|  |
| --- |
| Land Use Victoria  Customer Information Bulletin 191 September 2019 |
|  |

Reminder: Phase out of Plan Acceptance counter services

Land Registry Services is phasing out its face-to-face ‘over the counter’ lodgment service for plans under the *Subdivision Act 1988* and survey-based transactions.

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

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

The existing ‘drop-off’ box service for paper lodgments will continue to be available.

No reduction of service standards will be experienced by customers.

Please refer to Customer Information Bulletin 190 for further details.

Lodging parties can subscribe to the SPEAR Electronic Lodgment Network (ELN), which enables electronic lodgment of all survey-based transactions. Information about becoming a SPEAR ELN Subscriber is on the SPEAR website: <https://www.spear.land.vic.gov.au/spear/pages/lodging-parties/how-do-i-get-started.shtml>

# Strata Plan enhancement project

The Strata Enhancement Project aims to address and clarify information in strata plans **(**RPs & SPs) and associated folios through three key objectives:

1. To improve plan readability and information clarity

To date approximately 8000 strata plans have been enhanced. Customers should be able to easily identify these enhanced plans by their similarity to *Subdivision Act 1988* plans

1. To create a separate common property folio, where a folio does not exist

Common property folios have been created for all strata plans when a separate common property (‘CP’) folio did not previously exist. Also, any reference on a lot folio to ‘a share in the common property’ has been removed.

1. To update ‘unit’ to a standardised ‘lot’ description in folios

All parcels recorded on folios as a ‘unit’ have been changed to a standardised ‘lot’ description. Similarly, a reference to a ‘unit’ on an Owners Corporation search report has changed to ‘lot’.

If you have any further queries relating to these changes or this project, please email Land Use Victoria at – [strataenquiries@delwp.vic.gov.au](mailto:strataenquiries@delwp.vic.gov.au)

# Historical aerial photographs

Land Use Victoria holds historical aerial photos in many areas of the state that were taken about once a decade from the 1930s to the 1990s. These photos provide historical information about Victoria and are a valuable resource for viewing information on land use, occupation, and/or the pleasure of seeing properties or historical buildings as they existed through the decades.

The digital conversion of historical aerial photos was completed in 2017 to enable online delivery.  Customers can now obtain products directly online through the LANDATA®’ website at <https://www.landata.online/>.

Customers are advised that the ‘over the counter service’ at Laverton for viewing and printing photos has ceased. The LANDATA® online service is the only means of accessing historical aerial photos.

For further enquires please call (03) 9102 0401 or email [Landata.enquiries@victorianlrs.com.au](mailto:Landata.enquiries@victorianlrs.com.au)

# ELN Subscriber Compliance Examination

A Subscriber to an Electronic Lodgment Network (ELN), currently PEXA, Sympli and the SPEAR ELN, must comply with the Compliance Examination procedure under the Participation Rules for electronic conveyancing. Since June 2017, the Registrar has been conducting compliance examinations of Subscribers to ascertain whether the Participation Rules as determined by the Registrar under section 23 of the Electronic Conveyancing National Law (ECNL) are being or have been complied with.

In a compliance examination a Subscriber is asked to provide documents and information evidencing that instruments digitally signed and lodged using an ELN comply with the Participation Rules. A Compliance Examination Notice to a Subscriber specifies the documents and information relating to Registry Instruments lodged by that Subscriber listed in the notice and includes:

* Copies of the Client Authorisation for the Conveyancing Transaction and any evidence supporting the Client Authorisation
* Written details of the steps taken to verify the identity of the Client and/or the mortgagor and any evidence supporting that verification of identity
* Written details of the steps taken to verify that the Client and/or the mortgagor is a legal person and has the right to enter into the Registry Instrument or other Document (Right to Deal)
* Copies of all supporting evidence for the Registry Instrument or other Document

To date, in Victoria the Subscriber Compliance Examination program has examined nearly 500 subscribers; 30 per cent of subscribers examined did not demonstrate compliance with the Participation Rules. The following table shows the breakdown of the instances of non-compliance.

|  |  |
| --- | --- |
| Area | Percentage of total |
| Client Authorisation | 24.3 |
| Verification of Identity | 25.9 |
| Verification of Right to Deal | 25.1 |
| Supporting Evidence | 22.4 |
| Other | 2.3 |
| Total | 100.0 |

The Australian Registrars’ National Electronic Conveyancing Council (ARNECC) publishes a Model Participation Rules guidance note that contains a checklist of what is covered in a compliance examination: [*MPR Guidance Note #6 – Compliance Examinations*](http://www.arnecc.gov.au/publications/mpr_guidance_notes)(available at [www.arnecc.gov.au/publications](http://www.arnecc.gov.au/publications)>Model Participation Rules Guidance Notes)*.*

A Common Errors Report has also recently been published by ARNECC which covers the most common errors all jurisdictions are encountering and provides an explanation of ARNECC’s expectations in relation to compliance of Subscribers.

