|  |
| --- |
| Land Use VictoriaCustomer Information Bulletin 174January 2018 |
|  |

# Bulk conversion of paper Certificates of Title to electronic Certificates of Title

On 23 February 2018, Land Use Victoria will facilitate a bulk conversion of paper Certificates of Title (pCTs) to electronic Certificates of Titles (eCTs) when any of the following banks are recorded as the first mortgagee:

* Gateway Credit Union Ltd
* Community CPS Australia Ltd
* Credit Union Australia Ltd
* Bank of Queensland
* Macquarie Bank Ltd
* Suncorp-Metway Ltd.

Under section 27BAA of the *Transfer of Land Act 1958*, the Registrar of Titles will declare by notice in the *Victoria Government* *Gazette* that these pCTs will be void and of no effect after 24 February 2018. From then on, the Certificates of Title held by these banks will be eCTs and the relevant bank will be recorded as the eCT Control – the party entitled to control the eCT.

Transactions lodged on or after 24 February 2018 involving a folio of the Register, where these banks are first mortgagee, will be supported by an eCT. Only an eCT will issue after a transaction is registered if one of these banks is the incoming first mortgagee.

# New forms must be used when signedon orafter 1 January 2018

The transition period for accepting forms not containing certifications ended on 31 December 2017. All forms in paper signed on or after 1 January 2018 lodged for registration must use the new form.

If a conveyancer or lawyer represents a party in the transaction, the form must:

* be signed on behalf of the party by the conveyancer or lawyer
* contain the certifications required by the Registrar’s requirements for paper conveyancing transactions.

When a PEXA Subscriber is signing the form, it must contain the relevant certifications.

Non-compliant forms will not be accepted.

Detailed information regarding the Registrar’s requirements for client authorisations and certifications is in *Customer Information Bulletin 163*.

# Registrar’s requirements for paper conveyancing transactions and dates for transition to 100% digital

The Registrar’s *Requirements for Paper Conveyancing Transactions* – *Version 4* is available at www.propertyandlandtitles.vic.gov.au/publications.

Upcoming dates and requirements for transitioning to 100% digital lodgment are as follows.

## 2018

### February

Transmission application functionality will be available in PEXA.

Bulk conversion of pCt to eCT.

### 1 March

Transfers of land and survivorship applications, except when lodged with any other instrument for the same folio, must be lodged electronically. This requirement applies to conveyancers and lawyers acting for a party or themselves, and PEXA subscribers.

**Note:** The requirement does not include transfer types that as at 1 March 2018 are not available in PEXA, such as transfers:

* by mortgagees
* by a minor
* creating an easement
* of an interest, e.g. a lease or mortgage
* of part of land in a folio of the Register
* of a tenant in common’s share
* that cannot be assessed in [Duties Online](http://www.sro.vic.gov.au/dutiesonline) (www.sro.vic.gov.au/dutiesonline).

### 1 July

New requirements for creating restrictive covenants in transfers and restrictions in plans.

* Transfers – the details of any restrictive covenants to be created must be contained in a Memorandum of Common Provisions (MCP) and referred to in the transfer by the MCP number.
* Plans – there will be three options. The restriction can be one of the following:
	+ in one or more MCP (recorded under the *Transfer of Land Act 1958*)
	+ be a short-form restriction
	+ contain a reference to a planning permit.

### 1 October

All instruments or a combination of instruments available in PEXA are to be lodged electronically when signed on or after 1 October 2018. This requirement applies to conveyancers and lawyers acting for a party or themselves, and PEXA subscribers.

That means if any instrument in a case is signed prior to the requirement date, then the requirement to lodge electronically will not apply.

An example of a combination of instruments might include a Withdrawal of Caveat signed on 10 October 2018, a Discharge of Mortgage signed on 25 September 2018, a Transfer of land signed on 10 October 2018 and a Mortgage signed on 10 October 2018 – because the discharge of mortgage was signed prior to the 1 October 2018, the requirement to lodge electronically would not apply and the case could be lodged in paper.

## 2019

### 1 August

All instruments to be lodged electronically. This requirement applies to conveyancers and lawyers acting for a party or themselves, and PEXA subscribers.

The exception will be when there is an existing paper instrument signed prior to the date when electronic lodgment of that instrument or transaction is required.

