

## Elimination of cheques as a payment method

Since September 2009 Land Victoria has been advising customers, through Customer Information Bulletins and Customer Services Committee forums, of its intention to eliminate cheques as a payment method for Land Victoria lodgement fees.

Under Phase 1, which came into effect in January 2010, acceptance of third party cheques (with minor exceptions) as a payment method was discontinued.

Phase 2 will take effect from 4 January 2011 and will see full discontinuance of cheques as an acceptable payment method. 'Cheques' for this purpose includes cheques drawn by a bank or other authorised deposit-taking institution, trust account cheques, personal cheques and Australia Post money orders.

The existing non-cheque payment methods of cash, credit and debit card will continue to be accepted by Land Victoria. Additionally, Land Victoria will offer customers the option of direct debit as a payment method.

Customers who wish to pay by direct debit will be required to complete a standard Department of Sustainability and Environment (DSE) direct debit request form and provide their ABN/ACN number.

Having done so, all fees incurred by that customer will be paid by direct debit from the customer's nominated bank account. Direct debit payments will be made on completion of the processing of a lodgement.

Any queries on the phasing out of cheques and/or conversion to direct debit payment may be directed to Land Registration Services enquiries on (03) 8636 2010.

## Growth Areas Infrastructure Contribution

Part 9B of the *Planning and Environment Act 1987* came into operation on 1 July 2010.

As a result of this, some register search statements of land affected will show a notification by the Growth Areas Authority that a Growth Areas Infrastructure Contribution may be payable under Section 201UB of the Act.

Customers should also be aware of Section 201SZG (3) of the Act. This section states that a transfer of land or plan of subdivision of land affected by a notice under Section 201UB must be consented to by the Commissioner of State Revenue before the transfer or plan can be registered. Land Victoria will not accept for lodgement any relevant transfer of land or plan of subdivision of

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For further information telephone (03) 8636 2812 or fax (03) 8636 2250.

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land that is not accompanied by either a removal of the notification (Section 201UC) or the Commissioner's consent (Section 201SZG(3)).

Customers should familiarise themselves with the new legislation and determine its relevance to any land of interest.

Customers should contact:

- State Revenue Office on 132161 or email [sro@sro.vic.gov.au](mailto:sro@sro.vic.gov.au) for general queries, collection of the contribution, determination of liability and deferral of payment;
- Growth Areas Authority on 9651 9600 or email [info@gaa.vic.gov.au](mailto:info@gaa.vic.gov.au) for general queries, planning-related land matters and staged payments.

## Business practice clarification

### Lodgement of creation, removal and variation of easements pursuant to Section 23 of the *Subdivision Act 1988*

A combination of creation, removal and variation of easements, or a condition in a grant can be processed in the one certified plan.

The fees associated with this process are based on the number of parcels affected.

Applications that are lodged under this legislation will be charged a fee of \$596.40 and each parcel in excess of two parcels will incur an additional fee of \$130.10.

This is consistent with the current business rules for plans of subdivision.

## Office of Titles or the Registrar

In an instrument, reference should only be made to the Office of Titles or the Registrar, as these are the terms recognised by the *Transfer of Land Act 1958*. Other names such as the Titles

Office, LTO, Land Victoria or Land Registry are current or past business names and should not be used in any instrument or application lodged at Land Victoria.

### Registration of court orders from jurisdictions outside Victoria

Foreign or interstate court orders do not bind Victorian land or the Registrar of Titles. Lodging parties will need to register foreign or interstate orders in a competent court or tribunal in Victoria. The application or instrument must then refer to the order of the Victorian court or tribunal.

### Adverse possession and court orders

To support an application for adverse possession under Section 60 of the *Transfer of Land Act 1958*, court orders must indicate that a judge has considered the facts and declared that adverse possession has been established or that the registered proprietor's title has been extinguished by the adverse possessor. No further proofs will be required. Consent orders however, will not assist an application for adverse possession.

## Electronic Conveyancing

Since the introduction of Release 5 of the Electronic Conveyancing (EC) system in August 2010, registered EC subscribers have been able to process eLodge transfers not involving a financial settlement. The option to select eSettle (electronic settlement) is still available.

### What is an eLodge transfer?

Selecting eLodge as the *Settlement Type* allows EC subscribers to lodge a property transfer via EC without using the system's electronic settlement facility.

eLodge transfers can cite a monetary consideration OR one of the following non-monetary types:

- natural love and affection;
- change in manner of holding (equal shares).

