

Land Victoria Customer Information Bulletin

Edition 141 June 2013

National electronic conveyancing begins

Release 1 of National e-Conveyancing Development Limited's (NECDL) new national electronic conveyancing system, known as PEXA, started on 18 June 2013.

PEXA stands for Property Exchange Australia – a purpose-built system that supports the exchange of property by enabling lodgements and property settlements to be completed online.

PEXA's capabilities will be delivered over two main releases.

Release 1 supports stand-alone mortgages, stand-alone discharges of mortgage and refinancing.

Release 1 will see selected land registries and financial institutions join PEXA. A staggered approach will be used, with one land registry and one financial institution at a time joining PEXA.

Land Victoria and Commonwealth Bank of Australia are the first to join.

Other land registries and financial institutions will join following Release 2, when conveyancers and solicitors will also be invited to join PEXA as subscribers.

Release 2, scheduled for the second-half of 2014, will introduce transfers, caveats and withdrawals of caveats; and, enable multi-party transactions and online settlement.

Further information on PEXA is on the NECDL website at www.necd.com.au.

Changes customers may see as a result of PEXA include the following.

Electronically lodged instruments

Electronically lodged instruments will receive a dealing number in the same format as paper instruments. The dealing number should be used when enquiring about the transaction.

Electronic conveyancing terms

Electronic conveyancing uses the following terms:

- pCT for paper Certificate of Title (CT)
- eCT for electronic CT
- Administrative Notices
- eCT Control is the party entitled to control the eCT.

A pCT has no place in an electronic conveyancing system. Therefore, an eCT was adopted for use in electronic conveyancing where transactions are lodged electronically. The eCT acts in the same way as the pCT.

An eCT can result from either a paper or electronic dealing, be created to support an electronic transaction or be converted from a pCT as part of a 'bulk' conversion process.

When the CT is an eCT, a notification is placed on the relevant folio of the Register, including the name of the person or PEXA subscriber who has control of the eCT (eCT control).

Title search (Register Search Statement)

When the CT is an eCT, the Register Search Statement will provide the details of any Administrative Notices and the name of the eCT Control in the 'Additional information' section.

Administrative Notices

Administrative Notices are used to request that the Registrar deals with a CT in a particular way. The request provides a set of instructions about the use, control and output of the CT. These requests can only be made by the person with control of the CT.

The priority rules that apply to dealings also apply to Administrative Notice requests. Therefore, a dealing number is allocated to an Administrative Notice when it is lodged.

The Administrative Notice request can appear in two sections of the Register Search Statement – in the section named 'ACTIVITY IN THE LAST 125 DAYS' and the 'Additional information' section, under 'ADMINISTRATIVE NOTICES'.

In PEXA there will be four electronic Administrative Notices. These are often referred to as 'requests' because of their purpose – to request that the Registrar acts on the instructions of the person with CT Control.

The Administrative Notice requests are:

- a. Convert pCT and Nominate to the Lodgement Case
- b. Nominate eCT to the Lodgement Case
- c. Nominate eCT to Paper Instrument
- d. Withdrawal of Nomination.

In PEXA, a Lodgement Case is an electronic file used to create electronic transactions for lodgement at Land Victoria.

Electronic instrument

A rendered version of an electronic instrument is formatted in a similar way to a paper instrument and can be searched in the same manner as any other instrument. Administrative Notices can also be searched.

The major difference between the electronic and paper instrument is that electronic instruments contain certifications and a representation of the subscriber's digital signature.

Further information

Further information on CTs and Administrative Notices is available in *Your guide to Certificates of Title in PEXA*.

Electronic Conveyancing Victoria (ECV)

ECV will continue to operate in parallel with PEXA until PEXA Release 2 is implemented in the second-half of 2014. ECV will then be decommissioned. Land Victoria and NECDL will shortly start work on transitioning ECV subscribers to PEXA.

