# Customer INFORNATION

**Bulletin** 

### No. 81 September 2002

#### Inside

- Changes to return of duplicate titles process
- Transmission applications - new endorsement practice
- Preparation of caveats
- Titles made available failure to endorse orders to register
- VOTS folio search new land description
- Subdivision Act plan lodgement checklist
- Improvement to the issuing of document process
- Your guide to lost/new title Applications
- Archiving of title records

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Department of Natural Resources & Environment

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# CHANGES TO RETURN OF DUPLICATE TITLES PROCESS

Following numerous requests from customers for changes to the return of paper duplicate titles process, Land Registry has completed a review. The following changes became effective on 3 June 2002.

In the Over the Counter area, all customers will have the paper parchment returned as part of the processing operations unless they specifically state otherwise during the course of the transaction.

In the Bulk Registration area, only where the dealing/case causes the folio to remain in the same proprietorship would the parchment be returned. All other duplicates would be destroyed by Land Registry.

If the customer requires the return of the duplicate where it is processed through the Bulk Registration area, they can make a specific request in writing at the time of lodgement.

These changes are designed to maintain the service already provided whilst acknowledging the occasions where the return is not practical or deemed unnecessary.

If you require further information on this matter, please contact David Ridout, Manager, Registration Support on (03) 8636 2968 or email david.ridout@nre.vic.gov.au.

# TRANSMISSION APPLICATIONS - NEW ENDORSEMENT PRACTICE

In conjunction with the introduction of the new Victorian Online Titles System (VOTS), Land Registry will take the opportunity to change the manner in which certain types of dealings are endorsed on title. The first dealing type to be affected is an application by legal personal representatives (transmission application), made under Section 49 of the Transfer of Land Act.

Land Registry will no longer make a distinction between executors and administrators when endorsing transmission applications on title. Instead, the term 'legal personal representative' will be used. The following are sample endorsements:

Sole Proprietor
John Smith of 1 First Street, Melbourne, 3000
Legal Personal Representative(s) of
William Jones who died on 14 December 2001
AB123456J 14/01/2002

Joint Proprietors

John Smith of 1 First Street, Melbourne, 3000 Frederick Brown of 2 Second Street, Melbourne, 3000 Legal Personal Representative(s) of William Jones who died on 14 December 2001 AB123456J 14/01/2002

A slightly different endorsement will be used in cases where the grant of representation is limited, such as a grant of Letters of Administration 'Ad Colligenda Bona', or a grant of Probate to an executor for life. In these cases, the words 'with limitation' will be added to the endorsement. Example endorsements in this category are as follows:

Sole Proprietor

John Smith of 1 First Street, Melbourne, 3000 Legal Personal Representative(s) with limitation of William Jones who died on 14 December 2001 AB123456J 14/01/2002

OR

Joint Proprietors

John Smith of 1 First Street, Melbourne, 3000 Frederick Brown of 2 Second Street, Melbourne, 3000 Legal Personal Representative(s) with limitation of William Jones who died on 14 December 2001 AB123456J 14/01/2002

In cases where the precise date of death of the proprietor is unknown, Land Registry will no longer use expressions such as 'who died on or about...' or 'who is presumed to be dead'. Instead, the word 'deceased' will be used. This applies to both limited and unlimited grants.

An example endorsement follows:

Sole Proprietor
John Smith of 1 First Street, Melbourne, 3000
Legal Personal Representative(s) of
William Jones deceased
AB1234561 14/01/2002

Customers should also be aware that, in the process of transferring endorsements from existing paper titles to the VOTS, the new endorsement standard will apply. Customers can expect that the endorsement appearing in a Register Search Statement may differ in form to the endorsement of the same application as it appears on the (duplicate) Certificate of Title. However, the substance of the endorsement will remain the same.

Any queries concerning this change in practice should be directed to Specialist Registration Advice on (03) 8636 2006 or email neil.oliver@nre.vic.gov.au

### PREPARATION OF CAVEATS

An increasing number of customers, including legal firms and private customers, are seeking assistance from the Office to complete instruments to be lodged, in particular caveats.

It is not part of the duties of the Registrar nor Title Registration Services (TRS) staff to give advice to members of the public or other customers of Land Registry on the preparation of caveats or other instruments.

