|  |
| --- |
| Land Use VictoriaCustomer Information Bulletin 213 |
| August 2021 |

# Traditional Owners acknowledged on Register Search Statements

The State Government, together with Victorian Land Registry Services, has added a Traditional Owner acknowledgement to Register Search Statements (title search) and related products. The acknowledgement will appear on around 2.8 million search statements issued each year.

The Aboriginal Self-Determination Branch of the Department of Environment, Land, Water and Planning engaged with Traditional Owners on the acknowledgement that now appears at the top of title search and other statements:

*The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.*

Victorian Land Registry Services is moving

Victorian Land Registry Services (VLRS) is relocating to **Level 13, 697 Collins Street, Docklands** on **30 August 2021**.

Services will remain uninterrupted throughout the relocation, and call centres will continue to be available between 8.30 am and 4.30 pm Monday to Friday.

VLRS front counter services will remain closed to the public to ensure the safety and wellbeing of staff and customers during coronavirus (COVID-19) restrictions. Please visit the [VLRS website](https://victorianlrs.com.au/) for updates.

Customers are reminded that all correspondence to the Registrar, including responses to a requisition or stopped case notice, should only be sent by email to the relevant Land Registry branch. Correspondence should not be emailed directly to the Registrar of Titles or anyone else in Land Registry (unless specifically directed to do so).

* The **Victorian Land Registry Services** Customer Call Centre can be contacted on (03) 9102 0401 and by email at advice.enquiries@victorianlrs.com.au
* **Subdivision Branch** – if you wish to receive updates about the progress of a plan of subdivision you can subscribe to a property transaction alert through LANDATA® or an authorised information broker. For all other enquiries and responses to requisitions, please email Subdivision.Branch@delwp.vic.gov.au
* **Applications and Survey Branch** – for enquiries on adverse possession, easements, roads and general law land matters and responses to requisitions please email APS.Branch@delwp.vic.gov.au
* **Water Register** – for enquiries on dealings and responses to requisitions with water shares please email Lvwater.Register@delwp.vic.gov.au
* Enquiries on service of court documents and relating to folios of the register affected by a Notice of Action (NARF) must be communicated by email to Lv.warrants@delwp.vic.gov.au

# Appropriate use of the Generic Residual Document ‘Record-Notice-Transfer of Land Act - Section 104 (Generic Residual Document)

Use of the Generic Residual Document is limited to instruments that cannot be lodged in a fully electronic form. A completed [Request to Accept Paper Lodgment](https://www.land.vic.gov.au/__data/assets/word_doc/0023/492044/Request-to-accept-paper-lodgment-V2.docx) form must be included in every submission of a Generic Residual Document.

If an instrument or case is submitted using the Generic Residual Document that could be lodged using the appropriate electronic instrument(s), it will be refused, and the Subscriber will have to lodge using the correct electronic instrument(s).

Land Use Victoria is unable to refund any fees associated with the submission of the Generic Residual Document as the fee is an Electronic Lodgment Network Operator fee, not a Land Use Victoria fee.

# Aligning paper and electronic lodgment – section 207D Local Government Act 1989

Paper applications under section 207D of the *Local Government Act 1989* currently permit the vesting of land in a council and, in some cases, a transfer of the land from a council to another party. In moving to 100% digital lodgment, from 1 January 2022 a paper section 207D application can only be used to vest land in a council. This means that the council must be listed as both transferor and transferee in all paper section 207D applications lodged on or after 1 January 2022.

Note SPEAR can already be used to lodge applications to vest land in a council under section 207D. Lodging parties using SPEAR are required to specify the council as the ‘applicant’ rather than transferor and transferee. This process remains unchanged.

Following registration of a new or SPEAR section 207D application, lodging parties will need to use an Electronic Lodgment Network (ELN) such as PEXA or Sympli if they wish to transfer the land vested in a council to another party.

The existing combined paper form to transfer land to a party other than a council will continue to be acceptable for lodgment with Land Use Victoria until 31 December 2021.  Any such forms presented after this date will be refused lodgment.

# Notice under section 89A(3)(b) of the Transfer of Land Act 1958

Notice to the Registrar from a caveator under section 89A(3)(b) of the *Transfer of Land Act 1958* (TLA) that proceedings are on foot to substantiate the caveator’s claim must be provided using the [approved form](https://www.land.vic.gov.au/__data/assets/pdf_file/0032/471857/Written-notice-in-accordance-with-section-89A3bTLA.pdf). Subscribers must use the residual document ACTION – NOTICE – CAVEATOR – Transfer of Land Act – section 89A and upload the approved form as an Image Instrument. Land Use Victoria will not accept an email or letter as written notice of the service of proceedings. Failure to give notice in the approved form will result in the caveat lapsing pursuant to section 89A(5) of the TLA. For more information on the various applications under section 89A of the TLA please see [Customer Information Bulletin 212](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2021/212) and the [Guide to residual documents](https://www.land.vic.gov.au/__data/assets/word_doc/0022/505435/Guide-to-Residual-Documents.docx), both of which can be downloaded [here](https://www.land.vic.gov.au/land-registration/fees-guides-and-forms).

