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| Land Use Victoria  Customer Information Bulletin 190  August 2019 |
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Reminder: Mandatory electronic lodgment 1 August 2019

From 1 August 2019, for conveyancers, lawyers, authorised deposit-taking institutions (ADIs) and other subscribers to an Electronic Lodgment Network (ELN), all Instruments (including the residual documents released on 22 July 2019) available in an ELN are required to be lodged using an ELN.

The remaining residual documents will be required to be lodged using an ELN from 1 October 2019.

More information on the 1 August 2019 mandate and electronic lodgment is available in a new section of the Property and land titles website: https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees/electronic-lodgment.

Review of the InterGovernmental Agreement for an Electronic Conveyancing National Law (’IGA Review’)

Dench McClean Carlson (DMC) was commissioned to review the InterGovernmental Agreement (IGA) for an Electronic Conveyancing National Law in September 2018. Following extensive consultation with stakeholders, the draft report, its findings and draft recommendations are on the DMC website <http://dmcca.com.au/iga-review/>. Feedback from stakeholders is now sought via the website. Submissions are due by 5 September 2019 and will be published with the final report unless confidentiality is requested.

Notices of Acquisition

For land tax purposes, when you acquire land in Victoria you are required to lodge with the Registrar of Titles a Notice of Acquisition (NOA). For electronic conveyancing transactions, a NOA is automatically generated and sent to the Registrar of Titles when the transfer is completed in an ELN. A paper form of NOA should not be sent to the Registrar.

A NOA must also be provided to councils, water authorities and other relevant rating authorities. For electronic conveyancing transactions, customers should distribute the NOA outside of the ELN using the standard manual process.

For paper conveyancing transactions, a NOA form is required to be completed and lodged with the Registrar with the relevant dealing. A NOA must also be provided to councils, water authorities and other relevant rating authorities.

Refer to the State Revenue Office website for information on how to complete a paper NOA. <https://www.sro.vic.gov.au/land-tax/complete-notice-acquisition>

New LANDATA website address

LANDATA® has moved to a new website address (URL), [www.landata.online](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.landata.online&d=DwMFAg&c=JnBkUqWXzx2bz-3a05d47Q&r=DCv41t304hGl_S4Ld1LiVmALVqsO5MuiZN5Pll6Pyg0&m=AyiAqmSCVhyuA3kpopw4LcDBe6hyAZW8o0uPS1FLDCo&s=4GtJRdtbpaLryjouSIwVWnAWLet7XltQubYfibgN4ao&e=). Customers can still access the old website address [www.landata.vic.gov.au](http://www.landata.vic.gov.au) up until 30 September 2019, when it will be deactivated. Please update your bookmarks accordingly~~.~~

Any queries relating to LANDATA® should be directed to Victorian Land Registry Services on 9102 0402.

Phase out of Plan Acceptance counter services

Land Registry Services is rapidly moving to an electronic lodgment environment to support customer demand for online transaction capabilities.

To facilitate this, Land Registry Services is phasing out its face-to-face ‘over the counter’ lodgment service for plans under the *Subdivision Act 1988.*

**The following schedule has been set to phase out ‘over the counter’ Plan Acceptance lodgment;**

* **1 May 2019 - All day WEDNESDAY – no counter service**
* **1 September 2019 - All day TUESDAY and WEDNESDAY – no counter service**
* **1 October 2019 - All day TUESDAY, WEDNESDAY and FRIDAY – no counter service**
* **1 November 2019 - counter service ceases**

No reduction of service standards will be experienced by customers.

The ‘over the counter’ service is being replaced by a ‘drop-off’ box service for paper lodgments and an Electronic Lodgment Network (ELN) service for electronic lodgements through SPEAR. Customers may use these services now; there is no requirement to wait until full phase-out of ‘over the counter’ services. Both will run in conjunction with the ‘over the counter’ service until its full phase-out.

Signs are located at Reception and Plan Acceptance counters setting out the reduced counter service periods. Details of the ‘drop-off’ service are in a flyer available from Reception and Plan Acceptance counters.

Customers wishing to learn more about becoming a SPEAR ELN Subscriber for lodgment purposes should email SPEAR at spear.info@delwp.vic.gov.au

Verification of Identity

The Australasian Registrars’ National Electronic Conveyancing Council (ARNECC) has been notified that there are two additional types of immigration status cards (ImmiCards) that are not included in the categories of acceptable identity documents in both the Verification of Identity Standard in the Participation Rules and the Subscriber Identity Verification Standard in the Operating Requirements.  These are the Permanent Resident Evidence ImmiCard and the Residence Determination ImmiCard.

Victoria has issued a Participation Rules waiver and an Operating Requirements waiver which permit use of these identity documents, subject to their verification using the Visa Entitlement Verification Online system (VEVO).

As these two additional types of ImmiCards will all expire on 1 July 2020, it is not proposed to amend either the Participation Rules or the Operating Requirements.

Registrar’s verification of identity requirements regarding transfer of control of eCTs

Participation Rule 6.5.1(c) and Registrar’s Requirement 3.1.2(c) set out identical requirements for verification of identity of persons to whom certificates of title are provided.

These requirements relate to Clients, Client Agents (which excludes Representatives solely acting in that capacity) and mortgagors or their agents.