A caveat notifies a claim by one person to some interest in another person's land. The Registrar or his staff should not be seen to be assisting any person to prepare documents except to ensure that the formal requirements are complied with. The Registrar requires that a Caveator claim a specified estate or interest in land and that the Grounds of Claim sufficiently disclose or support the interest claimed.

TRS staff are able to provide information to customers about the Office's procedures and requirements for documents to be lodged. If customers are unsure about the preparation of a caveat they will be advised to obtain their own independent legal advice.

# TITLES MADE AVAILABLE - FAILURE TO ENDORSE ORDERS TO REGISTER

Conveyancing practitioners will be familiar with the system of titles "made available" and corresponding "orders to register" given by a proprietor or first mortgagee to permit registration of dealings without surrendering control of the Certificate of Title. The most common case is the registration of second or later mortgages.

Some dealings presented at Land Registry are not endorsed with Orders to Register. The absence of Orders to Register creates doubt in the mind of Land Registry staff as to which dealing is to be registered against the "made available" Certificate of Title.

The Registrar of Titles "has the right and duty to preserve his entries and records from confusion, and to prevent the intrusion of anything calculated to obscure or mislead, or even to impede the ordinary and practical working of his department". Bando Trading -v- Registrar of Titles [1975] VR 353.

Accordingly, the Registrar of Titles will henceforth refuse to accept dealings presented for lodgment without explicit orders to register.

If you have any queries on this matter please contact the Land Registry Legal Branch on (03) 8636 2213.

# VOTS FOLIO SEARCH - NEW LAND DESCRIPTION

During the conversion of the Register from paper based folios to computer folios, some folios required the allocation of a new "Lot on Title Plan" land description.

These new land descriptions replace the land descriptions of the land parcels in the folio.

The new land descriptions provide unique identification for land parcels that had a non unique land description eg Part of Crown Allotment 9 Parish of Gonzaga.

The Title Plans are in the process of being prepared and are being progressively released. The Title Plans contain a diagram of the land in the folio together with a table showing the relationship between the new Title Plan lot

numbers and the previous land descriptions.

With the implementation of the new Victorian Online Titles System (VOTS), the new land descriptions and the descriptions that have been replaced are output on the VOTS Folio Searches under the LAND DESCRIPTION heading.

An example of the wording is:

#### LAND DESCRIPTION

Lot 1 on Title Plan 800073Y (formerly known as part of Crown Allotment 9 Parish of Gonzaga).

#### **Diagram Location**

Even though new land descriptions have been allocated which refer to a Title Plan, for some folios the existing Imaged Folio will be used to provide the diagram information until the Title Plan is available.

It is therefore important to confirm the Diagram Location for these titles under the DIAGRAM LOCATION heading.

An example of the wording where the Imaged Folio provides the diagram information is:

#### **DIAGRAM LOCATION**

SEE DIAGRAM ON IMAGED FOLIO VOLUME 5062 FOLIO 369 FOR FURTHER DETAILS AND BOUNDARIES

If the Imaged Folio is providing the diagram information the former land description contained in brackets eg (formerly known as part of Crown Allotment 9 Parish of Gonzaga) under the LAND DESCRIPTION heading will be the description of the land on the Imaged Folio.

It should be noted that the imaged folio does not contain any reference to the Title Plan referred to under the LAND DESCRIPTION heading.

### Warning Note on Imaged Folio

The imaged folio contains a warning note advising customers of the information to be used. The warning note was recently reviewed and amended by Land Registry following suggested improvements from a number of customers. The wording of the warning note reads:

"IMAGED FOLIO - WARNING: TO BE USED FOR DIAGRAM, EASEMENT INFORMATION, DEPTH LIMITATIONS AND ANY DIAGRAM NOTATIONS. The text of this Folio has been converted to a computer Folio and the effect of any dealing registered since the text conversion will appear on the computer Folio."

#### Useful tip when ordering Rate and Information Certificates

As some councils and authorities have not yet completed updating their systems with the 'Lot on Title Plan ' land description, customers are advised to provide both the 'Lot on Title Plan 'description and the 'formerly known as' description when ordering rate and information certificates from municipal councils and authorities.

