

Edition 122 March 2010

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ISSN 1441 - 1504
PP 349181/01650

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Transfer of Land Act amendments

The *Transfer of Land Act 1958* has been amended by the *Land Legislation Amendment Act 2009*, which comes into operation on 1 May 2010.

The amendments will improve operational consistency and customer service at Land Victoria.

A number of process or practice changes will be made that impact Land Victoria customers. These are detailed below.

Note: all references are to the *Transfer of Land Act 1958* unless otherwise stated.

Significant changes

Application by Legal Personal Representative

Section 49(1) no longer requires the Registrar of Titles (Registrar) to record the date of death of a deceased registered proprietor. Customers will not be required to include the date of death on an application and the approved form will be amended to remove the date of death panel.

Following an IT system upgrade in June 2010, the date of death will no longer appear on a Certificate of Title (CofT) or on a Register Search Statement.

Leases

Leases under Section 66 must now contain both the commencement date and the expiration date. Once recorded, the lease expiration date will appear on the CofT and on a Register Search Statement. New forms of lease and sub-lease will be approved by the Registrar.

Section 69 has been amended to clarify that a partial surrender of a registered lease is possible where the surrendered part is the whole of the land in a folio of the Register.

Lodging fees on re-lodgements

If a dealing or application that was withdrawn is re-submitted to the Registrar, the fees payable for the re-lodgement will be half the current fee for that dealing or application. This will bring the procedure for withdrawn dealings in line with that for rejected dealings.

Sealing of Instruments

The Registrar will no longer seal registered documents.

Production of CofT for a change of address

Section 113(2) no longer requires production of the CofT for a change of address if the Registrar is satisfied that the applicant is the person entitled to seek the change. A customer without the CofT who seeks to change his/her address will require 100 points of proof of identity.

Address for service of caveator

Section 89(4) will allow interstate or international addresses for services of notice to a caveator.

Removal of restrictive covenants

Section 88 clarifies that a restrictive covenant created or authorised by a plan of subdivision, a planning scheme or permit under the *Planning and Environment Act 1987* may only be removed by one of those means or by order of a court.

Variations of mortgage

Section 75A now clarifies that a variation of mortgage will not include a transfer or assignment of mortgage, an alteration to the length of the mortgage, the area of mortgaged land or the parties to a mortgage. This amendment makes this section consistent with Section 67A of the Act, which relates to the variation of registered leases, and with long-established conveyancing practice.

Uniform time periods

All notice periods will be 30 days. Previously, various sections of the Act referred to 14 days, 21 days, 30 days and 35 days. The change represents an extension to most time limits and only a minor contraction (five days) in Sections 26N(5) and 89A(4).

Adverse possession

Where land is successfully claimed by adverse possession under Section 62, the Registrar will have discretion to consolidate the claimed land with adjoining land owned by the applicant.

Vesting orders

Under Section 47(c) the power of the Registrar to make a vesting order in cases of a completed purchase has been extended. Now included are situations where a corporate entity has been deregistered or its authorised agent cannot be found. 'Absence from Victoria' has been removed as a ground for a vesting order under this section.

Other changes

Definitional changes

- The definition of 'court' has been changed to mean 'court of competent jurisdiction'. This change recognises that, for example, the Magistrates' Court has jurisdiction for matters involving land up to the value of \$100,000, without conferring any additional jurisdiction on the court. It also adds flexibility to deal with any future changes in courts' jurisdictions.
- Section 62 authorises the Registrar, when satisfied that an applicant has acquired a title by possession, to create a folio of the Register for the land free from all encumbrances that have been determined or extinguished by possession. This clarifies that caveats, restrictive covenants, statutory charges and Section 173 *Planning and Environment Act 1987* agreements are an encumbrance that may be extinguished or determined by the possession.
- All references to duplicates and triplicates have been removed because the Registrar will no longer require or accept multiple copies of an instrument.