ARNECC’s Model Participation Rules Guidance Note on verification of identity provides guidance on what is covered by these requirements.  FAQs 16 and 18 cover this scenario.  Land Use Victoria’s Guide to verification of identity for conveyancers, lawyers and mortgagees conducting paper conveyancing transactions states:

Registrar's Requirement 3.1.2(c), which mirrors Participation Rule 6.5.1(c), only applies when a Certificate of Title is being given to a client or a mortgagor. It does not apply to parties participating in a settlement, including when a settlement agent is acting for a party in order to collect the Certificate of Title and transfer documentation.

The Registrar has no specific requirements for a transfer of control of eCTs.  However, it is expected a Subscriber (conveyancer, lawyer or financial institution) will take reasonable steps to ensure that the transfer is appropriate.  This may include satisfying themselves as to the bona fides of the receiving Subscriber and in some cases obtaining instructions from their client/former client.

Registrar’s power to rectify errors in the Register

The Registrar has power under section 103(2) of the *Transfer of Land Act 1958* (the Act)to ‘correct errors in the Register or in any plan of subdivision or unregistered instrument.’

Recently parties have requested rectification of errors made by the transacting party or their conveyancer or lawyer.

The circumstances in which rectifications can or cannot be made are:

**Registered/Recorded Instruments:**

1. The Registrar will rectify errors made by his office (e.g. data entry has misspelled a name or address or included the wrong folio of the Register).
2. The Registrar will not rectify errors made by the transacting party or their conveyancer or lawyer (e.g. wrong folio of the Register was included in an instrument; or a name was misspelled by the transacting party; or the incorrect mortgage was discharged). The transacting party will need to use normal conveyancing processes to rectify their error. This is likely to involve the lodgment of a further correcting instrument with the Registrar.

**Unregistered/Unrecorded Instruments:**

1. Paper: A lodged instrument or application form may be amended by the Registrar with the written consent of the transacting parties or their conveyancer or lawyer. The request must be precise and set out words to be added, substituted and/or deleted from the lodged instrument or application form, as the case requires. Supporting documents (e.g. agreements or deeds of covenant) cannot be amended by the Registrar. New supporting documents would need to be provided where amendment is required.
2. Electronic: Electronic instruments are digitally signed using complex algorithms and cannot be amended. The instrument needs to be withdrawn and a new instrument will need to be lodged.

You should carefully check instruments and applications for errors prior to lodging.

Reminder on creating restrictive covenants in transfers and plans

When defining the benefited land either in a transfer or plan under the *Subdivision Act 1988* or Memorandum of Common Provisions (MCP) you must ensure that you correctly identify the benefited land.

In addition to receiving transfers which set out that the burdened and benefited land is the same, Land Use Victoria has received transfers referencing MCPs for the benefited land which either refer to the wrong plan of subdivision or an unregistered plan of subdivision.

The consequences of having the incorrect benefited land are:

For paper transfers/plans: the transfer or plan may be refused lodgment or later requisitioned.

For electronic transfers: the transfer may be requisitioned. If no response is received by the Registrar within 30 days of the date of the requisition, the transfer will be registered without the covenant being recorded on the folio. An appropriate customer response may be to withdraw the transfer and prepare a fresh transfer correctly incorporating the covenant. Alternatively, an application to create a covenant pursuant to section 88(1) of the Transfer of Land Act 1958 may be lodged to record the covenant, supported by a deed signed by the registered proprietors of both the burdened and benefited land.

Transfers/plans already registered: if it becomes apparent at a later date that the transfer or plan refers to incorrect benefited land, then the folio of the Register will be rectified to remove reference to the covenant.

Some useful information about restrictive covenants can be found in previous articles:

• “Creating restrictive covenants in transfers and restrictions in plans” - Customer Information Bulletin 175, February 2018 and 179 July 2018

• “Things to consider when drafting restrictive covenants” - Customer Information Bulletin, Edition 83, October 2003.

SPEAR ELN information session

The SPEAR Electronic Lodgment Network (ELN) allows conveyancers and lawyers to lodge their plan-based dealings electronically with the Registrar of Titles. Over 100 organisations have already registered as SPEAR ELN subscribers and are electronically lodging applications under the *Subdivision Act 1988*. In line with Land Use Victoria’s 100% electronic lodgment strategy, the SPEAR ELN is being extended in August 2019 to accommodate other plan-based and survey-based dealings, including those under the *Transfer of Land Act 1958* and *Local Government Act 1989*.

Land Use Victoria is hosting a free information session for conveyancers and lawyers to learn more about the

SPEAR ELN including how the system works, supported transactions and how to register as a SPEAR ELN Subscriber:

**Time:** 9:30am - 10:30am

**Date:** Friday 6 September 2019

**Location:** Level 1 Room 3, 2 Lonsdale Street, Melbourne VIC 3000

Registrations are essential – please complete the form on the SPEAR website by **30 August 2019.**

[www.spear.land.vic.gov.au/spear](http://www.spear.land.vic.gov.au/spear) > [What’s new in SPEAR?](https://www.spear.land.vic.gov.au/spear/pages/about/news-and-events/whats-new-in-SPEAR.shtml)

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# Contact us

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