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# Residual documents affecting part of a folio

Residual documents affecting land that is less than the land in a whole of a folio of the Register can now be lodged using the Electronic Lodgment Network known as PEXA by selecting and completing the ‘Part Land’ section in the ‘Extent’ panel.

Residual documents are structured electronic instruments made up of a large number of infrequently lodged instrument types. Examples of residual documents that can now be lodged electronically over part of a folio include leases and a range of agreements, deeds, and covenants.

**Guide to Residual Documents updated**

The list of residual documents and details of the specific requirements for each residual document can be found in [Guide to Residual Documents.](https://www.land.vic.gov.au/__data/assets/word_doc/0022/505435/220505-Guide-to-Residual-Documents-part-land-final.docx) The Guide to Residual Documents has been updated and the Specific Requirement column now lists the instrument types which can be lodged over part of a folio.

For an Application to record an instrument, the only acceptable descriptions of part land are a:

* diagram showing part of a lot or part of a Crown allotment,
* lot reference(s) in a multi lot folio, or
* Crown allotment reference(s) in a multi allotment folio

For an Application to remove an instrument, the only acceptable descriptions of part land are a:

* lot reference(s) in a multi lot folio, or
* Crown allotment reference(s) in a multi allotment folio

**Land description**

If part land can be dealt with, ‘Part – Lot on Plan’ or ‘Part – Other description’ must be selected in the Extent panel.

If the part land affected cannot be described as a Lot on a Plan, Other description must be selected.

The Other description panel must then be completed using the following descriptions:

* Crown allotment [enter description]

OR

* That part of the land hatched or marked [insert identifier] as shown on the attached diagram/agreement/deed/lease/notice.

Any diagram including those contained within any agreement, deed, lease, or notice must be in black and white. The part land affected must be identifiable (for example by hatching or alphabetical reference), sufficiently dimensioned, fixed (not floating) and be within the title boundaries.

**Request to Accept Paper Lodgments form**

The [Request to Accept Paper Lodgments form](https://www.land.vic.gov.au/__data/assets/word_doc/0023/492044/Request-to-accept-paper-lodgment.docx) has been updated to remove the exception for documents that affect part land when lodging a residual document. From 1 October 2022, all residual documents which are enabled for part land must be lodged in the fully electronic form and cannot be lodged using the Generic Residual Document ‘Record-Notice-Transfer of Land Act- Section 104’.

In the meantime, customers are encouraged to use this ‘Part Land’ function for relevant residual documents to ensure more efficient processing.

For information please see the [Guide to Residual Documents.](https://www.land.vic.gov.au/__data/assets/word_doc/0022/505435/220505-Guide-to-Residual-Documents-part-land-final.docx)

**No change to structured documents**

Electronic transfers, mortgages, discharges of mortgage, caveats and withdrawals of caveat are not residual documents and are not yet enabled for Part Land. If they affect part land, the instrument must be lodged through the Generic Residual Document ‘Record-Notice-Transfer of Land Act- Section 104’.

# New Memorandum of Common Provisions (MCP) form for mortgages or annuity charges

LUV has approved a new [Memorandum of Common Provisions for mortgages or annuity charges form](https://www.land.vic.gov.au/__data/assets/word_doc/0029/498044/211126.MCP-template-Provisions-for-mortgages-or-annuity-charges-Final.docx) that is mandatory for use from 1 October 2022 where parties intend to seek to record new common provisions for mortgages or charges.

This new form has been created due to a significant number of MCPs that do not meet requirements.

Typical issues include:

* references to off-Register documents. [See CIB for 213](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2021/213) further information.
* provisions (terms/conditions/clauses/covenants however described) that relate to other documents such as loan agreements and guarantees, or repeat terms from the loan agreement or guarantee.

An MCP for a mortgage or annuity must include one of the options below in relation to off-Register documents (the remaining options must be deleted):

* this memorandum contains one or more references to an off-Register document, the provisions of which DO NOT AFFECT any of the essential terms (land, parties, or term) of the mortgage or annuity into which this memorandum is incorporated.

