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| Land Use VictoriaCustomer Information Bulletin 210 |
| April 2021 |

# Operating requirements and participation rules for electronic conveyancing

On 4 March 2021 the Registrar of Titles determined Version 6 of both the Operating Requirements and Participation Rules for electronic conveyancing under section 22 and section 23 respectively of the Electronic Conveyancing National Law (Victoria).

Version 6 of the Operating Requirements and Participation Rules was published on 4 March 2021 and takes effect on 12 April 2021 and is available at [www.land.vic.gov.au/land-registration/publications](http://www.land.vic.gov.au/land-registration/publications).

In determining Version 6 of the Operating Requirements and Participation Rules, the Registrar adopted the model operating requirements and model participation rules developed and approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).

The SPEAR Electronic Lodgment Network Participation Rules (Version 3) and the Registrar's Requirements for Paper Conveyancing Transactions (Version 8) have also been updated to reflect the changes in the model participation rules and is available at [www.land.vic.gov.au/land-registration/publications](http://www.land.vic.gov.au/land-registration/publications).

# Change in practice when subdividing existing Not in Common Ownership (NICO) folios

Following industry consultation, Land Use Victoria (LUV) is changing requirements for NICO folio/s to be resolved by transfer prior to lodging a subsequent plan of subdivision as advised in [Customer Information Bulletin 162](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2017/162).

From 3 May 2021, LUV will accept plans of subdivisions affecting NICO folios where a supporting plan diagram overlay is supplied. The plan diagram overlay will depict where the parent title boundaries lie for the new parcels and assist in determining the proprietorship for new folios. An example of the required diagram which can be attached in SPEAR as an additional document by the surveyor is available in the guide [What is a NICO?](https://www.land.vic.gov.au/__data/assets/word_doc/0031/469444/What-is-NICO.docx) available at [www.land.vic.gov.au/land-registration/fees-guides-and-forms](https://www.land.vic.gov.au/land-registration/fees-guides-and-forms).

Transfers resolving NICO proprietorship are lodged using the generic residual document ‘Record-Notice-Transfer of Land Act – Section 104’. If a discharge of mortgage and/or new mortgage are to follow the transfer these are ‘stand-alone’ transactions, mandated for electronic lodgment and must be lodged electronically after the NICO proprietorship has been resolved.

LUV will continue to contact the lodging party prior to registration of a plan where new folios issue NICO and the required transfer/s to resolve the NICO proprietorship have not been lodged.

Further information is available in the guide [What is a NICO?](https://www.land.vic.gov.au/__data/assets/word_doc/0031/469444/What-is-NICO.docx) available at [www.land.vic.gov.au/land-registration/fees-guides-and-forms](http://www.land.vic.gov.au/land-registration/fees-guides-and-forms)

# Plans lodged through the generic residual document ‘Record-Notice-Transfer of Land Act – Section 104’

For dealings lodged using the generic residual document ‘Record-Notice-Transfer of Land Act – Section 104’ where the supporting plan documentation has been prepared in SPEAR, the associated SPEAR reference must be supplied in the paper instruments attached to the generic residual document. If the SPEAR reference is not provided this will result in the dealing being refused for lodgment.

LUV will ensure the form, any supporting documentation and the plan are combined into the one dealing as part of the lodgment process.

Please do not provide copies of the surveyor’s plan as an attachment as it impedes the lodgment process.

SPEAR electronic lodgment is the preferred method for lodging all instruments eligible to be lodged using SPEAR. Information about how to register to become a SPEAR ELN Subscriber is on the SPEAR website: <https://www.spear.land.vic.gov.au/spear/pages/lodging-parties/about-lodging.shtml>

For instrument types available in SPEAR refer to <https://www.spear.land.vic.gov.au/spear/pages/about/what-is-spear/spear-dealing-types.shtml>

# Reminder: Evidence supporting an adverse possession application

**Strips and Slivers**

A reminder that LUV requires ‘deeds of assignment of possessory rights’ to be produced in support of applications for adverse possession of small strips and slivers, unless the survey was certified prior to 1 December 2019 – see [Customer Information Bulletin 192](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2019/192). If a deed of assignment cannot be produced consideration should instead be given to proceeding under Section 99 of the *Transfer of Land Act 1958* application*.*

**Survey-based application requisitions**

To avoid delays in the processing of survey-based applications, all requisitions must be addressed within the timeframe specified in the requisition notice and all requisitions should be responded to at the same time. Please email responses to requisitions to APS.Branch@delwp.vic.gov.au

Requests for extensions will only be considered in exceptional circumstances. If all requisitions cannot be satisfied within the timeframe specified, then the application should be withdrawn and relodged when the issues identified in the requisitions have been addressed.

