# Detecting and preventing elder abuse in property transactions

Land Use Victoria (LUV) reminds conveyancers and lawyers of their legal and professional obligations to verify identity, obtain Client Authorisations and conduct appropriate due diligence, especially in related party transactions. These obligations are critical to identifying and preventing financial elder abuse in property dealings.

With a growing number of property transactions involving potential elder abuse—often by family members or trusted associates—LUV encourages increased vigilance and professional care.

## Legal and professional obligations

Conveyancers and lawyers must:

* Comply with Registrar’s Requirements for Paper Conveyancing Transactions and Participation Rules for Electronic Conveyancing, including:
  + proper verification of identity of clients and other parties
  + proper completion of Client Authorisations
  + verification of the right to deal.
* Ensure clients have capacity
* Ensure clients understand the nature and consequences of the transaction
* Be alert to signs of duress, coercion or lack of informed consent, particularly for older or vulnerable clients.

## Related party transactions: red flags

Extra scrutiny is recommended in transactions involving family members, such as an elderly person transferring property to a child or grandchild. Common warning signs include:

* the client is passive or defers decisions to others
* the transaction is non-monetary, significantly below market value or involves unusual financial arrangements
* a third party speaks for the client or discourages them from seeking independent legal advice
* the client shows limited understanding of the transaction

## Recommended practices

To mitigate risks and safeguard elderly and vulnerable clients, LUV recommends:

1. Stronger verification of identity procedures

* Conduct or arrange in person Verification of Identity where possible
* Avoid rushed or proxy processes
* Follow ARNECC guidance notes

1. Assess capacity and consent

* Confirm the client’s mental capacity to understand the transaction
* If unsure, consider obtaining a medical assessment or delaying the transaction

1. Encourage independent advice

* Recommend that elderly or vulnerable clients seek independent legal or financial advice
* Document whether advice was offered and taken or declined

1. Meet privately

* Ensure meetings with elderly or vulnerable clients are held without family or other interested parties present.

1. Maintain clear records

* Keep detailed notes of meetings, advice given, and decisions made
* Record reasons for proceeding, especially if concerns were raised and addressed.

Conveyancing professionals play a vital role in protecting vulnerable individuals. Exercising due diligence and maintaining professional standards—especially in related party transactions— helps prevent financial elder abuse and ensure the integrity of Victoria’s land titles system.

## Further information

* Participation Rules: [https://www.land.vic.gov.au/land-registration/publications](https://www.land.vic.gov.au/land-registration/publications#heading-3)
* ARNECC Guidance Notes: [www.arnecc.gov.au/publications/mpr\_guidance\_notes/](http://www.arnecc.gov.au/publications/mpr_guidance_notes/)
* Registrar’s Requirements: [www.land.vic.gov.au](http://www.land.vic.gov.au/)
* Elder Abuse Resources: [www.elderabuseawarenessday.org.au](http://www.elderabuseawarenessday.org.au)

# Survey-based applications under the Transfer of Land Act 1958 (TLA) – requisitions through SPEAR

Since 29 April 2024, all plan and survey-based applications have to be submitted using the SPEAR Electronic Lodgment Network (ELN), in line with Version 9 of the Registrar’s Requirements for Paper Conveyancing Transactions.

If a requisition is issued for a SPEAR-lodged application, the lodging party or licensed surveyor must respond to the requisition using SPEAR.

If a response is sent via email, the Land Registry Services examining officer will request the required documentation be uploaded using SPEAR.

For more information, see [Customer Information Bulletin 226](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2024/226).

# Applications to remove an easement under section 73 of the TLA – critical deficiencies

To reduce the number of deficient applications under section 73 of the TLA, LUV will implement a new process from 1 September 2025. From this date, applications that are critically deficient will be rejected without further notice and application fees will be forfeited.

Critical deficiencies include:

|  |  |
| --- | --- |
| If | Deficiency |
| Abandonment by agreement | Deed(s) of abandonment |
| Abandonment through non-use | Statutory declaration(s) of applicant(s), and prior possessor(s) and if necessary, an independent witness providing unequivocal evidence of non-use for a continuous period of 30 years |
| Extinguishment by merger | Statutory declaration(s) by applicant(s) |
| Extinguishment by operation of law | Statutory declaration(s) by applicant(s) |
| Right of way or carriageway easement | Written confirmation from council that:   * the easement is not a road within the meaning of the Road Management Act 2004, and * council consents to the removal under section 73B of the TLA not held or provided |
| Drainage easement | Written consent of drainage authority/council to the removal |
| Easement created in a plan of subdivision | Written consent of council |
| Planning permit issued by council for the removal of an easement | Application must be made under section 23 of the Subdivision Act 1988 or other appropriate section of that Act, not under section 73 of the TLA |
| Rights saved under section 528(2)(e) of the Local Government Act 1958 or section 207C of the Local Government Act 1989 | Application must be made under section 106(1)(c) TLA, not under section 73 of the TLA |

For electronic lodgments, select the dealing requirement "Consent of Council, if required" instead of producing the consent. Paper lodgments must include written evidence of consent.