# SPEAR Electronic Lodgment Network

The SPEAR Electronic Lodgment Network (ELN) enables electronic lodgement of applications under the *Subdivision Act 1988*. Solicitors and conveyancers are encouraged to register to become SPEAR ELN Subscribers, in line with Land Use Victoria’s 100% digital lodgment strategy.

The benefits to lodging parties using the SPEAR ELN include:

* the ability to electronically complete, validate and lodge application forms
* no need to attend Land Use Victoria (LUV) in person to lodge applications
* improved access to application documents and details of LUV requisitions
* instant notification of new title allocations upon registration.

LUV will enhance SPEAR in 2018 to allow surveyors to provide plans and survey information for the remaining plan-based transactions under the *Transfer of Land Act 1958* and *Local Government Act 1989*. Functionality for lodging parties to support the electronic lodgment of these applications will follow in 2019.

LUV does not charge lodging parties to join or use SPEAR; however, lodging parties will need to purchase at least one digital certificate from Symantec to be able to digitally sign documents in SPEAR. User training and support is provided free-of-charge by the SPEAR Service Desk.

Information about how to register to become a SPEAR ELN Subscriber, obtain a digital certificate or contact the SPEAR Service Desk is available on the [SPEAR](http://www.spear.land.vic.gov.au/spear/) website ([www.spear.land.vic.gov.au](http://www.spear.land.vic.gov.au)).

# Minor registered proprietors

LUV has specific requirements for transacting land when a minor (an individual under 18 years old) is the registered proprietor. Provisions of the *Settled Land Act 1958* (the Act) apply when dealing with that land.

The Act governs settled land. Settled land is land subject to a ‘settlement’ under the Act. Under section 8 of the Act, settlement takes place when a less than absolute interest in land is created by deed, will or another instrument. Section 8 of the Act provides that land vested in a minor is deemed to be settled land. In other words, land becomes settled land when transferred to a minor.

When there is a minor registered proprietor, the land can be dealt with by:

* the trustees of the settlement, in accordance with section 26 of the Act
* the tenant for life (which includes a minor registered proprietor due to the operation of section 26), with consent from the trustees, in accordance with section 38 of the Act.

Section 30 defines who are trustees of a settlement. There must be a minimum of two trustees, or a trustee company. When there are no trustees, the Supreme Court and the County Court have the power to appoint trustees under section 36 of the Act.

LUV requires instruments to be signed by the trustee(s) under section 26. Please note the following requirements for electronic and paper conveyancing transactions.

## For electronic conveyancing transactions

* If the trustee is a subscriber to an electronic lodgment network, the trustee will sign an instrument.
* If the trustee is not a subscriber, their conveyancer or lawyer will sign an instrument on their behalf.

The dealing requirement of ‘Evidence of compliance with *Settled Land Act 1958*' must be provided. The supporting evidence need not be provided to the Registrar but does need to be retained for seven years.

## For paper conveyancing transactions

* If the trustee(s) is/are unrepresented, the trustee(s) will sign the instrument. A copy of the trust deed or court order must accompany the instrument, evidencing the appointment of the trustee(s).
* If the trustee(s) is/are represented by a conveyancer or lawyer, the conveyancer or lawyer must sign the instrument on behalf of the trustee(s). A copy of the trust deed or court order need not be provided but must be retained for seven years.

The minor registered proprietor should not sign the instrument in a paper conveyancing transaction and will be unable to sign an electronic instrument.

The transferee on the instrument in both an electronic and paper conveyancing transaction will be the minor registered proprietor.

If, when appointing the trustee(s), the Court vests land in the trustee(s), the trustee(s) can make an application under section 58 of the *Transfer of Land Act 1958*. However, this is not a pre-requisite to any other dealing with the land.

**Caveats requiring an attached plan**

From 1 December 2017, when a caveator is a PEXA subscriber or is represented by lawyer or conveyancer, any caveat not lodged with any other instrument must be lodged using an electronic lodgment network. If a caveat affects part of the land in a folio and it is necessary to attach a plan or diagram to define the part of land affected, the caveat can continue to be lodged as a paper instrument.

**Subscribe**

To receive notification when a *Customer Information Bulletin* is published online, 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 2018LogoThis 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).  |