Improvements to customer service

- The new Section 27B(7B) gives the Registrar discretion to not produce a CofT when the person entitled to receive it requests no CofT be produced. Initially, this is intended to be used for government-owned land.
- Section 52(2) no longer requires the Registrar to be satisfied that a judgement debtor is one-and-the-same person as the registered proprietor of the land. Instead, the judgement, decree, order or process of execution will need to identify the affected folio(s) of the Register.
- Section 58 has been expanded to include applications by beneficiaries

of a trust (it was previously limited to applications by the trustee).

- A new Section 59A provides that, where, by operation of law, a corporate entity is established as the successor at law to a registered proprietor of land, the successor corporate entity may request amendment of the Register. The application will need to be supported by a certificate signed by the successor's chief executive officer.
- Section 85, which allows a mortgagor to pay outstanding monies to the Treasurer if the mortgagee cannot be found, will allow the mortgagee to apply directly to the Treasurer (rather than the Registrar) for the payment of the monies.

Operational improvements

- Notwithstanding the repeal of Section 30(1), the Registrar will continue to record the minority of a proprietor, where applicable. Where a minor is recorded as a proprietor, reference to the minority will be removed from the Register upon the registration of the first dealing after that proprietor attains his/her majority.
- Section 37 will no longer allow the deposit of trusts with the Registrar. The trusts register will remain available for search.
- Section 60, which relates to adverse possession applications made to the Registrar, sets out notice and advertising procedures. It has been amended to ensure that the advertisement in a local newspaper, service of notice to interested parties and placement of a notice on the subject land will occur concurrently.
- The power of the Registrar to record the discharge of a mortgage under Section 84(2), where the principal and all interest have been repaid but a discharge of mortgage cannot be obtained, has been extended

to situations where the mortgagee is a corporate entity that has been deregistered or its authorised agent cannot be found. 'Absence from Victoria' has been removed as a ground for a recording under this section.

Clarifications

- Section 27(7)(b) now clarifies that the Registrar may create folios for interests other than freehold, for example leasehold.
- The Registrar's ability under Sections 38(4), 38(5) and 38(6) to make an order to deal with a folio marked 'no survivorship' has been removed. The power to make such orders will rest solely with a court.
- Section 59 allows the Registrar to register dispositions effected by the operation of statute. The amendment clarifies that Section 59 applies to Commonwealth as well as Victorian statutes.
- Section 104(3) has been amended to clarify that the Registrar's power to call in a CofT can be for any purpose that the Registrar considers necessary or appropriate, and that the section will apply only to actions taken of the Registrar's initiative.
- Section 106(a) has been restructured to aid clarity; although, in effect, it remains substantially the same. Caveats recorded under this section, previously known as Queen's Caveats, will now be known as Registrar's Caveats. 'Absence from Victoria' will be removed as a ground for recording a Registrar's caveat. The subsection now clarifies which recordings can be made on a folio of the Register affected by a Registrar's caveat. This power ensures that a Registrar's caveat will not be a complete block to activity with a folio; but rather, it will serve to limit registration to dealings compatible with the purpose for which the caveat was recorded. The Registrar will have express power to remove these caveats if

satisfied that they are no longer required for the purpose for which they were recorded.

- The new Section 106(f) provides the Registrar with discretionary power to do anything necessary to protect the operation, effectiveness and integrity of the Register.
- Section 116 provides that an applicant will need to request reasons for certain decisions from the Registrar before summoning the Registrar to appear in court.
- The Registrar (Section 116A(1)), or an interested person (Section 116A(1A)), will be able to apply to a court or VCAT for an order requiring the production of a CofT or other document. The former requirement to use Section 104 will no longer apply.