# Resubmitting withdrawn electronic instruments and applications

Electronic instruments are digitally signed using complex algorithms and cannot be amended electronically.

When an electronic instrument is withdrawn or rejected that was lodged in the Electronic Lodgment Network (ELN) (PEXA and Sympli):

1. a new electronic instrument can be submitted using an ELN, attracting full fees; or
2. a paper copy of the withdrawn/rejected electronic instrument can be amended as appropriate and then re-lodged as a paper instrument using the generic residual document, attracting half lodging fees (See Customer Information Bulletins [200](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/200), [201](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/201), [202](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/202) and [203](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/203)).

If a paper copy of the instrument is lodged, the Registrar cannot rely on the digital signing of the withdrawn/rejected electronic instrument or the certifications given. This is the case for all relying parties under section 12 of the Electronic Conveyancing National Law (Victoria).

All paper instruments *within the lodgment case*must be physically signed with a handwritten signature using a pen (‘wet signed’). The Registrar therefore requires that the withdrawn/rejected instrument(s) are wet signed by all party/ies to the instrument(s) or by their authorised representative i.e. conveyancer or lawyer. Section 91M of the *Transfer of Land Act 1958* will then apply to the paper instrument(s).

If the original Signer of the electronic instrument is not available to wet sign the paper instrument(s), another Signer from the same Signer Organisation may sign. If this occurs, the Signer Name must be hand amended.

# References to off-Register documents and MCPs

When references to any off-Register documents (e.g. constitutions, rules and various deeds and agreements) are made in either instruments or Memorandum of Common Provisions (MCPs), it must be clarified in the instrument or the MCP that none of the provisions in the off-Register document(s) affect any of the essential terms of the instrument or the instruments into which the MCP is to be incorporated.

The essential terms of a lease are the land, parties, term (commencement and expiry dates) and rent and the essential terms of a mortgage are the land, parties and the term.

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.

# Common issues with creations of easements and survey applications

A large proportion of easement and survey applications lodged with Land Use Victoria are refused or requisitioned. When amendments are required, the instrument may be refused or need to be withdrawn causing unnecessary delay and additional cost. Customers must ensure any instrument, plan or supporting document lodged complies with the following:

## Creation of easements under section 45 of the *Transfer of Land Act 1958*

* Easement details set out in the application form must accord with the ‘easement purpose’ set out in the supporting plan.
* The parties to the instrument must be limited to the owners of the dominant and servient land. If there are multiple folios affected, only one dominant and one servient landowner can be included. If additional landowners are affected, a further instrument must be lodged.
* Easements for ‘pipeline and/or ancillary purposes under section 136 of the *Water Act 1989*’ or ‘powerline purposes under section 88 of the *Electricity Industry Act 2000*’ are not acceptable. These easements can only be lodged using a plan of subdivision or consolidation under section 22 of the *Subdivision Act 1998*.

## Creation of easements under section 23 of the *Subdivision Act 1988*

* When a plan under section 23 is lodged to create an easement, the plan must be supported by a planning permit or planning scheme. The plan must also be certified by the council.
* The dominant land set out in the application form must accord with the dominant land set out in the certified plan.
* As set out above, easements to be created under section 136 of the *Water Act 1989* and section 88 of the *Electricity Industry Act 2000* must be lodged under section 22 of the *Subdivision Act 1988*.

## Applications lodged under section 60 of the Transfer of Land Act 1958

Application form

* The land that is the subject of the application must be set out in the Land description panel. If the land being claimed is less than a whole folio, lot or Crown allotment, the land must be described by reference to an attached plan of survey. The land must be clearly identified in the panel by reference to the subject parcel in the plan (for example, the land labelled A or cross hatched), the date of the survey plan, the licensed surveyor’s name and the folio reference as part. For example, the land labelled A on plan of survey dated 18 August 2021 by Jane Smith Licensed Surveyor forming part of folio of the Register volume [vol] folio [folio].
* The application form requires the applicant to state which encumbrances are to be retained if the application is granted. The relevant encumbrances are those affecting the land the subject of the application, not the encumbrances affecting the applicant’s own land. For example, an easement or a restrictive covenant may be retained but a mortgage given by the registered proprietor of the subject land would not.

