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 December 2022

# Christmas and New Year closure

[Secure Electronic Registries Victoria’s](https://servictoria.com.au/) offices close for the end-of-year holiday period from 4.00 pm Friday 23 December 2022 and reopen at 8.30 am on Tuesday 3 January 2023. Registration, call centre services, and appointment bookings will be unavailable during this period.

Customer queries will be responded to from 3 January 2023 onwards.

Online services, including electronic lodgment and search, will continue to be available as normal during this period.

# Proposed changes to the next version of the Registrar’s Requirements for Paper Conveyancing (Registrar’s Requirements)

The Registrar is proposing a number of changes to the Registrar’s Requirements to streamline processes, improve efficiency and progress further towards 100% digital lodgment.

These include:

1. a mandate for all remaining instrument types capable of being lodged electronically as they become available
2. mandates for lodgment using SPEAR
3. limits on variations of easement - the term (length of time), land, parties or the nature/purpose of the easement cannot be varied
4. removal of instruments as to part will only be accepted if the removal is from the whole of a folio of the Register or the whole of a separately transferable parcel
5. recording of Approved Building Envelopes will only be accepted in an agreement lodged under section 173 of the Planning and Environment Act 1987
6. withdrawals of caveat signed by a deceased caveator’s legal personal representative will be permitted
7. leases and sub-leases must not be accompanied by a paper document or a PDF document being a separately signed lease or sub-lease
8. mortgages and MCPs to be incorporated into mortgages must not include inappropriate matters including provisions that relate to other documents such as loan agreements and guarantees, or repeat terms from a loan agreement or guarantee
9. clarification around the creation of restrictions in plans.

Early in 2023, Land Use Victoria will provide its key industry stakeholders with a marked up version of the Registrar’s Requirements together with an explanation for each proposed change.

# Transfer of control of electronic certificates of title only available electronically

Subscribers must submit transfers of control of electronic certificates of title electronically between active subscribers using an Electonic Lodgment Network (ELN). Paper requests to transfer control are no longer accepted.

# Applications for discharges of mortgages when mortgagee is a deregistered company

Typically, a registered mortgage can only be removed from the Register of land (the Register) by the registration of a discharge of mortgage instrument under section 84(1) of the Transfer of Land Act 1958 (TLA).

In some circumstances, a discharge instrument cannot be obtained. Section 84(2) of the TLA allows the Registrar to amend the Register to remove a mortgage if satisfied certain requirements have been met.

Section 84(2)(b)(ii) of the TLA requires that the Registrar be satisfied a discharge of mortgage is not able to be obtained because the mortgagee is a body corporate and the authorised agent of the body corporate cannot be located or the agent’s signature cannot be obtained within a reasonable time.

When a mortgagee is a deregistered company, its assets may have vested in Australian Securities and Investments Commission (ASIC) upon deregistration, in accordance with section 601AD of the Corporations Act 2001 (Cth) (Corporations Act).

In this event, an application under section 84(2) of the TLA is not appropriate. As the interest has vested in ASIC, ASIC can execute a discharge of mortgage pursuant to ordinary conveyancing practices and Part 5A.1 of the Corporations Act.

Before applying under section 84(2) of the TLA to remove a mortgage when the mortgagee is a deregistered company, registered proprietors must make an application to ASIC’s Property Law Group for ASIC to execute a discharge of mortgage. More information on how to make such an application is available on ASIC’s website at <https://asic.gov.au/for-business/closing-your-company/effects-of-deregistration/applying-to-asic-to-deal-with-deregistered-company-property/a-deregistered-company-has-a-mortgage-over-your-property/>.

If ASIC is unable to execute the discharge, evidence including the application to ASIC and the outcome of that application must be provided with any subsequent application under section 84(2) of the TLA as supporting documents.

# Lodgment of Registrar’s Caveats

Customers are reminded that, from 1 August 2019, a request seeking the recording of a Registrar’s Caveats on a folio of the Register under section 106(1)(a) of the TLA is mandated as an instrument for electronic lodgment using an Electronic Lodgment Network (ELN). Other written requests will not be accepted.

The instrument must set out the grounds of the application under Additional Details and provide applicable Supporting Documents by uploading them in the ELN. Typical grounds include certificates under section 19 *State Trustee (State-Owned Company) Act 1994*, VCAT Orders under the *Guardianship and Administration Act 1986* (Vic) or the *Guardianship and Administration Act 2019* (Vic) or Court letters. A statutory declaration stating that the represented person is one and the same as the registered proprietor may be required as a Supporting Document.

Please see the Guide to Residual Documents at [Fees, guides and forms (land.vic.gov.au)](https://www.land.vic.gov.au/land-registration/fees-guides-and-forms) for more information.

# Electronic signing of legal practitioner’s certificates

Certain instruments lodged for registration or recording are required to be supported by a legal practitioner’s certificate.

Under section 9(1) of the *Electronic Transactions (Victoria) Act 2000*, the Registrar consents to legal practitioner’s certificates being signed by electronic signature when the following requirements are met:

1. The legal practitioner who electronically signs the legal practitioner’s certificate is the same legal practitioner who digitally signs the electronic instrument the certificate supports. For example, the residual document: Application to request action by the Registrar – Application - remove caveat under section 89A of the Transfer of Land Act 1958 must be digitally signed by the same lawyer who electronically signed the supporting legal practitioner’s certificate.
2. The method of electronic signing is reliable and appropriate.

Methods of electronic signing which the Registrar considers reliable and appropriate are limited to:

* an electronic signature, for example using a digital signing program such as DocuSign
* a digitised image of a physical signature
* electronic drawing of a signature, for example using a digital pen or touchscreen, or software such as Adobe Sign

In all other circumstances the Registrar will continue to require physical (wet) signing of a legal practitioner’s certificate. If lodging electronically, a PDF copy of the original signed certificate must be uploaded. If lodging in paper, the original signed certificate must be produced.

# *Contact us*

*For location and contact details, please go to* [*www.land.vic.gov.au/contact-us*](http://www.land.vic.gov.au/contact-us)

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