Continually re-visiting applications when an individual requisition is addressed is having a significant impact on holding levels and processing times of survey-based applications.

# Supporting evidence disclosure under Freedom of Information Act 1982

LUV advises legal practitioners of the recent decision by the Office of the Victorian Information Commission (OVIC) that Freedom of Information (FOI) requests for supporting material, including statutory declarations, in support of a survey-based application, such as adverse possession, will be provided if deemed relevant by the FOI unit.

The FOI unit will assess the document/s requested, and if deemed relevant, names and addresses of third parties will be redacted from the document. The document will then be released to satisfy the request. OVIC cited section 33(1) of the *Freedom of Information Act 1982* as supporting this decision*.*

Practitioners need to make their clients and any potential third-party witnesses aware that their statutory declarations will be released should an FOI application be made, with the name and address of the declarant redacted, but not otherwise de-identified. If the client or third party is not comfortable with this, then a statutory declaration from that party should not be submitted in support of the application.

# New Memorandum of Common Provisions (MCPs) forms for restrictive covenants

LUV has approved two new Memorandum of Common Provisions (MCP) forms that are mandatory for use from 3 May 2021 where parties intend to seek to record a restrictive covenant in the Register using a transfer or plan:

* [Memorandum of common provisions: Restrictive covenants in a transfer – Section 91A *Transfer of Land Act 1958*](https://www.land.vic.gov.au/__data/assets/word_doc/0031/517918/Memorandum-of-common-provisions-Transfer.docx)
* [Memorandum of common provisions: Restrictive covenants in a plan – Section 91A *Transfer of Land Act 1958*](https://www.land.vic.gov.au/__data/assets/word_doc/0025/517930/Memorandum-of-common-provisions-Plan.docx)

These forms can also be found in: Fees, Guides and Forms [www.land.vic.gov.au/land-registration/fees-guides-and-forms](http://www.land.vic.gov.au/land-registration/fees-guides-and-forms).

The new forms have been created due to a significant number of transfers and plans lodged that refer to MCPs that do not meet the requirements for recording a restrictive covenant. Typical errors include:

* benefited land not being identified; or
* attempts to burden and benefit the same land.

The transfer or plan must then be requisitioned, and the transfer withdrawn (with stamp duty implications), or the plan amended, potentially requiring recertification by council. The new forms are designed to reduce the occurrence of these errors.

From 3 May 2021, if customers do not use the appropriate form, the MCP will not be accepted. In the meantime, customers are encouraged to use these forms to ensure more efficient processing.

The [generic MCP form](https://www.land.vic.gov.au/__data/assets/word_doc/0029/498044/Memorandum-of-common-provisions-91ATLA-V3.docx) can continue to be used for leases and mortgages.

# Change to requirements for lost paper certificate of title applications

To create further efficiencies, the Registrar is changing lodging requirements for applications lodged electronically under section 31 of the *Transfer of Land Act 1958,* to replace a lost paper certificate of title.

From 3 May 2021, subscribers acting on behalf of applicants must request and receive confirmation that exhaustive and thorough searches have been conducted for the paper certificate of title from:

* the applicant(s)
* the party to whom the certificate of title last issued
* any Australian Legal Practitioner, Law Practice or Licensed Conveyancer who may have held the certificate of title
* any financial institutions, accounting firms or accountants that may have held the certificate of title
* any caveator if a caveat alleging a charge or mortgage affects the land the subject of the application; and
* if not one of the above, the person that last held the certificate of title.

Once confirmation is received, the subscriber must provide a statutory declaration that the above has been carried out with the application. A new [statutory declaration form for represented parties](https://www.land.vic.gov.au/__data/assets/word_doc/0037/517789/Represented-Statutory-Declaration-Certificate-of-Title-lost-or-destroyed.docx) is at: [www.land.vic.gov.au/land-registration/fees-guides-and-forms](http://www.land.vic.gov.au/land-registration/fees-guides-and-forms). No other evidence will be required at lodgment.