Name used by registered proprietor

Customer Information Bulletin No 109 January 2008 advised customers of Land Victoria's simplified practices, where the name used by a registered proprietor differs from the name recorded in the Register. A further article on the same topic appeared in Customer Information Bulletin No 132 September 2011. Customers should refer to those bulletins for full details.

In most instances, Land Victoria will accept a recital in an instrument or an accompanying statutory declaration as evidence of a change of name. It is not usually necessary for a customer to make an application under Section 32 or Section 103(2) of the *Transfer of Land Act 1958*.

Many customers, particularly financial institutions, continue to present Section 32 or Section 103(2) applications when they are not required. This results in additional costs to customers because of document preparation, lodging fees and additional work in processing unnecessary applications.

Any customer preparing documents in circumstances where a party deals in a name different from that recorded in the Register should firstly determine whether or not a Section 32 or Section 103(2) application is required, bearing in mind that in most cases an application will not be required. The customer should then determine whether to proceed by way of recital in the instrument or an accompanying statutory declaration. These are alternatives; both are not required. Examples of acceptable recitals are included in Customer Information Bulletin No 127 April 2011.

Adherence to these practices will minimise costs and paperwork for customers.

New fees

In accordance with the *Monetary Units Act 2004*, Land Victoria lodgement fees expressed in number of fee units will increase from 1 July 2013.

The changes apply to fees under the *Transfer of Land Act 1958*, *Subdivision Act 1988*, *Instruments Act 1958* and *Water Act 1989*.

Search fees, LANDATA® service charges, ECV fees and user charges will also increase from 1 July 2013.

Details are available at:

www.dse.vic.gov.au/property >Forms, guides and fees

New forms

Land Victoria has made changes to its interactive forms – Transfer of Land, Discharge of Mortgage and Mortgage – as a result of customer feedback.

Leading zeroes in ABN/ACN/ARBN

The ABN/ACN/ARBN field now retains leading zeroes when keyed.

Additional Terms and Covenants

This page has been amended to clarify that multiple pages must be signed individually.

Additional Terms and Covenants in Mortgage form

This panel allows copied data to run across the page rather than in columns.

'Lot' removal from address panel

'Lot' has been removed as a selection in an address panel in accordance with Australian standards for rural and urban addressing.

Consideration

This panel has been amended to show all keying in upper case.

Directing Party Considerations

Customers can indicate the actual direction of monies within the transaction.

VCAT/marksperson signing

The ability to select these options from the drop-down box has been removed due to infrequent use. If required, select the 'Leave Blank' option from the list and in the signing panel insert the appropriate signing clause. Examples of signing clauses include:

VCAT Order

Signed by – *full name of represented person* – by being signed in his/her name and on his/her behalf by – *full name of Administrator* – the Administrator of his/her estate pursuant to an Order of the Guardianship and Administration Board or the Victorian Civil and Administrative Tribunal (insert either) dated – date – in the presence of:-

Marksperson

Signed by the said – *full names of marksperson* – by making his/her mark (*he/she* being prevented through *illness/illiteracy etc.* from signing this document) in my presence:

Note: qualification of the witness must be given.

For further examples of a signing clause for a marksperson, see the Land Victoria Lodging Book Version 4.1, page 1.26.

Printing instructions

Printing instructions clarify which panels need to be completed before printing.

Hover help

Hover help occurs when placing the cursor over any field; it offers improved guidance.

Website address

Given that the forms are on the website, reference to the web address has been removed from the forms.

Customers who have Land Victoria's approval to use their own templates should contact Land Registration Services if they wish to clarify which of the above items need alteration in their own products. Please call Paul Major on 8636 2255 or Craig Barnes on 8636 2252.

Phasing out old-style forms

In November 2012 Land Victoria introduced new interactive Transfer of Land, Discharge of Mortgage and Mortgage forms. These have been popular with customers.

Land Victoria now intends to phase out the T1 Transfer of Land and old-style Discharge of Mortgage and Mortgage forms.

