

Summary of proposed changes

On 4 March 2021 the Registrar of Titles determined Version 8 of the Registrar's Requirements for Paper Conveyancing Transactions (Registrar's Requirements) under section 106A of the *Transfer of Land Act 1958* (TLA). The Registrar of Titles has conducted a review of version 8 and is proposing a number of changes to streamline processes, improve efficiency and progress digital lodgment.

Proposed changes

1. Definitions (proposed amended Registrar's Requirement 2.1)

Definitions for Approved Building Envelopes and PDFs have been included.

2. Verification of identity (proposed amended Registrar's Requirement 3.1)

Registrar's Requirement 3.1.11 provides officers of State Trustees Limited with an exemption from having their identity verified in certain circumstances. This Registrar's Requirement has been updated to include reference to the *Guardianship and Administration Act 2019* (Vic).

3. Electronic Instruments (proposed amended Registrar's Requirement 6.2)

Registrar's Requirement 6.2 has been amended to clarify that Subscribers must use the 'Record-Notice-Transfer of Land Act - Section 104' (Generic Residual Document) to lodge any instruments which cannot be electronic instruments.

4. Mandate for all remaining instrument types capable of being lodged electronically (proposed amended Registrar's Requirement 6.5(h))

From the day Version 9 of the Registrar's Requirements is published, which is expected to be in the second half of 2023, all instruments that are capable of being lodged electronically must be lodged using an ELN (PEXA/Sympli) subject to the exceptions relating to non-represented parties.

As future instruments become available, it will become mandatory to lodge these electronically. Sufficient notice and time will be provided to customers to be able to comply with this requirement.

The Registrar seeks to minimise confusion as to whether a particular instrument is mandatory for electronic lodgment and further increase the use of more efficient processes that can be delivered through electronic lodgment.

5. Mandate for lodgment using SPEAR (Registrar's Requirement 6.6)

Electronic lodgment of instruments with a plan component for all application types has been available using the SPEAR Electronic Lodgment Network (SPEAR ELN) since August 2019.

For the last two years, a consistent 65-70% of these instruments have been lodged electronically and are processed quickly and efficiently. By contrast, the remaining 30-35% are lodged using the Generic Residual Document using the ELN known as PEXA. Once a Generic Residual Document is received by Land Registry Services (LRS) it can take up to 10 days to be processed to lodgment. Lodgments through SPEAR are processed within twenty-four hours.

The benefits to lodging parties using the SPEAR ELN include:

- the ability to electronically complete, validate and lodge applications
- no need to use the Generic Residual Document to submit applications
- improved access to application documents and details of Land Use Victoria (LUV) requisitions
- instant notification of new title allocations upon registration.

a. All customers who lodge plan and survey-based applications (proposed amended Registrar's Requirement 6.6(d))

From 1 February 2024, all instruments capable of being lodged using SPEAR must be lodged in the SPEAR ELN.

Customers eligible to be a SPEAR ELN Subscriber are strongly encouraged to consider registering to become a SPEAR ELN Subscriber or engage a SPEAR ELN Subscriber to lodge on their behalf.

Information about how to register to become a SPEAR ELN Subscriber, obtain a digital certificate or contact the SPEAR Service Desk is available on the SPEAR website (www.spear.land.vic.gov.au).

b. SPEAR ELN Subscribers (proposed amended Registrar's Requirement 6.6(e))

From the day Version 9 of the Registrar's Requirements is published which is expected to be in the second half of 2023, all lodging parties who are at the time of lodgment SPEAR ELN Subscribers, must lodge using the SPEAR ELN if their instrument is capable of lodgment using SPEAR.

Any instrument signed after this date that is submitted for lodgment using the Generic Residual Document will be refused. SPEAR ELN Subscribers are therefore encouraged to start using the SPEAR ELN now for all their survey-based applications.

6. Paper quality and size (proposed amended Registrar's Requirement 10)

To come into effect on the day Version 9 of the Registrar's Requirements are published which is expected to be in the second half of 2023.

Registrar's Requirement 10.3 has been updated to accommodate PDF documents.

7. Clarification around the creation of restrictions in plans (proposed amended Registrar's Requirement 12 and Schedule 6)

To come into effect on the day Version 9 of the Registrar's Requirements are published which is expected to be in the second half of 2023. The exception to this will be for restrictions in plans under the *Subdivision Act 1988* first signed by the Licensed Surveyor on or before 31 January 2024. The Registrar recognises that these plans may be going through approval processes on the basis that any restrictions comply with Registrar's Requirements Version 8.

Schedule 6 of the Registrar's Requirement currently limits restrictions to be created in a plan to a single page. LRS has observed that customers have interpreted this requirement to allow multiple pages of restrictions to be included as long as each restriction is limited to one page. This was not the intention. To ensure a usable and manageable plan instrument is provided to future users, the Registrar seeks to clarify the limits on the creation of restrictions.

The Registrar intends to clarify that ALL restrictions must be included in a single page of the plan. The single page may include both text, table and/or diagrams. If more than one page is required, a Memorandum of Common Provisions (MCP) must be used.