<https://www.arnecc.gov.au/__data/assets/pdf_file/0017/1448000/subscriber-compliance-common-errors.pdf>

# Applications under section 47 of the *Transfer of Land Act 1958*

Section 47 of the *Transfer of Land Act 1958* (the Act)allows the Registrar of Titles (Registrar) to make an order vesting land in a purchaser under a completed contract of sale. The granting of an application under section 47 of the Act is discretionary. It is not a substitute for ordinary conveyancing practice. Before making an application under section 47 of the Act, applicants must first seek a transfer of the land.

Generally, for the Registrar to grant an application, an applicant must provide a statutory declaration setting out their recollection of the circumstances of the sale and purchase.

In addition, the application must prove:

1. that land was sold by the registered proprietor and the applicant may make the application because one of the events in either section 47(1)(a)(i) or (ii) has occurred. Usually, this will require production of a copy of the Contract of Sale and, when available, a copy of the transfer under the contract.
2. When an applicant claims that the whole of the purchase money has been paid, proof of payment of the purchase monies must be provided. This may take the form of an acknowledgement of settlement from the vendor or their conveyancers or lawyers. In the case of a terms contract, an applicant may also provide receipts from the vendor or a balance sheet or bank statements; or,
3. When an applicant claims that the time specified in section 8 of the *Limitations of Actions Act 1958* has elapsed, the applicant must demonstrate the due date for payment of the purchase monies.

(b) that the applicant’s entry and possession of the property under the sale has been acquiesced in by the vendor. This may take the form of a statutory declaration from the applicant, setting out how this has occurred. For example, an applicant may state that they have moved into the property without objection from the vendor.

(c) that a transfer of the land cannot be obtained for one of the reasons set out in section 47(c)(i) or (ii).

1. The Registrar considers that applicants or their conveyancers or lawyers should attempt to contact the registered proprietor(s) or their legal personal representative(s) by completing a name search of the Register and searching relevant telephone directories, electoral roles and probate indices, together with making enquiries of the vendor’s conveyancers or lawyers, if known.
2. An applicant will need to demonstrate the steps they have taken to locate a corporate registered proprietor and the corporation’s authorised agent (e.g. a director, secretary, administrator or liquidator). In cases where a corporation has been deregistered, an applicant should seek a transfer of the land from the Australian Securities and Investment Commission.

It may be difficult to provide evidence of these matters. For this reason, applicants are encouraged to seek the advice of their conveyancer or lawyer and to provide as much evidence as possible.

In some circumstances, alternatives to a section 47 application might be available, such as an application under section 60 of the Act. In other cases, applicants may need to seek orders from a Court to vest the land in them. An application could then be made under section 103 of the Act to give effect to the Court order.

# Defining burdened and benefited land in restrictive covenants in transfers and plans

Recently, a number of transfers have been lodged incorporating Memoranda of Common Provisions (MCP) that both set out the restrictive covenants and attempt to define the land burdened and benefited by the covenants. For those transfers, review of the MCPs has revealed that:

* the burdened and benefited land are the same; or
* the benefited land is incorrectly defined; or
* the benefited land is not defined.

To avoid these issues consideration should be given to only including the restrictive covenants in the MCPs. The burdened and benefitted land can then be defined in the transfer or plan. This has the added advantage that the MCPs can then be used in future developments.

# Subscribe

To receive notification when a *Customer Information Bulletin* is published, please send an email to lv.cib@delwp.vic.gov.au with SUBSCRIBE in the subject line – include your name and email address in the body of the email.

# Contact us

For [location and contact details](http://www.dtpli.vic.gov.au/property-and-land-titles/contact-us), go to [www.propertyandlandtitles.vic.gov.au/contact-us](http://www.propertyandlandtitles.vic.gov.au/contact-us).

|  |  |
| --- | --- |
| © The State of Victoria Department of Environment, Land, Water and Planning 2019  Title: LogoThis 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/  Disclaimer  This 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 her consequence which may arise from you relying on any information in this publication. | Accessibility  If 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](mailto: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 so available on the internet at [www.delwp.vic.gov.au](http://www.delwp.vic.gov.au). |