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| Land Use VictoriaCustomer Information Bulletin 184December 2018 |
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# Christmas and new year closure

Land Registry Services at 2 Lonsdale Street, Melbourne and 57 Cherry Lane, Lavertonwill close at 4.00 pm on Friday 21 December 2018 and reopen at 8.30 am on Wednesday 2 January 2019.

Online services (LANDATA® and electronic lodgment) will continue to be available during this period.

Customers with bulk paper lodgments or bulk payments will have access to ‘drop-off’ baskets on Level 1, 2 Lonsdale Street.

Customer queries (telephone message or email) will be responded to when the office reopens.

# Converting paper certificates of title to electronic

Certificates of title can be paper (pCT) or electronic (eCT). If lodging via an Electronic Lodgment Network (ELN) the certificate of title must be eCT. There are three ways in which customers can convert their certificate of title to eCT:

## Bulk conversion for authorised deposit-taking institutions (ADIs)

Land Use Victoria (LUV) is preparing the next round of bulk conversion of pCTs to eCTs in the first quarter of 2019. To qualify for bulk conversion the following requirements must be met:

* the ADI or its Representative must be an active ELN Subscriber
* the ADI must have a Registered first mortgage on the folio
* the ADI must declare all legal and former entity names
* the certificate of title is paper; and
* is not nominated or part of an unregistered dealing.

LUV has already bulk converted approximately 1.9 million pCTs to eCTs for the following ADIs:

NAB, CBA, ANZ, Westpac, Bendigo and Adelaide Bank, Rural Bank Limited, Teachers Mutual Bank, Auswide Bank Ltd, Bank of Queensland, Community CPS Australia Ltd, Credit Union Australia Ltd, Gateway Credit Union Ltd, Macquarie Bank Ltd, Suncorp-Metway Ltd.

For more information and to register interest in the next bulk conversion please email ecoft@delwp.vic.gov.au

## Convert and nominate when lodging in an ELN

Customers can convert pCTs and nominate to a lodgment case in an ELN. This function is available to all ELN Subscribers who have eCT control. The function is currently only available on the PEXA platform; for more information on the process please contact PEXA support.

## Conversion via paper application

Customers who hold pCTs but do not satisfy the requirements for bulk conversion can lodge in paper, at any time, an *Application to convert a paper Certificate of Title to an electronic Certificate of Title.* The application form and other useful information regarding certificate of title management is at <https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees/title-management>.

# New Electronic Lodgment Network Operator (ELNO)

The Registrar has entered into an operating agreement with Sympli Australia Pty Ltd (Sympli) to operate an electronic lodgment network in Victoria. Sympli has commenced operations in Victoria by lodging its first document in Victoria on Monday 17 December 2018. Sympli will commence by lodging caveats and withdrawal of caveats, with extension to other dealing types expected to occur during 2019.

The Electronic Lodgment Networks (ELNs) now operating within Victoria are:

* PEXA (Property Exchange Australia Ltd)
* Sympli (Sympli Australia Pty Ltd)
* SPEAR (Surveying and Planning through Electronic Applications and Referrals)

Customers wishing to transact electronically should contact the respective ELNOs for more information.

# Extension of priority notices and guidelines on priority notices

Customers are advised that an applicant in a priority notice may apply to the Registrar for an extension of the priority notice. An application for extension of a priority notice can only be lodged using an Electronic Lodgment Network (ELN). The period of priority for the instruments specified in the notice is extended from 60 to 90 days from the date of lodgment of the priority notice – see section 91FA *Transfer of Land Act 1958* (TLA).

An application for extension of a priority notice must be made before the expiry or withdrawal of the priority notice and can only be lodged once. The current lodgment fee for an extension of a priority notice (electronic transaction) is $29.60.

Subscribers are also reminded of the following requirements for priority notices:

A priority notice, application for an extension of a priority notice, or withdrawal of a priority notice may only be lodged by subscribers using an ELN, irrespective of whether the intended dealing(s) will be lodged in paper or electronically.

The information in a priority notice must be accurate and complete. Depending on the type of instrument intended to be lodged, the following information must be included in the priority notice:

• instrument type, dealing number

• instrument type, party receiving name

• instrument type, dealing number and party receiving name.

