

# Land Victoria Customer Information Bulletin

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## Paper settlement with an electronic Certificate of Title

Land Victoria requires a Certificate of Title (CT) to support lodgement of most conveyancing transactions. Two types of CT are accepted by Land Victoria for this purpose – the paper CT (pCT) and the electronic CT (eCT).

The pCT is traditionally provided at the settlement of a conveyancing transaction. It is, however, also possible to attend settlement when the CT is an eCT. In this case, the eCT Control nominates the eCT to the paper transaction prior to settlement.

A Register Search Statement will indicate if a CT is an eCT by providing the name of the eCT Control. Details of the nomination of the eCT to the transaction being settled should also be recorded. Additionally, the nomination will be shown on the final search. If not, the eCT Control should be contacted and requested to nominate the eCT to the transaction.

At lodgement, Land Victoria will confirm that the CT is an eCT and a nomination has been recorded. The lodgement process can then continue unimpeded.

After registration of the transaction, the new CT will generally issue to the lodging party. Whether it is an eCT or a pCT is determined by the lodging party's VOTS customer code. If the VOTS customer code provided has been established for use in an Electronic Lodgment Network (ELN), for example PEXA, then the CT will issue as an eCT. If the VOTS customer code provided has not been established for use in an ELN, the CT will issue as a pCT.

For further information refer to 'Guide to attending a paper settlement when the Certificate of Title is in an electronic format' at [www.dtpli.vic.gov.au/property](http://www.dtpli.vic.gov.au/property)>Forms, guides and fees (under the 'National Electronic Conveyancing' heading).

## Notices to caveators

In some circumstances notice will be sent to a caveator about the lodgement of a dealing even though the lodgement will not result in the caveat lapsing. Examples of these circumstances include when the caveat claims an interest as lessee under a lease or when it claims an option for a lease.

The need to send notice will delay registration of any dealing lodged.

Customers also need to be aware that when the dealing is one that disposes of the whole of the proprietor's interest (such as a transfer of land), notice will be sent to a caveator claiming a lesser interest in the folio. Examples of this include when a caveat claims an interest as lessee under a lease; or, claims an option for a lease. In these cases, the caveat will lapse if the caveator fails to respond appropriately to the notice of the dealing (generally, with a consent to registration).

When a customer has a dealing to lodge against a caveat affected folio, consideration needs to be given to the delay in registration resulting from the need to send notice to the caveator. This delay can be avoided if the caveator's prior consent is obtained and submitted with the dealing.

## Disclaimer of onerous freehold property

Property burdened by onerous covenants or not readily saleable may be disclaimed by a trustee in bankruptcy in the case of an individual; or, by the liquidator of a company (See section 133 of the *Bankruptcy Act 1966* and sections 568–568F of the *Corporations Act 2001*). A disclaimer of property operates to determine the rights, interests and liabilities of the bankrupt or insolvent registered proprietor of the property (section 133(2) of the *Bankruptcy Act 1966* and section 568D of the *Corporations Act 2001*). It also discharges a trustee in bankruptcy from all personal liability in respect of the disclaimed property.

However, a disclaimer of property does not affect the rights or liabilities any other person has in the property, except to the extent necessary to release the bankrupt or company from the property (Section 133(2) of the *Bankruptcy Act 1966* and section 568D(1) of the *Corporations Act 2001*). This means that although a registered proprietor may be released from a mortgage encumbering the property, a mortgagee's interest (including a power of sale) may still subsist in the disclaimed property.

Mortgagees or other persons with an interest in disclaimed property may apply for an order vesting the property in them under either sections 133(9)–(11) of the *Bankruptcy Act 1966* or section 568F of the *Corporations Act 2001*. These persons may then apply to be registered as the proprietors of the land under section 59 of the *Transfer of Land Act 1958*.

A disclaimer of onerous property may be set aside. When the Registrar of Titles (Registrar) receives notice of a disclaimer from a liquidator or trustee in bankruptcy, a Registrar's caveat will be recorded over the affected land. In these circumstances, the recorded Registrar's caveat recognises that the land cannot be dealt with by the registered proprietor of the land; but, may still be dealt with by an interested party. The Registrar will only record a Registrar's caveat when a bankrupt or insolvent company's freehold estate is being disclaimed. This practice does not apply to other estates or interests in land – for example, leases.

When notifying the Registrar of a disclaimer, trustees in bankruptcy, liquidators or their legal representatives should provide both of the following to Land Victoria:

- proof of the appointment of the trustee or liquidator
- notice of disclaimer of onerous property.

