant business practices and business system changes will be required for industry and Land Use Victoria
- it reduces security provided by electronic certificate of title control and the nomination process, and
- it reduces certainty around right to deal.

Option 3 – Remove paper certificates of title and retain electronic certificates of title for all folios

Paper certificates of title will cease to have effect and all folios will have an electronic certificate of title.

Advantages:

- if a party with control of the electronic certificate of title is not a party to a transaction where a nomination is required, they have oversight over the transaction. For example, a first mortgagee will have oversight of a second mortgage or a creation of easement.
- it supports a fully digital system for electronic conveyancing
- it simplifies the conveyancing process
- it eliminates industry's transportation, storage and retrieval costs for paper certificates of title
- it eliminates government's production, transportation and storage costs for paper certificates of title
- it eliminates the costly process of replacing lost certificates of title
- it eliminates the possibility of unauthorised or inappropriate transactions by use of a paper certificate of title, and
- it creates efficiencies and a consistent process for paper and electronic conveyancing transactions.

Disadvantages

- members of the public may value having the paper certificate of title, and
- loss of the ability to create informal security arrangements using the paper certificate of title.

Preferred Option

Option 3 is the preferred option. Legislative amendment will not be required to support this option. Electronic certificates of title will be created for all folios that do not currently have an electronic certificate of title. Paper certificates of title will be declared void on the date specified in the government gazette and will have no relevance from that date.

Where electronic control of the certificate of title cannot be held by a subscriber, control will be held by the Registrar. The Registrar will hold control of the electronic certificate of title until a subscriber acting for the party entitled to control of the certificate of title applies to take control. This will typically be done in anticipation of a transaction. Once the transaction is completed, registered proprietors of unmortgaged property will have the option to have a subscriber hold control of the electronic certificate of title or the Registrar.

How it will work

If Option 3 is implemented, the following scenarios demonstrate what will happen when the Registrar holds control of the electronic certificate of title.

Scenario 1 – Multi party transaction where all parties are represented

The subscriber for the party entitled to control of the certificate of title applies to take control of the electronic certificate of title from the Registrar and all parties complete the transaction in an electronic lodgment network.

The certificate of title will be issued as an electronic certificate of title.

Scenario 2 – Multi party transaction where at least one party is unrepresented

The transaction must be lodged in paper.

- A. If the party entitled to control of the certificate of title is not represented, this party must make a request to the Registrar to nominate the electronic certificate of title to the paper transaction.
- B. If the party entitled to control of the certificate of title is represented, the subscriber applies to take control of the electronic certificate of title from the Registrar and nominates it to the paper transaction.

In both scenarios, the certificate of title will be issued as an electronic certificate of title in the control of a subscriber or the Registrar, as the context dictates.

Scenario 3 – Single party transaction where applicant is unrepresented

The transaction must be lodged in paper. The party must make a request to the Registrar to nominate the electronic certificate of title to the paper transaction.

The certificate of title will be issued as an electronic certificate of title in the control of the Registrar.

Scenario 4 – Multi party transaction where all applicants are unrepresented

The transaction must be lodged in paper. The party entitled to control of the certificate of title must make a request to the Registrar to nominate the electronic certificate of title to the paper transaction.

The certificate of title will be issued as an electronic certificate of title in the control of the Registrar.

In all cases where a non-represented party makes a request to the Registrar to nominate an electronic certificate of title, that non-represented party must have their identity verified, and their signing of the request witnessed, by Australia Post.

Questions

5.1: Which is your preferred option and why?

5.2: Are there any other options that should be considered?

5.3: Are there any other safeguards that need to be considered prior to the complete removal of paper certificates of title from the conveyancing process?

Questions about the matters in this discussion paper can be made by calling (0478) 255 432 or emailing luv.consultation@delwp.vic.gov.au.