A new [guide to replacing a lost or destroyed Certificate of Title – Represented parties](https://www.land.vic.gov.au/__data/assets/word_doc/0029/517745/Guide-to-replacing-a-lost-or-destroyed-Certificate-of-Title_Represented-.docx) is at: [www.land.vic.gov.au/land-registration/fees-guides-and-forms](http://www.land.vic.gov.au/land-registration/fees-guides-and-forms).

Please note that additional evidence may be requested after lodg~~e~~ment if necessary.

If a subscriber is unable to provide the required declaration, the application may be refused or requisitioned.

# Cluster Plan enhancement project

Cluster plans, recognised by the plan prefix of ‘CS’, consist of 786 registered plans of subdivision under the *Cluster Titles Act 1974*, and they range from CS001000 to CS001785. These plans were digitally converted in 1992, with the digitally converted image becoming the official plan record.

Cluster plans are similar to strata plans, in that they contain common property parcels, accessory and restricted lots and create owners’ corporations.

LUV is working to create folios in the Register of Land for all common property parcels across all plan types, where a folio was not previously created. This is to support simplified common property transactions through an electronic lodgment network.

The cluster enhancement project has been developed to create the remaining common property folios, enhance the plan image, enhance the visual identification of the common property parcels on the diagrams and update all cluster folios to remove reference to the share in the common property.

The project is expected to be completed by July 2021. It is aligned and operating in parallel with the Strata plan enhancement project referred to [Customer Information Bulletin 161](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2016/161).

Customers will be able to easily identify the created common property folios through the Owners Corporation Search Report and identify enhanced plans by their similarity to contemporary plans of subdivision.

Any queries relating to this project should be forwarded to LUV at strataenquiries@delwp.vic.gov.au

# New Land Registry Compliance System

Since the introduction of electronic conveyancing in Victoria, LUV has followed a nationally consistent Subscriber Compliance Program approved by the Australian Registrars’ National Conveyancing Council (ARNECC). Subscriber compliance examinations have been conducted manually, with over 1,100 examinations undertaken. Subscribers are required to provide evidence that demonstrates the subscriber’s compliance with the Participation Rules, including:

* Client Authorisation – a document that enables a party to a transaction (client) to authorise a conveyancer or lawyer to act on their behalf in that transaction
* Verification of Identity – verification of the identity of a client or mortgagor
* Right to Deal – verification of the entitlement of a person to be a particular party to a conveyancing transaction
* Retention of Evidence – evidence supporting a conveyancing transaction.

The program was suspended due to coronavirus (COVID 19) restrictions and LUV has utilised this time to develop a fully automated and secure electronic Land Registry Compliance System (LRCS) to conduct subscriber compliance examinations. This includes a secure way to electronically exchange documents between subscribers and LUV, and a secure database to store and manage the audits.

The main benefits of the LRCS include:

* no documents sent through mail
* all required evidence directly uploaded in the LRCS
* examinations completed in a timely manner

enhanced reporting capabilities for LUV

* all provided evidence securely filed in the LRCS.

A pilot system commenced in November 2020, with a further release in February 2021 as part of the Subscriber Compliance Program recommencing. All subscriber compliance examinations will now be conducted through the LRCS, with every subscriber to be examined at least once every three years.

If you are selected for a subscriber compliance examination, you will receive a telephone call from Land Registry Services and be guided through the process to login and use the system.

# Reminder changes to notification for the Customer Information Bulletin

With the launch of the new website [land.vic.gov.au](http://www.land.vic.gov.au), customers will notice a small change in the notification they receive when a new Customer Information Bulletin (CIB) is published. Initially, the CIB notification email may appear in junk mail of some subscribers to the CIB. Subscribers to the CIB are asked to check their junk mail for the next CIB.

Customers wishing to subscribe to the CIB should use the [sign-up form](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/sign-up-for-bulletins) on the Customer information bulletin page. If you are already a recipient of the CIB notification you do not have to subscribe again.

To Unsubscribe, click the unsubscribe link at the bottom of the new CIB notification email.

Please do not email LUV about subscribing or unsubscribing to the CIB, as these requests will not be actioned.

# Contact us

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