If you require further information about this matter please contact David Wille on (03) 8636 2026 or email david.wille@nre.vic.gov.au.

### SUBDIVISION ACT PLAN LODGEMENT CHECKLIST

Land Registry has recently completed an analysis of data relating to the refusal of Plans of Subdivision and Plans of Consolidation lodged.

The major reasons for the refusals are as follows:

- Certificate of Title not supplied or made available 26%
- Incorrect orders to register and issuing instructions 19%
- Surveyors report of field records not supplied 17%
- Planning Permit not supplied 10%
- Consent of Mortgagee not supplied 6%
- Miscellaneous 17%

To assist customers, Land Registry has developed a comprehensive Plan Lodgement Checklist to provide guidance in lodging Plans of Subdivision and Plans of Consolidation.

The Plan Lodgement Checklist is to be completed and presented when lodging plans in person or by correspondence. Required documentation not supplied or erroneous information presented to Plan Acceptance Officers will lead to non acceptance of the plan and will ultimately result in delayed lodgement/registration of the plans. Copies of the Plan Lodgement Checklist can be obtained from Reception, Level 9 Marland House.

If you require further information about the above matter please contact Peter Battle on 8636 2122 or email peter.battle@nre.vic.gov.au.

Victoria		PS/PC	
SUBDIVISION ACT PLAN LODGEMENT CHECKLIST			
Correct Application	Form 10 Subdivision (Procedures) Regulations 2000. (for Section 22 applicants name/s agrees with title, and must include current addres		
	Form 16 Subdivision (Procedures) Regulations. (for Section 32 plans). (If Common Property is affected or alters boundaries of a Body Corporate, applicant must be the Body Corporate).		
	Form 9 Subdivision (Procedures) Regulations (for Section 35 plans applicant must be the Acquiring Authority).		
	Form 12 Subdivision (Procedures) Regulations, (for Section 23 plans Form 13 Subdivision (Procedures) Regulations, (for Section 23 plans (If Common Property is affected, applicant must be the Body Corpora	)forRestrictions	
	Form 14 Subdivision (Procedures) Regulations. (for Section 24A plans Council must be applicant if vesting land). te: All above applications must be signed and dated		
Correct Consents & Orders to Register	Order to register & issuing instructions. (If applicable).		
	Consent of Mortgage es, Caveators, etc. (If applicable).		
Title	Supplied. In a leader dealing.  Made available. Not required (If applicable).		
Certified Plan	Certified by Council.		
	Signed and Dated by the Surveyor & Council Delegate on each sheet The applicant or a Surveyor may sign (Plan of consolidation on non-survey basis).		
	Correct Statement of Compliance (Form 25 for Plans of Subdivision and Consolidations, Form 24 for Stage Subdivisions).		
	Additional Rules must be supplied for Body Corporates. (If applicable	е).	
Transparencies	Transparencies supplied for each sheet of the plan and correct version	ion no.	
Field Records & Surveyors Report	Supplied (if based on survey).		
	Each sheet signed & dated by the Surveyor.		
	If not supplied; are in a survey based leader plan (eg BP, PS, etc) or Plan accords with Non – Survey Guidelines		
Planning Permit	Copy supplied if removing or varying easements or restrictions or ret the plan.	moving reserve status in	
Gov't Gazette	Acquisition Plan (if land is to be acquired by compulsory acquisition, a copy is required Section 35 plans).		
Fees	Correct fee as set out in the " Guide to Subdivision Act Fees".		

### IMPROVEMENT TO THE ISSUING OF DOCUMENT PROCESS

Following numerous requests from customers for greater flexibility in the issuing of documents process, Land Registry undertook a review of its processes. The following service took effect from 11 June 2002.

All customers of Land Registry will have the ability to COLLECT their issues.

#### How can this be done?

To perform this task, a unique customer code will be created that identifies the customer's name with an issue record referring to **COLLECTION**. This customer code needs only to be prepared once and used by a customer whenever collection service is desired.

To create this customer code a letter from a customer indicating **COLLECTION** as the preferred delivery method must be presented to the Document Management area on Level 10, Marland House. This letter must contain explicit address details, such as email address, phone and fax address, contact name(s) and existing customer code.