The eLodge option does not support financial settlement. Therefore, any financials, apart from applicable fees and assessed duty, must be handled external to EC.

### Benefits of using EC to lodge a transfer

Transfers lodged using EC attract lower fees than equivalent paper based transfers. An electronically lodged transfer currently attracts a base fee of \$100.90 whereas its paper equivalent costs \$122.

A dealing number is provided to the subscriber as soon as the transfer has been lodged. This can occur minutes after payment of applicable fees and duty.

### Payment of fees and duty

Duty will be assessed by the State Revenue Office duty calculator within EC as part of the eLodge transaction. The applicable lodgement fees and any assessed stamp duty will be direct debited from the subscriber's bank account when the eLodge transfer is lodged.

### Lodging transfers using EC and a Representation Agreement

There is a requirement that EC subscribers have their clients complete a *Representation Agreement* before acting on their behalf. A copy of the accepted *Representation Agreement* is provided to all EC subscribers upon completion of their registration and is also available from the EC website at [www.landexchange.vic.gov.au/ec](http://www.landexchange.vic.gov.au/ec).

## Lodging transfers using EC and the production of the title

Transfers lodged using EC require the paper certificate of title to be converted into an electronic format. After registration, the subscriber can elect to either retain the certificate of title in an electronic format or have it issued from the transaction in paper.

### Training

A number of free training options are provided to EC subscribers.

If you are already an EC subscriber and would like training on how to lodge a property transfer using EC, please contact EC on (03) 8636 2586.

## How to subscribe to Electronic Conveyancing

- Information on how to become a subscriber of Electronic Conveyancing can be found on the website at [www.landexchange.vic.gov.au/ec](http://www.landexchange.vic.gov.au/ec) or phone EC on (03) 8636 2586.
- Currently no set-up fees exist when registering with EC and an increasing number of conveyancing and legal professionals are successfully using EC as an alternative to paper-based lodgement.

## Caveats and a transfer by mortgagee

When a transfer by mortgagee (T3 Transfer) is lodged and there is a caveat recorded on title, whether notice is given to the caveator will depend on the order in which the caveat is recorded and the claim made in the caveat.

Where the caveat was recorded before the mortgage, the caveator would have received notice of the

lodging of the mortgage and had the opportunity to seek an injunction against registration of the mortgage. If there was no injunction, the mortgage was registered. If the mortgagor later defaults and there is a transfer by mortgagee, no notice will be given to the caveator and the caveat will lapse.

If the caveat was recorded after the mortgage, whether notice of the transfer by mortgagee is given will depend on the claim in the caveat. No notice is given if the caveat claims an estate or interest by virtue of an unregistered mortgage, unregistered charge or unregistered document intended to create a security for the payment of monies.

The caveat will lapse and the transfer by mortgagee will be registered. The only exception is where the unregistered security document was intended to bind the mortgagee. For all other interests claimed in caveats, notice of the transfer by mortgagee will be sent to the caveator – see ss 90(1) and 91(2A) and (2B) of the *Transfer of Land Act 1958*.

## Drafting leases

According to the Transfer of Land (General) Regulations 2004, Form 26 is prescribed for leases and Form 29 for sub-leases.

It is important to note that these are instruments and not application forms in the same way that an M1 is an instrument of mortgage. The definitions contained in leases and sub-leases (land, lessor/head lessor, lessee/sub-lessee etc.) should be used throughout the lease or sub-lease.

Any covenants should be set out in the covenants panel and may run to as many pages as necessary. Annexure pages should not be used. The covenants would then be followed by the date and execution.

If there is a possibility of a lease being lodged for registration, you should use the relevant form from the outset.

When the parties consider it necessary to refer to off-Register documents in leases, they must make it clear whether those documents affect any of the essential terms of the lease, being the land, the parties, the rent, term and commencement and termination dates.

If a provision of an off-Register document does affect an essential term, it must be set out in full in the lease. This allows people searching the Register to be certain of what the essential terms of a lease are.

If a lease or a sub-lease contains rights that could give rise to an easement (e.g. a right of carriageway over adjoining land), the parties must make it clear whether they intend to create an easement or whether the rights are purely contractual.

If a lodging party or firm is considering lodging a number of leases in the same or a similar form, they should consider using a Memorandum of Common Provisions for covenants.

Finally, all lodging parties should note that Form 26 has been updated to refer to 'rent' rather than 'rental' and now contains a termination date panel.