Evidence

* Statutory declarations lodged in support of applications must comply with the *Oaths and Affirmations Act 2018* and the Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018 as amended. See Customer Information Bulletin [196](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2020/196) and [212](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2021/212). If statutory declarations are provided that do not comply with the current law, requisitions will be issued for a new statutory declaration.
* When an application is lodged by two or more applicants, the applicants may either provide a single statutory declaration signed by all applicants or separate statutory declarations signed by each. It is not acceptable for one applicant to sign on behalf of other applicants. See [Customer Information Bulletin 192](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2019/192).
* When an applicant has occupied the subject land for less than 15 years but wishes to make an application to claim that land, one or more deeds of assignment of possessory interest will be required. To accumulate the period of possession so that the period of adverse possession amounts to at least 15 years, a deed will be required from each of the prior occupants. When the land was occupied jointly, both occupants must execute the deed. Statutory declarations setting out the facts of the possession will also be required from all prior possessors.

Reminder: Surveys supporting Subdivision Act dealings

Customers are reminded that boundary plans, plans of subdivision and plans of consolidation lodged to confirm boundaries under the *Subdivision Act 1988* must not attempt to significantly amend external boundaries. See [Customer Information Bulletin 192](https://www.land.vic.gov.au/land-registration/customer-information-bulletins/2019/192).

Plans signed from 4 October 2021 onwards can only take up hiatus land that is limited to 1 in 100. Hiatus land exceeding this ratio will require an appropriate survey-based amendment application under section 60, 99 or 103 of the *Transfer of Land Act 1958.* Any plan signed prior to the above date may be subject to requisitions if an excessive amount of hiatus land is taken up.

Where a plan of subdivision is anticipated and an amendment application is required, it can be expedited upon request. Evidence of the anticipated plan of subdivision will be required.

Customers are advised to lodge the appropriate amendment application in the first instance to avoid unnecessary delays.

Removal of Caveat where caveator is deceased

To remove a caveat when the caveator is deceased, you may wish to consider one of the following options:

a. An application under section 89A of the *Transfer of Land Act 1958* (TLA) by a person with an interest in the land.

b. Await lapsing of the caveat pursuant to section 90(1) of the TLA, following lodgment of an instrument for registration; or

c. A court order pursuant to section 90(3) of the TLA for the removal of the caveat.

A Withdrawal of Caveat pursuant to s89(1) of the *Transfer of Land Act 1958* (Vic) made by the legal personal representative of a deceased caveator is not acceptable.

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). See [CIB 212](https://www.land.vic.gov.au/land-registration/customer-information-bulletins?anchor=528706), June 2021. 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

To correctly prepare these documents a subscriber will need to enter the correct new or amended/name of their client when completing their client details in the participants tab. The subscriber will then be asked to provide a justification for the change of name using the justification dropdown list.

Available justifications are:

* Adoption of new name
* Amalgamation – Hospitals – Registered proprietors (s) may still exist
* Amalgamation – Hospitals – Registered proprietors (s) may still exist – Registrar holds satisfactory evidence
* Approved abbreviation
* Change of incorporated name
* Deed Poll
* Error in Register
* Legislative change – Company – Registered proprietors(s) may still exist
* Legislative change – Company – Registered proprietors(s) may still exist – Registrar holds satisfactory evidence
* Legislative change – Non Company - Registered proprietors(s) may still exist
* Legislative change – Non Company - Registered proprietors(s) may still exist – Registrar holds satisfactory evidence
* Marriage
* Merger or takeover – Registered proprietors(s) may still exist
* Merger or takeover - Registered proprietors(s) may still exist – Registrar holds satisfactory evidence
* Resumption of maiden name
* Sale or transfer of enterprise – Registered proprietors(s) may still exist
* Sale or transfer of enterprise - Registered proprietors(s) may still exist – Registrar holds satisfactory evidence

The subscriber can then proceed with creating the 27A document using the documents tab. The justification information will be displayed in the resulting 27A document if it has been prepared correctly. If you do not see the justification, please review the process to ensure the new or amended name has been entered in the participants tab prior to lodgment.

If an incorrect instrument is lodged, it will need to be withdrawn and relodged.

#

# 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)

|  |  |
| --- | --- |
| © The State of Victoria Department of Environment, Land, Water and Planning 2021LogoThis work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Environment, Land, Water and Planning (DELWP) logo. To view a copy of this licence, visit http://creativecommons.org/licenses/by/4.0/ DisclaimerThis publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication. | AccessibilityIf you would like to receive this publication in an alternative format, please telephone the DELWP Customer Service Centre on 136186, email customer.service@delwp.vic.gov.au, or via the National Relay Service on 133 677 [www.relayservice.com.au](http://www.relayservice.com.au). This document is also available on the internet at [www.delwp.vic.gov.au](http://www.delwp.vic.gov.au).  |