The Document Management area on Level 10, Marland House will notify all customers using this service that their issues are available for collection soon after registration and issuing processes have been completed.

The collection of issuing documents by our customers is expected to be shortly after notification. Collection of issuing documents will be from Document Management staff located on Level 10, Marland House.

Once a customer code is established, a customer can prepare an Issue Order and/or Control Order to change the issue details of documents, which are currently in a dealing awaiting registration. Alternatively, a customer may use this code as the Controlling party of any future dealing presented for lodgement, if the lodgement is presented to our Bulk Registration lodgement service.

Any further information can be obtained from David Ridout, Manager, Registration Support on (03) 8636 2968 or email david.ridout@nre.vic.gov.au.

### YOUR GUIDE TO LOST/NEW TITLE APPLICATION

(T1 Approved Form)

This Guide has recently been reviewed by Title Registration Services and will be reprinted and available to you from the Customer Service Centre on Level 9, Marland House, in the near future. In the meantime, please use this information from the Bulletin.

The following information is a general guide to the procedure to follow when applying for a replacement for a certificate of title that has been lost or destroyed.

### 1. Should you use a lawyer to apply for a replacement certificate of title?

Depending on the facts, an application for a replacement certificate of title may be quite simple or very complex.

The Registrar is required by law to satisfy himself as to certain evidence before approving an application for a replacement certificate of title. The evidence required is described in this pamphlet under the heading 'Standard requirements for evidence and documents'. If all necessary evidence is not presented when you first apply, your application will not be accepted for lodgement.

If you are not certain that you understand how to gather and present the necessary evidence, you should consider employing a lawyer or other adviser to do the work for you.

If you wish to use a lawyer, the Law Institute of Victoria has a referral service that can refer you to lawyers experienced in this type of work. The Law Institute of Victoria is at 470 Bourke Street, Melbourne 3000 and can be contacted on (03) 9607 9311. Ask the receptionist for a referral to a lawyer for an application at Land Registry.

### 2. What does a certificate of title look like?

Victorian certificates of title are of two types. The older ones are produced on heavy paper and, for all transactions after the original date of creation, will have records of each transaction printed or handwritten with different inks and stamps. The newer ones are computer printouts on blue security paper with a 'State of Victoria' emblem/crest background.

Certificates of title sometimes contain photocopied text or diagrams, but they are never produced on photocopy paper.

### 3. Where to look before applying for a replacement certificate of title

Certificates of title are issued by Land Registry to the person who last lodged documents at Land Registry for amendment of the certificate of title. This is usually one of the registered proprietors (owners), the mortgagee (bank or other lender), or a lawyer or conveyancer for the registered proprietors or mortgagee. You should check with all such persons before you fill in the forms or pay a fee to Land Registry to process a replacement title application. You can identify the person to whom a certificate issued by doing an issue search at Land Registry.

Other places to look or inquire before making your replacement title application are:

Safe deposit boxes and envelopes - held by any registered proprietor.

Your lawyer's office - if you have consulted a lawyer since the certificate of title last issued from Land Registry. It is easy to forget that you gave a certificate of title to your lawyer for safekeeping, for example, the last time you updated your Will.

Your personal papers - for example, in your home safe or in a filing cabinet or drawer with your insurance policies.

Your bank - for example, if you paid off a mortgage but never got the certificate of title back.

### 4. What you need to apply for a replacement certificate of title

- (a) Application (form AP31), which can be purchased from Land Registry. The application should be typed, laser printed or legibly handwritten in permanent ink. Correctable typing ribbons and correcting fluids may not be used. An example of the Form of Application is set out on the back of this pamphlet.
- (b) Evidence to establish loss or destruction of the certificate of title, including evidence that all reasonable searches have been made. Land Registry sells a standard form of statutory declaration for the assistance of applicants. In most cases, statutory declarations will be required from several witnesses in order to explain what happened to the certificate of title after it was issued by Land Registry. If there is more than one registered proprietor of the land, each registered proprietor must provide a statutory declaration verifying that he or she does not have the certificate and does not know where it is. The requirements to be addressed are set out in section 8 of this pamphlet. You must address all of these requirements.
- (c) The results of an issue search. Before making your application, you must obtain from Land Registry an up-to-date title search to determine the last transaction registered. You must then request an issue search from the last transaction registered. Depending on the progress of the Land Registry computerisation program, you may be able to do both searches at the same time.