For example:

• for a discharge of mortgage, the instrument type would be a discharge of mortgage and the dealing number is the dealing number of the mortgage being discharged

• for a transfer, the instrument type would be a transfer and the party receiving name would be the legal name of transferee

• for a mortgage, the instrument type would be a mortgage and the party receiving name would be the legal name of mortgagee (brand names are not to be shown).

When the instrument(s) specified in the priority notice are lodged, they must precisely match the details contained in the priority notice. All instruments cited in the priority notice must belong to the same transaction and be set out in the intended order of lodgment. If not, the instrument will be lodged, but will not be processed. Processing will be delayed until the priority notice expires or is withdrawn.

There is no ability to amend or correct a lodged priority notice. If necessary, a priority notice may be withdrawn, and a new priority notice lodged.

# Recording judgments, decrees, orders or processes of execution of a court

Land Use Victoria recently reviewed its practice on the recording of judgments, decrees, orders or processes of execution of a court including warrants of seizure and sale, under section 52 of the *Transfer of Land Act 1958* (TLA). Section 52(2) requires the Registrar of Titles (Registrar) to record a judgment, decree, order or process of execution of a court on the relevant folio(s) of the Register upon being served.

Once a judgment, decree, order or process of execution of a court has been recorded, it will continue to bind or affect the land for three months from the date of recording. After three months, the judgment, decree, order or process of execution of a court ceases to bind or affect the land, as set out in section 52(5) of the TLA.

## What happens to instruments lodged where a judgment, decree, order or process of execution of a court is recorded on the folio of the Register?

Within three months of the judgment, decree, order or process of execution of a court being recorded:

* any instruments that do not require the certificate of title to be produced or nominated will be processed, e.g. section 89 caveat and section 173 agreement;
* any instruments that do require the certificate of title to be produced or nominated may be lodged but will not be processed. They will join a queue in order of lodgment, e.g. section 45 (transfers), section 49 (application by legal personal representative), section 74 (mortgages); an exception to this rule is section 84 (discharges of mortgage) which may be processed immediately;
* transfers by the sheriff or any other officer authorised by the judgment, decree, order or process of execution of a court will be registered prior to any other dealings lodged for registration within the three months.

After three months from the judgment, decree, order or process of execution of a court being recorded:

* any instruments lodged within the three months of the judgment, decree, order or process of execution of a court being recorded but remaining in the queue will be processed in the order of lodgment;
* any instruments lodged after three months from the judgment, decree, order or process of execution of a court being recorded, excluding transfers by a sheriff or any other authorised officer pursuant to the judgment, decree, order or process of execution of a court, will be processed. Once processed, any judgments, decrees, orders or processes of execution of a court will be removed.

**Note:**

Transfers by a sheriff or any other authorised officer lodged after the three-month period from the recording of the judgment, decree, order or process of execution of a court will be refused unless the judgment, decree, order or process of execution of a court has first been re-lodged.

## Re-lodgment of judgments, decrees, orders or processes of execution of a court

A judgment, decree, order or process of execution of a court may be re-lodged at any time within 12 months of the date of the judgment, decree, order or process of execution of a court being made. After the 12-month period, justification as to why the judgment, decree, order or process of execution of a court can be re-lodged must be provided (e.g. if the judgment, decree, order or process of execution of a court has been extended).

## Removal of judgments, decrees, orders or processes of execution of a court

At any time, judgments, decrees, orders or processes of execution of a court may be removed from a folio of the Register by lodging an application under section 52(6) (for full satisfaction of an order) or section 52(6A) (by a judgment creditor).

After three months from the date of the judgment, decree, order or process of execution of a court being recorded, once any other instrument is registered or recorded, judgments, decrees, orders or processes of execution of a court will be removed from that folio of the Register.

Anyone with a registered interest may apply under section 106(1)(c) of the TLA to remove judgments, decrees, orders or processes of execution of a court recorded more than three months earlier.

# Deceased registered proprietors

When a registered proprietor has died, the following applications are acceptable under the *Transfer of Land Act 1958* (TLA).