OR

* this memorandum contains one or more references to an off-Register document, the provisions of which AFFECT one or more of the essential terms (land, parties, or term) of the mortgage or annuity into which this memorandum is incorporated and these provisions are set out in full in this memorandum.

OR

* this memorandum does not contain any references to off-Register documents.

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

From 1 October 2022, if customers do not use the appropriate mortgage or annuity MCP form, the MCP will not be accepted. In the meantime, customers are encouraged to use this form to ensure more efficient processing.

There is no change to existing recorded MCPs or mortgages and annuities that refer to the existing recorded MCPs. MCPs that are recorded prior to this date can continue to be referenced in new mortgages if they adequately address any references to off-register documents.

Also, customers are reminded that pursuant to section 91A(1) of the *Transfer of Land Act 1958*, only provisions that relate to the instrument(s) to be subsequently lodged for registration should be contained in the MCP. For example, in an MCP for a mortgage, provisions relating to loan agreements and guarantees should not be included.

Finally, customers are advised that if a mortgage is lodged with unacceptable references to off-Register documents (see CIB 213), it will need to be withdrawn and relodged.

The [generic MCP](https://www.land.vic.gov.au/__data/assets/word_doc/0029/579332/Memorandum-of-common-provisions-91ATLA-Generic.docx) form can continue to be used for leases. Specific MCP forms must continue to be used for restrictive covenants and restrictions in [transfers](https://www.land.vic.gov.au/__data/assets/word_doc/0031/517918/Memorandum-of-common-provisions-Transfer.docx) and [plans](https://www.land.vic.gov.au/__data/assets/word_doc/0025/517930/Memorandum-of-common-provisions-Plan.docx) respectively. Refer to the article in [Customer Information Bulletin 210](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2021/210) for information on the use of these forms.

Amendments to the Electronic Conveyancing National Law (Victoria)

Land Use Victoria is pleased to confirm that amendments to the Electronic Conveyancing National Law (Victoria) to facilitate interoperability have taken effect.

Following Royal Assent of the *Electronic Conveyancing (Adoption of National Law) Amendment Act 2022* in New South Wales on 6 June 2002, the amendments automatically apply in Victoria.

Under section 18A(1) of the Electronic Conveyancing National Law (Victoria), a person approved as an Electronic Lodgment Network Operator (ELNO) must, in accordance with the Operating Requirements, establish and maintain interoperability between its Electronic Lodgment Network (ELN) and each ELN operated by another ELNO.

New South Wales and Queensland will be the first jurisdictions to introduce interoperability.

For a number of reasons interoperability is not yet ready for roll out in Victoria. As a result, the Registrar has issued a waiver of the requirement for ELNOs to interoperate under section 18A(2) of the Electronic Conveyancing National Law (Victoria). There are a number of matters Land Use Victoria is keen to see finalised before interoperability is rolled out in Victoria including:

* completion and satisfactory testing of APIs being developed and built by ELNOs
* independent report on system readiness for interoperability
* finalisation of Model Operating Requirements and Model Participation Rules Version 7
* completion of the financial industry code being drafted by AusPayNet
* completion of an independent interoperability pricing review
* development of the enforcement regime for electronic conveyancing and consideration of stakeholder feedback on potential further amendment to the national law
* completion and satisfactory testing of necessary Land Registry system changes
* ELNO capability to deliver all interoperable transaction types.

Reminder to ensure digital signing certificates are not shared

Under Participation Rule 7.5.5 of the Participation Rules for electronic conveyancing and the Participation Rules for the SPEAR Electronic Lodgment Network (ELN), Subscribers must take reasonable steps to ensure that:

* a Digital Certificate is only used to Digitally Sign by the Signer to whom it is allocated; and
* Signers do not allow any other person to use their Access Credentials and Digital Certificates; and
* Signers keep the Digital Certificate allocated to them safe and secure in the Signer’s control; and
* access Credentials are only used to access the ELN by the User to whom the Access Credentials belong; and
* other Users do not allow any other person to use their Access Credentials.

It is fundamental to the integrity of ELNs and the Register of land that the person who purportedly signs an instrument is in fact the person who does so.

Breach of Participation Rule 7.5.5 is considered a material breach of the Participation Rules and can result in the suspension or termination of a Subscriber’s access to an ELN.