### 5. Where a registered proprietor has died

Where any registered proprietor has died, an application for a replacement certificate of title must be accompanied by the appropriate application to remove the name of the deceased person(s). This would usually be an Application by Surviving Proprietor (form ASP - for joint proprietors) or an Application by Personal Representative (form APR - for sole proprietors and tenants in common).

Where you are an executor or administrator of a deceased estate, you must state your belief that all debts of the estate have been satisfied. You must state the reasons for this belief and give details of any notices served or published in relation to actual or possible claims against the estate.

#### 6. Lodging your application at Land Registry

If you are lodging your application personally (for example, without using a lawyer), you will need to prove to Land Registry staff that you are the registered proprietor of the land. In the case of multiple registered proprietors, all must prove their identity.

Applications lodged in Land Registry by the applicant personally will not be accepted until satisfactory identification has been provided.

Applications lodged by mail will be accepted but will not be approved until satisfactory proof of identity is submitted.

If attending Land Registry in person, satisfactory proof of identity includes:

Any one of -

- Passport
- Drivers licence
- Other document with your name and photo issued by a government agency in Australia

OR

Any two of -

- Bank book
- Birth certificate
- Credit card
- Medicare card
- Marriage certificate

### 7. How much does it cost?

Statutory fees - Current fees are set out in the fees pamphlet available at Land Registry. At the date of printing this pamphlet (August 2000), the fees are \$136.00 for the first certificate, \$20.00 for each additional certificate, plus \$4.00 if lodging by mail.

Advertising requirements and insurance contribution - In addition to the statutory fees, you may be required, at your expense, to place a public notice in a newspaper after the application has been reviewed by Land Registry staff.

Land Registry staff will advise you of the wording. There is no point in advertising until you are instructed to do so by Land Registry staff. You will be required to supply to Land Registry the full page of the newspaper containing the public notice.

Prior to issue of a new certificate, you will be required to pay an indemnity contribution (similar to insurance), based on the value of the land and the circumstances of loss or destruction.

The amount of the indemnity contribution is decided by officers of Land Registry after considering the evidence for each case. The amount is calculated based on the value of the property in the certificate of title and the degree of risk (or uncertainty) that the certificate of title might have been used fraudulently.

A certificate of title is a very important document. Under Victorian law, Land Registry (on behalf of the State of Victoria) is potentially liable to make good any loss suffered as the result of fraudulent use of a lost or stolen certificate of title. It is because of this potential liability that there are strict requirements for evidence, advertising and indemnity contributions.

For cases assessed as low risk the contribution would be calculated on the following scale:

- For land (including improvements) valued at up to \$200,000, a <u>flat fee</u> of \$100.

- For land (including improvements) valued at more than \$200,000 and up to \$500,000, 0.1% of the value of the land and improvements. For example, for land and improvements valued at \$325,000 the contribution would be \$325.
- For land (and improvements) valued at more than \$500,000, a <u>flat fee</u> of \$600.

If the risk of fraudulent use is considered to be higher than normal the indemnity contribution may be increased to cover the risk.

The contribution must be paid on lodging. The contribution is not refundable unless the Certificate of Title is located and produced to Land Registry before the application is granted.

Where an application is assessed at lodgement for registration and discretion is used by the officer to waive advertising, the application may be registered over the counter, provided all requirements are met and the contribution is paid.

To ensure that the contribution you are charged is as low as possible, it is important to provide as much information as possible about how your certificate was stored and how it went missing.

Until all the circumstances of your case are known and the evidence provided, Land Registry cannot provide any estimate of the indemnity contribution.

### 8. Standard requirements for evidence and documents

**General** - Statutory declarations should preferably be made by eyewitnesses and should demonstrate clearly the means of knowledge of the declarant. Where eyewitness evidence is not available, the reasons must be explained in a statutory declaration made by the applicant.