## Applications under section 49 of the TLA (transmission application)

An application under section 49 of the TLA is appropriate only in circumstances where the applicant is one of the following:

* administrator(s) or executor(s) of the deceased registered proprietor;
* administrator(s) or executor(s) of (now deceased) surviving proprietor (A) where A had not lodged a survivorship application under section 50 of the TLA, for land owned with the pre-deceased joint registered proprietor (B);
* executor of a deceased executor, whether or not the deceased executor has been recorded on the Register;
* substituted administrator(s) appointed by court order under sections 34, 34A and 35 of the *Administration and Probate Act 1958* (Administration and Probate Act) following an already registered section 49 TLA application;
* substituted executor(s) appointed by court order under section 34 of theAdministration and Probate Act following an already registered section 49 TLA application; or
* executor(s) subsequently appointed after the will is found following an already registered section 49 TLA application where letters of administration were initially obtained.

## Applications under section 58 of the TLA (vesting order)

Providing ordinary conveyancing practices are not available, an application under section 58 of the TLA may be appropriate in circumstances where the applicant is one of the following:

* executor and trustee of a deceased administrator;
* administrator and trustee of a deceased executor;
* administrator and trustee of a deceased administrator; or
* solely beneficially entitled to the estate and all the estate’s debts have been paid.

The following is a list of supporting evidence typically required for an application under section 58 of the TLA:

* grant of probate naming the applicant as executor for the deceased administrator or grant of letters of administration naming the applicant as the administrator of the deceased executor or administrator;
* copy of instrument creating the trust. If none, then justification of how the land was held on trust e.g. written confirmation from an Australian Legal Practitioner stating that the deceased executor or administrator was acting as trustee;
* duly executed deed of appointment pursuant to section 41 of the *Trustee Act 1958* appointing the applicant as trustee in place of the deceased trustee; or
* evidence of sole beneficial entitlement either from the will or the rules of intestacy.

## Applications under section 103(1) of the TLA (court order)

An application under section 103(1) is appropriate in circumstances where the applicant is the:

* remaining executor(s) where one or more existing executor(s) are removed pursuant to court order pursuant to section 34 of the Administration and Probate Act, following an already registered section 49 TLA application; or
* remaining administrator(s) where one or more existing administrator(s) are removed pursuant to court order pursuant to section 34 of the Administration and Probate Act, following an already registered section 49 application.

For applications under section 103(1) of the TLA, a copy of the court orders is required to be produced.

# Which caveats can be lodged using an ELN?

All Subscribers to an ELN are advised and reminded that currently the only caveats that can be lodged using an ELN are caveats under section 89 of the *Transfer of Land Act 1958* (TLA) – i.e. Caveats against dealings under Part 5 of the TLA that generally are lodged to temporarily forbid dealings with land.

The other caveat types that may be lodged under the TLA are not (yet) instruments that can be created in an ELN – namely, caveats under sections 26R, 61 (against an adverse possession application), 73(4) (against application for removal of easement), and 100 (in respect of application by proprietor for amendment of boundaries in the Register). These caveat types are still lodged in paper. The ability to lodge these other caveat types using an ELN will be available following implementation of new functionality to enable Residual Documents to be lodged electronically.

The Registrar’s requirements for paper conveying transactions do not apply to Registrar’s caveats under section 106 of the TLA.

# Update on 100% electronic lodgment

## Operating requirements and participation rules for electronic conveyancing

The Australian Registrars’ National Electronic Conveyancing Council (ARNECC) has recently approved version 5 of the *Model Operating Requirements* and the *Model Participation Rules.* In January the Registrar of Titles will adopt versions 5 of the model operating requirements and model participation rules for electronic conveyancing under the Electronic Conveyancing National Law (Victoria).

## SPEAR electronic lodgment network and Registrar’s requirements for paper conveyancing transactions

In January the Registrar of Titles will also determine Version 2 of the SPEAR Electronic Lodgment Network Participation Rules under section 23 of the Electronic Conveyancing National Law (Victoria). The Registrar will also determine version 6 of the *Registrar’s requirements for paper conveyancing transactions* under section 106A of the *Transfer of Land Act 1958*. These next versions will incorporate updates from version 5 of the model participation rules for electronic conveyancing and consequent amendments to the Certifications. In instruments.

Further details of these versions will be provided in the next Customer Information Bulletin.

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