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| Land Use VictoriaCustomer Information Bulletin 212 |
| June 2021 |

# New change of name residual documents

The Registrar has approved two new electronic change of name residual documents which are available to be lodged using an electronic lodgment network (ELN). They are currently available in the ELN known as PEXA.

* Action - Application - Change of name of proprietor and if applicable address – Transfer of Land Act – Section 27A
* Action - Application - Change of name of interest holder and if applicable address–Transfer of Land Act – Section 27A

The application ‘Change of name of proprietor and if applicable address’ relates to the registered proprietor of the land. The application ‘Change of name of interest holder and if applicable address’ relates to mortgagees, lessees, caveators, chargors, covenantors or entities named in a notice that is registered or recorded on a folio.

These applications can only be used where the relevant entity has changed its name or where there has been a minor typographical error in their name. If a different person or body corporate is entitled to be the registered proprietor or interest holder, an appropriate application must be made to change proprietorship.

A change of address can also be included in these applications. For a standalone change of address, customers will need to continue to apply under section 113 of the *Transfer of Land Act 1958*.

These new dealing types replace the need for an application under section 32 of the *Transfer of Land Act 1958* for the issue of a new certificate of title based on a change of name. Applications under section 32 will no longer be accepted from 1 August 2021 - an application under section 27A will be required instead.

The [Guide to residual documents](https://www.land.vic.gov.au/__data/assets/word_doc/0022/505435/Guide-to-Residual-Documents.docx) has been updated and provides details of the specific requirements for these new applications.

# Update: changes to the requirements for lost paper certificate of title applications

In CIB 210, customers were advised of a change to lodging requirements for electronically lodged applications under section 31 of the [*Transfer of Land Act 1958*](https://www.legislation.vic.gov.au/in-force/acts/) to replace lost paper certificates of title. In response to customer feedback, the required statutory declaration by subscribers acting on behalf of applicants has been updated and can be found [here](https://www.land.vic.gov.au/__data/assets/word_doc/0037/517789/Represented-Statutory-Declaration-Certificate-of-Title-lost-or-destroyed.docx). This statutory declaration must be completed by the applicant’s conveyancer or lawyer and lodged with the application. No other evidence is required at lodgment.

The **statutory declaration** **must not be altered to remove any of the search requirements** as inquiries must be made with each of the classes of parties set out where it is possible that they held the missing paper certificate of title. If amendments are made, requisitions and further evidence may be required.

# Variations and removals of restrictive covenants and restrictions

Land Use Victoria (LUV) is changing the way variations and removals of restrictive covenants and restrictions (collectively referred to as ‘restrictive covenants’ in this CIB) are recorded in the Register of land. At present, where a restrictive covenant created in a plan of subdivision is varied or removed under the *Subdivision Act 1988*, the Land Registry amends the restrictive covenant text in the plan. For restrictive covenants created in transfers, any variations or removals are given effect only on the relevant folio of the Register.

From 1 July 2021, the practice relating to plans of subdivision will change to make processing more efficient, aligned and to reduce confusion. From that date, any variation or removal of a restrictive covenant will only be reflected on the folio of the Register. Variations will be set out on the folio and removals will be found in the folio history. The plan itself will remain in its original form, and the following warning will be added to affected plans of subdivision:

**WARNING: The restrictive covenant(s)/restriction(s) in this plan may have been varied or removed. For current information, please refer to the relevant folio(s) of the Register, noting section 88(3) of the Transfer of Land Act 1958.**

To understand the current status of any restrictive covenant, customers will need to obtain a folio search for the affected land. If a restrictive covenant is shown on the folio, it is likely that it continues to affect the land, noting the provisions of section 88(3) of the *Transfer of Land 1958*. If no restrictive covenant is shown on the folio, then it has been removed. If the restrictive covenant has been varied, the instrument(s) that varied the restrictive covenant will be recorded on the folio. To understand more about how a variation or removal happened, customers may need to conduct folio history and instrument searches.

# Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021

The *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (Amendment Act) commenced either 24 March 2021 or 26 April 2021, apart from Part 22. Part 22 will commence on 23 February 2022 or a day to be proclaimed, whichever is the earlier.

The Amendment Act made changes to several pieces of legislation that cover how legal documents must be signed and witnessed in Victoria. For further information on the Amendment Act, refer to <https://www.justice.vic.gov.au/electronicwitnessing>.

However, the Amendment Act has limited application to documents lodged with the Registrar. In particular:

* it does not vary or override the requirements in the *Transfer of Land Act 1958* and *Subdivision Act 1988* that instruments be lodged in an approved form. Approved forms have their own signing and witnessing requirements that have not been varied
* it does not vary or override existing requirements relating to verification of identity
* for any supporting documents including agreements, deeds, powers of attorney and wills, lodging parties will need to satisfy themselves that they have complied with the Amendment Act and, if applicable, the *Electronic Transactions (Victoria) Act 2000*, *Oaths and Affirmations Act 2018*, *Powers of Attorney Act 2014* and *Wills Act 1997*.

# Reminders from Registration Branch

Processing times for the generic residual document ‘Record-Notice - Transfer of Land Act - Section 104’ (Generic Residual Document)

Instruments submitted through the Generic Residual Document are processed manually, so additional time is required. The date a Generic Residual Document is submitted using the ELN known as PEXA is not the date of lodgment. Generally, non-plan instruments submitted by this method can take up to 7 business days to be processed for lodgment.

Submissions made using the Generic Residual Document are subject to ordinary lodgment and registration processes within LUV. Submissions that do not meet the lodging requirements will be refused lodgment.

Attaching paper instruments to electronic instruments

Customers are reminded that a PDF image of a paper instrument must not be provided as an Image Instrument or Supporting Document in an electronic workspace other than for a submission using the Generic Residual Document. If a PDF image of a paper instrument is included, requisitions may be issued, and the electronic instrument may need to be withdrawn and relodged. For more information on PDF documents provided with electronic documents please refer to [CIB 208.](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/208)

Electronic lodgment of applications under section 89A of the Transfer of Land Act 1958

There are several actions that can be taken in relation to the removal of a caveat that is recorded in the Register of land. Recently, a number of applications have been lodged seeking an action by the Registrar that is inappropriate or unintended. Customers are reminded of the differences and uses of the following applications that can be lodged using the ELN known as PEXA:

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| Description in PEXA | Action requested |
| ACTION – APPLICATION - REMOVE CAVEAT - Transfer of Land Act - section 89A | The applicant, a registered proprietor or registered mortgagee, applies under section 89A(1) for the Registrar to serve notice on a caveator that the caveat will lapse unless proceedings are on foot. |
| ACTION – NOTICE – ABANDONMENT - Transfer of Land Act - section 89A | The applicant no longer wishes to proceed with the application under section 89A(1) - see section 89A(3)(a). |
| ACTION – NOTICE – CAVEATOR – Transfer of Land Act – section 89A | Having received a notice under section 89A(1), a caveator wishes to give notice to the Registrar under section 89A(3)(b) that proceedings are on foot in a court or VCAT to substantiate the caveator’s claim. |
| ACTION – NOTICE – REGISTERED PROPRIETOR – Transfer of Land Act – section 89A | The applicant wishes to give notice under section 89A(7) to the Registrar that a caveator’s proceedings (notice of which were given under section 89A(3)(b)) have been discontinued, withdrawn or struck out or provides evidence to the Registrar that the proceedings have been dismissed. |

# 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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