Repealed provisions

- Subsections 6(2) and 6(3), which related to sealing documents
- Section 13, which set out the deed registration conversion scheme (Sections 14 and 15 remain as the common General Law conversion methods)
- Section 30(1), which required the Registrar to state the age of a minor or nature of a disability when recording as registered proprietor who is a minor or a person with a disability
- Section 48 and the Seventh Schedule containing Table A (Table A is preserved in a new transitional provision (Section 130), which applies if Table A is incorporated in any current or future contract)
- Sections 92 and 93, which provided for a stay of registration process
- Section 98CD(1)(f), which was inconsistent with the Commonwealth *Corporations Act 2001* (dissolution of the service company in a stratum conversion application now needs to be dealt with by a separate process under the *Corporations Act 2001*)

- Sections 104(3A)–(3D), which contained an ineffective scheme by which application could be made to the Registrar for the service of a notice requiring the production of a CofT

Subdivision Act amendments

The *Land Legislation Amendment Act 2009* also amends the *Subdivision Act 1988*. The amendments will also come into operation on 1 May 2010.

Note: all references are to the *Subdivision Act 1988* unless otherwise stated.

Significant changes

Lodging requirements

Section 5(3)(e) has been amended to require certain additional documentation to accompany the lodgement of a certified plan.

To be accepted for lodgement, plans will need to be accompanied by:

- Statement of Compliance
- street addressing advice from council (Form 8 Subdivision (Procedures) Regulations 2000).

Withdrawal and re-lodgement of plans

Section 22A provides that if a plan or instrument that was refused registration by the Registrar or withdrawn is re-submitted to the Registrar, the fee payable on the re-lodgement will be half the current fee for that plan or application.

Section 173 Planning and Environment Act 1987

Section 24(2)(ba) now provides for Section 173 agreements to cease affecting roads and/or reserves (only) created on a plan of subdivision, if vested in the name of the responsible authority to the agreement.

Encumbrances on Common Property

Section 31A(3) will allow for encumbrances that affect BOTH Common Property and a lot to be shown in the Register, for example a 'substation lease' restrictive covenants or caveats recorded on parent folio/s.

Note: other encumbrances will still only be recorded over the lot folio if related to the lot owner's share in common property (for example a mortgage).

Alter land affected by an Owners Corporation

Section 32(c) has been amended to clarify that a unanimous resolution of the members of an Owners Corporation may provide for the alteration of land boundaries affected by the Owners Corporation (by increasing, decreasing or a combination of adding or subtracting land). This amendment complements amendments to Section 32AI.

Registered proprietor creating Common Property

Section 32AI(1) has been replaced and Section 32AI(1A) has been added to clarify that, except in certain limited circumstances (refer to Section 32AI(1)(c)), a unanimous resolution will be required to alter the boundaries of Common Property or add new Common Property to a plan. This will allow for the creation of new Common Property (with a unique identifier) only with the creation of a new Owners Corporation (limited to common property) with membership not

greater than the applicants of the parcels subject to the plan.

Re-subdivision or consolidation of land affected by Owners Corporation

Section 32A(1) has been amended to clarify that all members of an Owners Corporation may lodge a plan to consolidate or re-subdivide all of the land on the plan that is affected by that owners corporation.

If all the lots (affected by the Owners Corporation) are owned by the one entity (company or individual) then the proprietorship will remain that entity for all new lots.

If there are multiple owners (companies or individuals) then resultant proprietorship will be a tenancy in common, in proportion to the lot entitlement of the relevant Owners Corporation.

Section 32A(3)(d)(ii) provides that upon re-subdivision or consolidation of land affected by an Owners Corporation, any easements existing prior to the previous registered plan will carry forward, but all other easements will be removed (including Section 12(2) easements over the previous registered plan).

Other changes

Definitional changes

Section 3(1) amends the definition of 'master plan' to clarify what land may be considered part of a master plan, i.e. land that was not a lot on the initial stage plan will not be part of the master plan.

Land added to a plan using Section 32 will not be dealt with under Section 37 (staging) because it does not form part of the master plan.

Determining expiration of a registered plan ('plan affects' warning)

Section 46A has been inserted, relating to folios with a 'WARNING: PLAN AFFECTS LP.....' endorsement.

The Registrar may deem that a pre-Subdivision Act plan has expired based on:

- whether the parcel has been dealt with without observing the 'plan affects' notation

AND

- whether any folios exist that have used the plan reference as the land description.

Repealed provisions

Section 37(3)(c)(v) has been repealed, removing ambiguity about what land may be brought into the master plan.