Persons wanting to deal with disclaimed property must prove that they are able to do so. This may mean they must seek a vesting order from a court of competent jurisdiction; or, they produce the relevant declarations from a court, together with the appropriate application for dealing with the land.

## Recovery of possession by lessors – section 70 Transfer of Land Act

Land Victoria has recently received a number of applications for recovery of possession by lessors after determination of leases. Section 70 of the *Transfer of Land Act 1958* (the Act) allows lessors to apply to the Registrar of Titles (Registrar) for the removal of any lease, Crown lease or perpetual Crown lease from the Register in the following circumstances:

- possession of the lease has been recovered by a legal proceeding
- the lessor has re-entered the leased premises in strict conformity with the provisions for re-entry contained or implied in the lease
- the lessee has abandoned the leased premises and the lease, and the lessor has re-entered the land undisturbed by the lessee.

Granting a section 70 application is discretionary. Applicants should specify in their applications which ground for re-entry they are relying upon and provide evidence of the determination of the lease. For example, if a court has made an order for the recovery of possession by a lessor, a

copy of the order should be provided with the application. In other cases, a statutory declaration from the lessor and copies of any notices served on the lessee should be provided. It may also be useful to provide a copy of any relevant correspondence from a lessee or their solicitor.

When an applicant claims that re-entry has occurred in strict conformity with the provisions of the lease, they should state under which provisions they have re-entered. The lease will then be examined to ensure that the re-entry was in conformity with those provisions. The Act provides that the re-entry must be in strict conformity with the provisions of the lease. If there are no provisions for re-entry contained within the lease, section 67(1)(b) of the Act will apply (unless expressly excluded by the lease).

In cases where default notices must first be served on a defaulting lessee, a copy of the notice should be provided. It will be examined to ensure that it was duly served. In some instances, it may be necessary for applicants to prove due service of the notice – for example, with acknowledgment by the lessee or a registered post receipt. If time periods limit a lessor's ability to re-enter, re-entry must not be claimed to have occurred prior to expiration of the time period.

When an applicant claims abandonment and re-entry, particulars of the abandonment must be provided. Applicants should also provide proof that a lessor's or tenant's re-entry has been undisturbed by the abandoning lessee. Again, this could be in the form of an acknowledgment by the lessee or their mortgagee.

In cases where a surrender of lease could possibly be obtained from a lessee, applicants should consider seeking a surrender of lease and lodging the surrender under section 69 of the Act (as an alternative to making a section 70 application). In other cases, it may be more appropriate for applicants to seek to establish adverse possession of the leasehold estate.

In cases of a disclaimer of lease occurring under the *Corporations Act 2001 (Cth)*, applicants should apply for removal of the lease under section 106(1)(c) of the Act.

## Conditions in Crown grants

Customers are reminded that the estate of a registered proprietor is subject to the conditions and reservations contained in the Crown grant of the land.

In the interests of transparency, Land Victoria may record a Registrar's caveat when it becomes aware of a condition in a Crown grant that limits how a folio may be dealt with; or, when failure to comply with a condition renders the original grant null and void.

Examples of conditions that may be in the Crown grant include:

- a condition requiring the land in the grant to be consolidated with an adjoining parcel

- a condition generally preventing subdivision or
- a condition only allowing subdivision with the Minister's consent.

## Growth Areas Infrastructure Contribution (GAIC)

Register search statements may indicate a Growth Area Infrastructure Contribution (GAIC) may be payable – refer to section 201UB of the *Planning and Environment Act 1987* (the Act).

Section 201SZG of the Act provides for the Commissioner of State Revenue (SRO) to give a notice to the Registrar of Titles that a transfer or subdivision of land in the contribution area can be registered. The Registrar does not accept a transfer of land subject to GAIC unless it is accompanied by a notice issued by the Commissioner under section 201SZG.

Customers are reminded that Land Victoria will not accept for lodgement any relevant transfer of land or plan of subdivision of land that is not accompanied by either:

- a removal of the notification (section 201UC)
- a Commissioner's notice under section 201SZG(2).

Parties lodging acquisition plans under section 35 of the *Subdivision Act 1988* must contact the SRO to ascertain whether or not the subdivision constitutes a GAIC event. Although most acquisition plans would not constitute a GAIC event, a response is required from the SRO in the form of a letter. The SRO letter must accompany the plan at the time of lodgement with Land Victoria.

For queries on GAIC matters please 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
- Metropolitan Planning Authority on (03) 9651 9600 or email [info@mpa.vic.gov.au](mailto:info@mpa.vic.gov.au) for general queries, planning related land matters and staged payments.

## Contact us

For location and contact details, refer to [www.dtpli.vic.gov.au/property](http://www.dtpli.vic.gov.au/property)>Contact us.

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