From 1 July 2013, Land Victoria will no longer approve the use of the T1 Transfer of Land and old-style Discharge of Mortgage and Mortgage forms. This applies to new applications and applications to renew a current approval. Therefore, when the two-year approval period for existing T1 Transfer of Land and old-style Discharge of Mortgage and Mortgage forms passes, the forms will be considered expired. Any expired form has a 'run off' period of 12 months, during which time the expired form is still acceptable for lodgement. Once the run off period passes, an instrument produced using an expired form is generally unacceptable for lodgement.

Affected customers are encouraged to use the new interactive Transfer of Land, Discharge of Mortgage and Mortgage forms. Alternatively, customers using forms packages provided by major software providers should approach their provider because they are developing new versions of the online forms. Customers may also develop their own forms in the new, online style; however, forms will only be approved if developed in accordance with Land Victoria's specifications. Customers wishing to pursue this course should contact Paul Major on 8636 2255 or Craig Barnes on 8636 2252.

Delivery of Certificates of Title

Land Victoria uses ordinary mail (not registered mail) to deliver a Certificate of Title (CT) issued from the registration of transactions. For many years this has been efficient and cost-effective. Land Victoria also uses DX to deliver a CT if a customer prefers this delivery method. Alternatively, major customers have the option of a secure delivery box at Land Victoria's office.

A CT might sometimes be returned to Land Victoria as 'undelivered'. When this occurs, the issue record for the CT is changed to reflect this, the returned CT is destroyed and a fresh CT will be printed only upon proof of entitlement.

When a transaction document is lodged for registration, the lodging party has a responsibility to ensure the successful registration of the document and the issue of a CT reflecting that registration. Land Victoria expects a lodging party to monitor the completion of a transaction and the issue of the new CT.

If receipt of the new CT does not occur within a normal processing time, the lodging party should make an enquiry at Land Victoria. It will then become clear if the transaction has been processed and the CT has gone astray. If Land Victoria is notified of the non-delivery within a reasonable time of dispatch, the CT will be replaced at Land Victoria's expense. A reasonable time would generally be regarded as one month; although, that can vary depending on individual circumstances.

Land Victoria was recently asked to replace a CT issued many years ago on the basis that it was never delivered. In that, and other similar cases, the lodging party clearly failed to monitor completion of the transaction and issue of the CT.

Customers should be aware that, when there has been a significant lapse of time between the CT being issued and

the report of its non-delivery, Land Victoria will not replace the 'missing' CT at its own expense. In these circumstances, the registered proprietor will need to make an application for a replacement CT under Section 31 of the *Transfer of Land Act 1958*.

Incorporated associations

The Associations *Incorporation Reform Act 2012* (the Reform Act) came into operation on 26 November 2012.

The repealed Associations *Incorporation Act 1981* included a specific provision (section 9) under which vesting applications were made to the Registrar of Titles. The Reform Act omits this provision. Instead, an incorporated association should apply to amend the Register by making an application under section 59 of the *Transfer of Land Act 1958* (the Transfer of Land Act). The applications that may be made following the occurrence of an event under the Reform Act are set out in the table below.