# Statutory declarations in support of applications under section 60 of the Transfer of Land Act 1958

Evidence requirements for applications under section 60 of the *Transfer of Land Act 1958* (TLA) are changing. From 1 October 2022 all applications under section 60 must include the following:

* a statutory declaration from the applicant’s Australian Legal Practitioner (ALP) – [see proforma](https://www.land.vic.gov.au/__data/assets/word_doc/0027/585135/Application-under-section-60-TLA-solicitor-statutory-declaration-2.docx)
* a statutory declaration from the applicant – [see proforma](https://www.land.vic.gov.au/__data/assets/word_doc/0026/585134/Application-under-section-60-TLA-applicant-statutory-declaration-2.docx)

If the applicant has not possessed the subject land for 15 years in their own right, the following will be required:

* a statutory declaration from prior possessor(s) - [see proforma](https://www.land.vic.gov.au/__data/assets/word_doc/0028/585136/Application-under-section-60-TLA-prior-possessor-statutory-declaration-1.docx)
* a deed of assignment of possessory interest – [see sample](https://www.land.vic.gov.au/__data/assets/word_doc/0033/578634/Draft-Deed-of-Assignment-of-Possessory-Rights.docx)

In the majority of circumstances, statutory declarations from disinterested witnesses are not required – [see proforma](https://www.land.vic.gov.au/__data/assets/word_doc/0029/585137/Application-under-section-60-TLA-disinterested-witness-statutory-declaration1.docx).

The [Guide to adverse possession](https://www.land.vic.gov.au/__data/assets/word_doc/0029/469451/Guide-to-adverse-possession.docx) and [adverse possession checklist](https://www.land.vic.gov.au/__data/assets/word_doc/0033/472398/Adverse-possession-checklist-2022.docx) have been updated to reflect these changes.

While the use of an ALP to lodge these applications is not mandatory, if an applicant chooses to lodge on their own behalf, a statutory declaration from an ALP will still be required.

Use of the proformas is mandatory. Any statutory declaration signed after 1 October 2022 must use the proformas. If the proformas are not used, the application will not be accepted for lodgment. In the meantime, customers are encouraged to use these forms to ensure more efficient processing.

# Reminders from Registration Branch

Attachments to electronic lodgments

A paper instrument (including application forms) must not be included as an image instrument or supporting document within an Electronic Lodgment Network (ELN). The only exception to this is the addition of supporting documents in a Generic Residual Document ‘Record-Notice-Transfer of Land Act- Section 104’.

The electronic document completed and digitally signed by the Subscriber is the instrument lodged for registration or recording. If a paper instrument is included as an image instrument or supporting document, the electronic instrument will be requisitioned requesting that it be withdrawn and relodged without the paper instrument being attached.

See Customer Information Bulletin [208](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/208) and [213](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2021/213) for further information.

For any instrument of variation of a recording in the Register, a copy of the recorded instrument should not be included as an image instrument or supporting document. Including a copy of the recorded instrument causes confusion to persons searching the Register, as the instrument being varied is already available for search.

For example, an application to vary an agreement under section 173 of the *Planning and Environment Act 1987* requires a deed of variation to be uploaded as an image instrument. A copy of the section 173 agreement being varied or as varied should not be included. The deed of variation should clearly describe the amendments or variations being made to the recorded agreement.

If unnecessary documents are included as an image instrument or supporting document, the electronic instrument will be requisitioned requesting that it be withdrawn and relodged without the extraneous document.

Memorandum of Common Provisions reminders

Customers are reminded that any MCP lodged in support of a creation of a restriction or restrictive covenant in a plan or transfer MUST NOT:

1. Contravene section 37 of the TLA and should not contain any reference to any specific trust(s), trustees or beneficiaries. If a reference to a trust is required, contingent words must be used. An example of contingent wording is: ‘If a party is a trustee, the following clauses apply:’.
2. Alter the description of the burdened land set out. If the restrictive covenant is created pursuant to a transfer, the land to be burdened is the land being transferred. If the restriction is created pursuant to a plan of subdivision, the land to be burdened must be set out in the plan. The burdened land panel in the template MCPs must not be altered.
3. Include tables describing the burdened and benefitted land. If a table of the burdened and benefitted land is required, it should be included within the plan of subdivision per Schedule 6 of the Registrar’s Requirements Version 7. The inclusion of such a table either repeating or contradicting the information in the plan causes confusion and should not be included.
4. Contain plan diagrams on plain paper. All plan diagrams must be provided within the MCP template.
5. Contain colour, grayscale, and references to colour. The MCP should only be in black and white for imaging purposes.
6. Contain references that imply a party has an absolute right to vary or remove a covenant. A recorded covenant can only be varied or removed with the agreement of all affected parties, pursuant to a planning permit, planning scheme or by court order. The suggestion in an MCP that a party reserves the right at its absolute discretion to vary or exclude any of the covenants (or words to that affect) is incorrect, misleading and is not acceptable. An MCP containing wording to that effect will not be accepted and if lodged, will be requisitioned requesting it be withdrawn.

For further guidance refer to Customer Information Bulletins [205](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/205), [208](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/208), [210](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2021/210) & [213](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2021/213).

Appropriate applicants under section 89A(1) of the Transfer of Land Act 1958

Section 89A(1) of the *Transfer of Land Act 1958* (TLA) allows a person with an interest in land affected by a caveat recorded under section 89(2) of the TLA to apply for the service of a lapsing notice under section 89A(3) of the TLA.

The Registrar considers that an ‘interest in land’ for the purposes of section 89A(1) of the TLA is an estate or interest in the land that is registered under the TLA.

Accordingly, applications under section 89A(1) of the TLA will only be accepted from applicants who hold a registered estate or interest in the land, such as registered proprietors, mortgagees under a registered mortgage or lessees under a registered lease.

If a person does not yet, but is entitled to, hold a registered estate or interest in the land, there must be a preceding application to register that estate or interest. For example, the executor or administrator of the estate of a deceased registered proprietor must first lodge a transmission application under section 49 of the TLA to become the registered proprietor before they may lodge an application under section 89A(1) of the TLA.

Any other person claiming to have an interest in the land needs to either:

* obtain a withdrawal of caveat from the caveator;
* allow an instrument to be lodged and notices sent under section 90(1) of the TLA; or
* apply to a court of competent jurisdiction for an order under section 90(3) of the TLA to remove or otherwise deal with the caveat in question. They may then lodge an Application – Amendment by Court/VCAT Order – section 103 of the Transfer of Land Act to give effect to that order.

Amendment to Section 52 of the Transfer of Land Act 1958

Customers are advised The *Justice Legislation Amendment (Fines Reform and Other Matters) Act 2022* received Royal Assent 18 May 2022.

Consequently, the moratorium period for a transfer following a Sheriff’s sale in sections 52(3) and (5) of the *Transfer of Land Act 1958* has changed from three to six months.

# Operating requirements for electronic conveyancing

On 10 May 2022, the Registrar of Titles determined Version 6.1 of the Operating Requirements for electronic conveyancing under section 22 of the *Electronic Conveyancing National Law (Victoria)*.

Version 6.1 of the Operating Requirements was published on 16 May 2022, effective 17 June 2022, and is available at [www.land.vic.gov.au/land-registration/publications](http://www.land.vic.gov.au/land-registration/publications).

In determining Version 6.1 of the Operating Requirements, the Registrar adopted the model operating requirements developed and approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).

Version 6.1 of the Operating Requirements is a minor release with only one change from Version 6 of the Operating Requirements. This change relates to Operating Requirement 5.4.3 and extends the period during which an Electronic Lodgment Network Operator (ELNO) may raise its service fees by no more than the consumer price index (CPI). In Version 6 this period expires on 30 June 2022 and in Version 6.1 is extended to 30 June 2023. This step has been taken as in interim measure to ensure ELNO Service Fees remain capped at the rate of CPI increase during the period in which Version 7 of the Model Operating Requirements remains under development by ARNECC.The change proposed in Version 6.1 was included in a consultation draft for proposed Version 7 of the Model Operating Requirements which was published for stakeholder consultation in November 2021.

# 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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