Customer Information Bulletin 222

# Consultation on proposed changes to 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 increase digital lodgment.

A draft of Version 9 has been developed. On 26 July 2023, Land Use Victoria provided its key industry stakeholders with a marked-up version of the draft of the Registrar’s Requirements together with an explanation for each proposed change. Land Use Victoria is now seeking feedback.

The closing date for submissions of feedback has been extended to 10 October 2023.

Details about the consultation can be found on Land Use Victoria’s [Consultation papers page.](https://www.land.vic.gov.au/land-registration/consultation-papers)

# Guide to Removal of Easements (sections 73, 73A and 60 Transfer of Land Act 1958)

An easement that is recorded or registered in the Register may be removed under a number of provisions under the *Transfer of Land Act 1958* (TLA) or *Subdivision Act 1988*.

The appropriate application to be lodged will depend on the circumstances by which the easement was granted or created and the circumstances under which it ceased to have effect.

Land Use Victoria has published a [Guide to removal of easements](https://www.land.vic.gov.au/__data/assets/word_doc/0032/678443/Guide-to-removal-of-easements.docx) (section 73, 73A and 60 TLA) (the Guide). The Guide is available on the [Fees, Guides and Forms](https://www.land.vic.gov.au/land-registration/fees-guides-and-forms) page.

This Guide provides information about the removal of easements that have been abandoned or extinguished under sections 60, 73 and 73A of the TLA and outlines the common issues that are encountered when these applications are lodged.

Customers are encouraged to refer to the Guide when preparing a removal of easement application under these provisions.

Customers are advised that the Guide only provides information on the removal of easements that have been extinguished or abandoned. Easements may also be removed under a number of other provisions of the TLA such as section 45 or under a range of provisions under the *Subdivision Act 1988*. Further guides on these provisions will be published when available.

# Statutory declarations in support of applications under section 99 of the Transfer of Land Act 1958

Evidence requirements for applications under section 99 of the *Transfer of Land Act 1958* (TLA) are changing. From 1 October 2023 all applications under section 99 must include the following:

* a statutory declaration from the applicant(s) in the form required by Land Use Victoria– [see proforma](https://www.land.vic.gov.au/__data/assets/word_doc/0024/673134/Application-under-section-99-TLA-applicant-statutory-declaration-Aug-2023.docx)
* statutory declarations from two disinterested witnesses who have at least 15 years’ knowledge of the land in the form required by Land Use Victoria – [see proforma](https://www.land.vic.gov.au/__data/assets/word_doc/0022/673150/Application-under-section-99-TLA-witness-statutory-declaration.docx)

The Guide to title boundary amendment is available through the [Fees, Guides and Forms](https://www.land.vic.gov.au/land-registration/fees-guides-and-forms) page of land.vic.gov.au. The [Amend title boundaries – Section 99 TLA 1958 checklist](https://www.land.vic.gov.au/__data/assets/word_doc/0024/472137/Amend-title-boundaries-Section-99-TLA-1958-Aug-2023.docx) has been updated to reflect these changes.

Any statutory declaration signed after 1 October 2023 must use the proformas. If the proformas are not used, the application will be stopped and requisitioned. In the meantime, customers are encouraged to use the proformas to ensure more efficient processing.

# Applications made under section 60 of the Transfer of Land Act 1958 – reminder on critical deficiency process

Customers are reminded that applications under section 60 of the *Transfer of Land Act 1958* (TLA) to acquire title by possession that do not meet the minimum criteria for examination will be rejected. Approximately 50 per cent of such applications have been found to not meet fundamental requirements. As set out in [CIB 192](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2019/192), an application will be critically deficient if the:

* claimed land is affected by section 7, 7A, 7AB, 7B or 7C of the *Limitation of Actions Act 1958*
* claimed land is in the name of Roads Corporation or any of its predecessors
* application is lodged without a survey but does not meet non-survey guidelines
* survey provided is out of date - the survey must not be more than two years old at the time of lodgment
* applicant does not have 15 years’ accrued possession (including, where applicable, deeds of assignment from prior possessors)
* land is identified as a road, an easement of carriageway, right of way, etc. and a letter from council is not produced stating the subject land is not a road within the meaning of the *Road Management Act 2004*, and
* statutory declarations from all applicants and the applicants’ Australian Legal Practitioner have not been supplied (please note all statutory declarations should be on the approved proforma, see [CIB 216](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2022/216)).

**If the above requirements are not met, the application will be rejected without further notice and fees will be forfeited.**

In addition to the minimum requirements, the following common issues have been identified in relation to the application form:

1. The land being claimed is not adequately described.
2. It is unclear whether the land is being claimed "free of encumbrances" or "subject to existing encumbrances".