A new section 73 checklist is available [here](https://www.land.vic.gov.au/__data/assets/word_doc/0039/750999/application-for-removal-of-easement-checklist-may-2025.docx), which includes a declaration that minimum lodging requirements have been met.

For detailed guidance, see:

* Guide to removal of easements
* Guide to residual documents

Available on the [Fees, guides and forms](https://www.land.vic.gov.au/land-registration/fees-guides-and-forms) page.

# Changes to fees for relodged instruments and applications

Those parts of the Regulatory Legislation Amendment (Reform) Act 2025 that amend the Subdivision Act 1988 and the Transfer of Land Act 1958 (TLA) commenced on 21 May 2025.

As part of these amendments, section 108 of the TLA — which relates to fees payable — has been updated. Subsections (6), (7), (9) and (10) have been repealed.

The repeal of section 108(10) means that any instrument or application that is relodged after being previously withdrawn or rejected now attracts the full lodgment fee. The previous provision that allowed a reduced (half) fee in these cases no longer applies. As relodgments are fully examined and require the same time and effort as a new lodgment, a reduced fee does not reflect the examination and registration effort involved.

To avoid the need for withdrawal or rejection, customers should ensure all applications and instruments are prepared accurately and completely before lodgment. Customers are advised to review the relevant guide before lodging.

Both the [Guide to Subdivision Act Fees 2024–2025](https://www.land.vic.gov.au/__data/assets/word_doc/0026/707381/DTP_Guide-to-Subdivision-Act-fees-2024-2025.docx) and the [Guide to Transfer of Land Act Fees 2024–2025](https://www.land.vic.gov.au/__data/assets/word_doc/0030/707385/guide-to-transfer-of-land-act-fees-2024-2025.docx) have been updated to reflect this change.

# Communication with lodging parties

Under section 115 of the TLA, the Registrar will only communicate with:

* the lodging party (for paper lodgments), or
* the Responsible Subscriber (for electronic lodgments)

Responses to requisitions must be submitted by the lodging party or the Responsible Subscriber. If a representative changes during processing, both the outgoing and incoming representative must notify the Registrar in writing.

# e-Conveyancing Payments Industry Code

The e-Conveyancing Payments Industry Code, launched by AusPayNet on 21 March 2025, standardises secure payment processes for e-Conveyancing settlements and establishes a framework for resolving payment issues.

Operating Requirements 7.1 has been updated to include requirements relating to compliance with this Code.

# Victorian Water Registrar updates

## Discharge of mortgage over water shares

Discharges under section 84N and clause 10(1) of Schedule 12A of the Water Act 1989 must be used to remove mortgages from the Water Register.

If a discharge cannot be obtained, the Water Registrar may amend the Water Register under clause 10(3) of Schedule 12A on proof that:

|  |  |
| --- | --- |
| If | Evidence could include |
| All the principal and interest due in respect of the mortgage have been paid to the person entitled to receive them | Receipts, balance sheets, bank statements, settlement statements (stating that the mortgage was to be discharged), correspondence from a solicitor or conveyancer confirming settlement, payment and intent to discharge, or other evidence of payment(s) made. |
| The person entitled to receive the amounts due is dead, cannot be found or is a body corporate which has ceased to exist | For an individual, deceased’s death certificate or a statutory declaration by someone with requisite knowledge (explaining how they have that knowledge) setting out that the person has died.  If probate has been granted, evidence showing efforts to locate the legal personal representative and that they cannot be found or they are unable to sign the discharge.  For a deregistered company, evidence such as an ASIC search showing the body corporate is deregistered and that ASIC is unable to sign the discharge. |

Alternatively, court orders may be obtained directing the Water Registrar to remove the mortgage under section 84ZB of the Water Act. An application may then be made under that section supported by the court order.

Application forms to discharge a mortgage under section 84N and clause 10(1) of Schedule 12A, clause 10(3) of Schedule 12A or section 84ZB(2) are all available at [Lodging in the Victorian Water Register](https://www.land.vic.gov.au/land-registration/for-professionals/lodging-in-the-victorian-water-register).

## Transfers of water shares – correct signing

Each party must sign the approved form in the space provided after water authority approval. Do not use annexure pages for signatures.

Submissions with signed annexures will be refused and returned.

## New form – mortgage of water shares

A new approved form for mortgages under clause 1 of Schedule 12A of the Water Act 1989 must be used from 1 September 2025. The new form:

* can incorporate a memorandum of common provisions, and
* replaces all previous water share mortgage forms

The new form aligns with the national mortgage form for land.

All relevant forms are available on the [Lodging in the Victorian Water Register](https://www.land.vic.gov.au/land-registration/for-professionals/lodging-in-the-victorian-water-register) page.

# Contact us

For location and contact details, please go to <http://www.land.vic.gov.au/contact-us>.