LRS has observed that the description of both the burdened and benefited land is not always clear. A standard form table must therefore be used if a table is necessary.

LRS has received restrictions which repeat requirements of a planning permit and MCP already referenced in the plan, and restrictions which do not constitute restrictive covenants i.e. that are not negative in nature or affecting the use of the land. The details/description of restrictions must not contain repeated provisions and must be capable of being classified as a restrictive covenant.



8. Limits on variations of easement (proposed new Registrar's Requirement 14)

To come into effect on the day Version 9 of the Registrar's Requirements are published which is expected to be in the second half of 2023.

It is the view of the Registrar that only the provisions (terms, conditions, clauses, covenants however described) ancillary to an easement that is registered or recorded in the Register of land can be varied. These may include matters relating to payment, permitted works, access etc.

The term (length of time), land, parties or the nature or purpose of the easement cannot be varied. If an amendment is required to the term, parties or nature or purpose of an easement, the easement must be surrendered or removed and a new easement granted.

The Registrar proposes to amend the Registrar's Requirements to put the issue beyond doubt and ensure that easements are treated in the same way as leases and mortgages.

Note: the proposed amendment described below affecting the removal of instruments as to part which will allow the partial removal of an easement where the removal affects the whole of a folio or a separately transferable parcel such as a lot in a multi-lot folio or a Crown allotment in a multi-Crown allotment folio.

9. Removal of instruments as to part (proposed new Registrar's Requirement 15)

To come into effect on the day Version 9 of the Registrar's Requirements are published which is expected to be in the second half of 2023.

It is the current practice of LRS to only remove a registered or recorded instrument as to part if the removal is from the whole of a folio of the Register or the whole of a separately transferable parcel, for example, a lot in a multi-lot folio or a Crown allotment in a multi-Crown allotment folio.

The Registrar intends to amend the Registrar's Requirements to align with this practice to ensure clarity and consistency.

10. Recording of Approved Building Envelopes only accepted in an agreement lodged under section 173 of the *Planning and Environment Act 1987* (proposed new Registrar's Requirement 16)

To come into effect on 1 August 2024. The exception to this will be for Approved Building Envelopes in plans under the *Subdivision Act 1988* first signed by the Licensed Surveyor on or before 31 July 2024. The Registrar recognises that these plans may be going through approval processes on the basis that any building envelopes are contained in a restriction.

The Registrar proposes that Approved Building Envelopes, as defined in the *Building Regulations 2018*, can only be lodged within a section 173 agreement.

This means that LRS will not accept the lodgment of:

- 1) plans under the *Subdivision Act 1988* containing restrictions referencing MCPs which set out Approved Building Envelopes; or
- 2) MCPs prepared for incorporation in a plan lodged under the *Subdivision Act 1988* which set out Approved Building Envelopes.

The benefits of this change are that:

- it will streamline the ways in which planning matters are recorded in the Register
- variation and removal of a section 173 agreement is more straightforward than varying or removing a restriction
- there will be clarity around who may take action if a planning requirement is breached
- electronic verification and examination of plans can be enabled which will result in faster processing.



11. Withdrawals of caveat by a deceased caveator's legal personal representative (proposed new Registrar's Requirement 17)

To come into effect on the day Version 9 of the Registrar's Requirements are published which is expected to be in the second half of 2023.

At present, the caveat notice period must be allowed to run once an instrument is lodged over a folio that is affected by a caveat lodged by a caveator that is now deceased. If this change is adopted, the Registrar will accept a withdrawal of caveat that is signed by the legal personal representative of the deceased caveator lodged in paper or using the Generic Residual Document.

12. Leases and sub-leases (proposed new Registrar's Requirement 18)

To come into effect on the day Version 9 of the Registrar's Requirements are published which is expected to be in the second half of 2023.

Leases and sub-leases lodged under section 66 and 71 respectively of the TLA must not be accompanied by a paper document or a PDF document which is, or is a copy of, a separately signed lease or sub-lease. As the lease itself is the instrument, the inclusion of a copy is superfluous and creates confusion.

See the Guide to Leases for further information on the lodgment of leases.

13. Mortgages and MCPs to be incorporated into mortgages must not include inappropriate matters (proposed new Registrar's Requirement 19)

To come into effect on 1 February 2024. The exception to this will be a mortgage:

- granted by a mortgagor on or before 31 January 2024 and
- for which a mortgage signed by the mortgagee under section 74(1A) of the TLA is lodged after 31 January 2024

Any mortgage or MCP lodged to be incorporated into a mortgage, must not include provisions (terms, conditions, clauses, covenants however described) that relate to other documents such as loan agreements and guarantees, or repeat terms from a loan agreement or guarantee.

Only matters directly related to the mortgage should be included in a mortgage lodged for registration or an MCP lodged for retention.

Possible future amendments – concurrent leases

The Registrar is currently looking at a nationally consistent approach to the treatment of concurrent leases. It appears that the predominant approach to these types of leases nationally is to require that each concurrent lease be registered. It is therefore likely it will become a Registrar's Requirement that any concurrent lease must be registered or lodged for registration. This change will provide clarity to any person searching these leases.