The Guide to Adverse Possession has been updated to include an image and instructions on how the electronic form should be completed. It is important to remember, that once lodged, this office cannot amend any electronic instruments. The application will need to be withdrawn and relodged if there is an error in the electronic form. The guides and checklists available provide extensive information on how to lodge an application. They can be found at [Fees, Guides and Forms](https://www.land.vic.gov.au/land-registration/fees-guides-and-forms).

# Applications for discharge of mortgage and the Limitation of Actions Act 1958

Under section 84(2)(a)(ii) of the *Transfer of Land Act 1958* (TLA) the Registrar of Titles (Registrar) may amend the Register to remove a mortgage if it is proved to the Registrar’s satisfaction that section 20 of the *Limitation of Actions Act 1958* (LAA) applies, and the requirements of section 84(2)(b) of the TLA are met.

As considered in the High Court case of *Price v Spoor [2021] HCA 20* it is possible for a mortgage to include a term excluding the application of the LAA and any limitation defences ordinarily available, including under section 20 of the LAA.

It is the responsibility of the applicant to be satisfied the terms of the mortgage do not contain any provision which prohibits or otherwise excludes a mortgagor relying on section 20 of the LAA.

In considering an application under section 84(2)(a)(ii) of the TLA, the Registrar will rely on the certifications provided by the conveyancer or lawyer who digitally signs the application on behalf of the applicant (or Subscriber if it is the applicant). In particular, the Registrar will consider the certification that the application is correct and compliant with relevant law as sufficient evidence that the applicant may rely on section 20 of the LAA.

Paper applications may be subject to requisition to provide further evidence.

Customers are also reminded that section 84(2) of the TLA is discretionary and is not an alternative to ordinary conveyancing practice. Section 84(2) of the TLA should only be considered when a discharge of mortgage under section 84(1) of the TLA cannot be obtained for the reasons set out in section 84(2)(b) of the TLA.

# Court orders authorising parties to sign on behalf of other parties

There are occasions when a party is required by a court to sign an instrument to be lodged for registration or recording (for example, a transfer, mortgage or withdrawal of caveat) but does not cooperate. In this event further court orders are often sought to authorise a party to sign the instrument on behalf of the uncooperative party.

For example, when court orders are made under to section 106A of the *Family Law Act 1975 (Cth)* for a spouse or the lawyer for the spouse to sign on behalf of the uncooperative spouse.

## Order for court officer to sign

It is the preference of the Registrar that parties obtain orders that a Court Officer (as defined in the [Registrar’s Requirements for paper conveyancing transactions](https://www.land.vic.gov.au/land-registration/publications)) be authorised to sign an instrument on behalf of any party to proceedings. This could be either as an alternative or if an ordered party fails to or refuses to cooperate within a specified time.

Registrar’s Requirement 3.1.10 exempts a Court Officer from the need to have their identity verified when they are signing in these circumstances. The Registrar’s Requirements are available at <https://www.land.vic.gov.au/land-registration/publications>.

If a Court Officer does sign an instrument (unless they are a Subscriber to an Electronic Lodgment Network), the paper instrument must be lodged using the generic residual document ‘Record - Notice - Transfer of Land Act - Section 104’. A copy of the court order(s) would need to be provided as supporting evidence.

## Order for another party to sign

If a party is represented and obtains orders authorising that party to sign a Registry instrument on behalf of an uncooperative party, their lawyer or conveyancer must sign the instrument on behalf of their client and the uncooperative party.

In the signing panel for the uncooperative party the lawyer or conveyancer would need to:

1. Strike out Certification 1, which states that ‘The Certifier has taken reasonable steps to verify the identity of the [party]’. The lawyer or conveyancer for the represented party cannot validly give this certification in relation to the uncooperative party who they do not represent.
2. In respect of Certification 2, ensure that the Signer holds a properly completed Client Authorisation for the Conveyancing Transaction including the instrument being Signed. The Client must be the uncooperative party, with the party entitled to sign on their behalf in accordance with the relevant court order(s) being the Client Agent.

Since the Certifications must be amended, an instrument signed pursuant to such court order(s) cannot be lodged electronically. The instrument would need to be lodged in paper using the generic residual document ‘Record – Notice – Transfer of Land Act – Section 104’. A copy of the court order(s) would need to be provided as supporting evidence.

If a party is not represented and obtains orders authorising that party to sign an instrument on behalf of an uncooperative party, they will not be able to lodge the instrument. This is because unrepresented agents cannot have their identity verified under the Registrar’s Requirements. In order to lodge the instrument, they will need to engage a conveyancer or lawyer to undertake the lodgment.

# Contact us

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