Event under the Reform Act	Application
<i>s.9 incorporation</i> : upon registration of association as an incorporated association specified property vests in the incorporated association	s.59 the Transfer of Land Act: Application to give effect to vesting effected by operation of statute (particulars of disposition: s.9 of the Reform Act)
<i>s.21 amalgamation</i> : upon registration of amalgamated association under s.19(1) the property of each constituent association vests in the amalgamated association	s.59 the Transfer of Land Act: Application to give effect to vesting effected by operation of statute (particulars of disposition: s.21 of the Reform Act)
<i>s.15(4) registrable body</i> : upon incorporation of registrable body (e.g. a co-operative under the Co-operatives Act 1996) the property of the body vests in the incorporated association	s.32 the Transfer of Land Act: Application for a new folio of the Register (reason for request: change of name; per s.15(1), registrable body is one and the same as the incorporated association)
<i>Part 8: transfer of incorporation</i> : incorporated association becomes prescribed body corporate and ceases to be incorporated under the Reform Act	s.32 the Transfer of Land Act: Application for a new folio of the Register (reason for request: change of name; per s.115(2), incorporated association is one and the same as the prescribed body corporate)
<i>s.140 cancellation</i> : upon an incorporated association being cancelled under s.135 the property of the incorporated association vests in the Registrar of Incorporated Associations	s.59 the Transfer of Land Act: Application to give effect to vesting effected by operation of statute (particulars of disposition: s.140 of the Reform Act)
<i>transitional</i> : before the commencement of the Reform Act, the Registrar of Incorporated Associations grants a certificate of incorporation and property vests in the incorporated association (covers both initial incorporation [former s.9 of <i>Associations Incorporation Act 1981</i>] and amalgamation [former s.31(5)]; note: no event under the Reform Act)	s.59 the Transfer of Land Act: Application to give effect to vesting effected by operation of statute (particulars of disposition: s.8 of the <i>Associations Incorporation Act 1981</i>)

The Reform Act sets out a simple process for an incorporated association to execute documents, subject to a more restrictive arrangement being required by the rules of an incorporated association. The signatories should set out the office they hold and use the following signing clause:

Executed by [name of incorporated association] in accordance with the *Associations Incorporation Reform Act 2012* and the rules of the incorporated association.

Signatures:

Full names:

Office:

Victorian Water Register

Customers presenting documents for recording in the Water Register are reminded of the following.

When lodging a Transfer of Water Share for recording:

If a mortgage affects the water share, then either a Discharge of Mortgage of Water Share with the appropriate lodging fee; or, a Mortgagee's Consent (in writing) to the transfer must be lodged.

The correct lodging fee(s) must be paid to the Victorian Water Register. From 1 July 2013, the fee for a Transfer of Water Share is \$111.80 and for a Discharge of a Mortgage of Water Share is \$56.00.

The transfer must be executed by both the transferor(s) and transferee(s), with all signatures being properly witnessed by an independent adult person.

If the transferor or transferee is a body corporate, the transfer must be appropriately executed by a company in accordance with the *Corporations Act 2001* and by other incorporated bodies in accordance with their governing legislation and/or their rules. If additional space is needed to complete the execution, then use page 2 of the transfer or an approved annexure sheet.

The transfer must be lodged with the Victorian Water Register, 570 Bourke Street, Melbourne 3000 before the expiry of the approval date displayed on the bottom left-hand corner of the front page.

Please note: the pre-filled sections of the transfer must not be amended.

For further information on completing a transfer or lodging requirements please contact Victorian Water Register on 8636 2010 and select the 'water register' option.

How to subscribe to the Customer Information Bulletin

To receive the CIB online, send an email with your name and email address to lv.cib@dse.vic.gov.au with **SUBSCRIBE** in the subject line.

Subscribers receive an email including a link to each new issue available for download from the Department of Environment and Primary Industries website.

Unsubscribe by sending an email with **UNSUBSCRIBE** in the subject heading.

For further information

Land Registration Services
Land Victoria
Level 9, 570 Bourke Street
Melbourne VIC 3000
PO Box 500
East Melbourne VIC 8002

DX 250639

Telephone (03) 8636 2010
Fax (03) 8636 2299

Published by the Victorian Government

Department of Environment and Primary Industries Melbourne, June 2013

© The State of Victoria Department of Environment and Primary Industries 2013

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968*.

Authorised by the Victorian Government, 570 Bourke Street, Melbourne.

ISSN 1441-1504 PP 349181/01650

For more information contact the DEPI Customer Service Centre 136 186

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

Accessibility

If you would like to receive this publication in an accessible format, such as large print or audio, please telephone 136 186, or email customer.service@dse.vic.gov.au

Deaf, hearing impaired or speech impaired? Call us via the National Relay Service on 133 677 or visit www.relayservice.com.au