**Documents** - The Land Registry issue search and copies of relevant documents and correspondence should be referred to in one or more statutory declarations. Documents referred to in statutory declarations must be clearly identified and signed by the witness to the statutory declaration. Documents referred to may be stapled to the statutory declaration or be presented with Supreme Court-style exhibit notes.

**Valuation** - Your statutory declaration must state what you believe the current market value of the land to be. To support this, a copy of the most recent rate notice or current rate certificate showing council valuation must be supplied. Your statutory declaration must also state whether or not the land is subject to a contract of sale. If the land is subject to a contract, your statutory declaration must also state the contract price and name of purchaser. A copy of the contract should be produced with your application.

Custody of lost or destroyed certificate - The statutory declarations provided with this application must trace the custody of the certificate of title from the time it was last issued from Land Registry until loss or destruction was discovered. A statutory declaration should be supplied from each person who had custody. The statutory declarations should make it clear when, where and by whom the certificate was last seen. In the case of a witness who is dead, unavailable or uncooperative, inability to obtain a statutory declaration must be substantiated with copies of correspondence, death certificates or other appropriate evidence attached to your own statutory declaration.

**Records of mortgagees** - Where a certificate is believed to have been lost while in the custody of a mortgagee (for example, a bank), the mortgagee must state if any monies are owing on the loan; that the relevant records of the mortgagee still exist; and that the records show that the certificate was not released from the custody of the mortgagee. In any case where the mortgagee's records have been destroyed (for example, after repayment of a loan), further proof is required that the certificate was not released from the mortgagee's custody.

**Destruction** - In the case of destruction, the remains of the old certificate must be produced or accounted for and copies of correspondence about insurance claims must be supplied. If there was no insurance claim, the reason for this must be explained.

**Theft** - In the case of theft, details of the report to police must be supplied; and copies of correspondence about insurance claims must be supplied. If there was no insurance the reason for this must be explained.

**Searches** - One or more statutory declarations must detail who looked where to find the missing title. If you have failed to look in any obvious places, you will be required to look there and submit a further statutory declaration.

**Different names** - If the registered proprietor is described by any different names in any of the documents submitted, this should be explained by statutory declaration. (However, use of first initials, or omission of middle names or middle initials generally need not be explained.)

**Statement as to deposit of certificate** - You must state that the missing certificate has not been deposited as a security or held by another by way of lien. If you have no personal knowledge because, for example, you are an executor of a deceased proprietor, you must state your belief that the missing certificate of title has not been deposited as a security or held by another by way of lien. You must also explain the reasons for your belief.

**Undertaking to return** - You must state in your statutory declaration that you undertake to return the missing certificate of title to the Registrar of Titles in the event that it is ever found.

### **ARCHIVING OF TITLE RECORDS**

With the completion of titles automation and the move to Marland House it has been possible to move many paper records to secondary storage. Today, most searches may be performed online, from your home or office, or at Marland House.

The paper register and associated documents have moved to the former Public Records Office site at Laverton. Some experienced Register Book staff have transferred to the new facility to ensure efficient document retrieval, supported by electrically driven compactus and computer data base, enabling staff to quickly identify the location of a document and facilitate its retrieval within minutes.

The move to Laverton involved the relocation of over 30 million documents. The move is now complete. Customers may have experienced some minor delays in having their requests satisfied while the documents were in transit.

Where Land Registry is unable to provide an online copy of a document, customers may lodge an application for a copy of the original at the Search area counters located on either the Mezzanine or Level 10 at 570 Bourke Street.

There is no additional fee for this service at present. To access an original or copy of an original you will need to satisfy staff with sufficient evidence or reasons why a copy of the original or the original itself should be supplied. Once the document has been retrieved it is either photocopied and the copy held at the counter for collection by the customer or it is imaged and delivered in an electronic format.

If you require further information please contact David Wille on (03) 8636 2026 or email david.wille@nre.vic.gov.au

### Customer Information Bulletin on email

Many of you have provided your email address to enable us to send you the Title Registration Services (Land Registry) *Customer Information Bulletin* electronically. If you have not already done so, and you would like to receive the Bulletin via email, please forward your details to Nancy Mazza, email nancy.mazza@nre.vic.gov.au, telephone (03) 8636 2812 or fax (03) 8636 2250.

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