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| Land VictoriaCustomer Information BulletinEdition 158 July 2016 |

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Registrar’s requirements for paper conveyancing transactions

Following are the requirements and dates on which the Registrar’s Requirements take effect.

2016

1 March

* Discharges of mortgage to be lodged by the mortgagee.

1 August

* Discharges of mortgage and some mortgages to be lodged electronically.

October

* Commence bulk conversion of paper certificates of title to electronic certificates of title.

December

* Implement priority notices.

2017

May

* Implement National Mortgage Form.
* Client authorisation required for paper conveyancing.
* Certifications required for paper conveyancing.

August

* Refinance transactions to be lodged electronically.

Changes to lodging mortgages and discharges of mortgage

A discharge of mortgage signed on or after 1 March 2016 must be lodged by or on behalf of the mortgagee. The practice of providing a discharge of mortgage to the registered proprietor(s) for lodgement at Land Victoria is no longer permitted. The only exception is when the discharge of mortgage will be lodged with a transfer of land and/or a mortgage affecting the same folio(s) of the Register.

Further, if the mortgagee is an authorised deposit-taking institution (ADI) under the *Banking Act 1959* *(Cth)*, the following conditions will apply:

* A discharge of mortgage signed on or after 1 August 2016 must be lodged using an electronic lodgment network – ELN, except when the discharge of mortgage will be lodged with any transfer of land or mortgage for the same folio(s) of the Register.
* A mortgage to which the National Credit Code applies, signed on or after 1 August 2016, must be lodged using an ELN, except when the mortgage will be lodged with any discharge of mortgage or transfer of land for the same folio(s) of the Register.

Currently, the only ELN is Property Exchange Australia (PEXA). Land Victoria strongly recommends that all ADIs and their conveyancers and lawyers contact PEXA as soon as possible to discuss becoming a PEXA subscriber. Details are available at [www.pexa.com.au/register](https://www.pexa.com.au/register).

Land Victoria has recently published a guide to assist mortgagees, their conveyancers, lawyers and lodging agents understand Land Victoria’s changes to lodging requirements for mortgages and discharges of mortgage. The guide is available [here](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/transfer-of-land-act) and at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms) >Transfer of Land Act>Mortgage.

Bulk conversion of paper certificates of title to electronic certificates of title

Over time paper certificates of title (pCTs) will be converted to electronic certificates of title (eCTs). The Registrar proposes to use section 27BAA of the *Transfer of Land Act 1958* to declare void certain classes of pCTs. Initially this will be limited to pCTs with an ADI as the first registered mortgagee. Land Victoria is currently working with major ADIs to finalise a new bulk conversion process and is aiming for their bulk conversions to occur in October 2016.

Customers should confirm their understanding of the impact of these changes and refer to the following guides:

* Certificates of Title and Administrative Notices
* Attending paper settlement when Certificate of Title is electronic

The guides are available [here](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/certificate-of-title-management-and-electronic-conveyancing) and at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms) >Certificate of Title management and electronic conveyancing.

National Mortgage Form

The National Mortgage Form (NMF) is a significant national initiative. It standardises the content and presentation of mortgages lodged for registration through all lodgement channels with land registries in all Australian states and territories. National agreement on the NMF’s content was reached in July 2015 by members of a working group consisting of land registry, financial institution and PEXA representatives. The group was chaired by the Australian Bankers’ Association.

Since then, work has been undertaken to develop a specification for the NMF to incorporate all of the input received from industry. This aims to assist its implementation by financial institutions and other mortgagees, as well as PEXA. As well as the basic content agreed to in July 2015, the specification sets out the NMF’s acceptance and lodgement scenarios in each jurisdiction, and the execution details for the mortgagor and mortgagee for each jurisdiction.

The specification is available [here](http://www.arnecc.gov.au) and at [www.arnecc.gov.au](http://www.arnecc.gov.au) >New documents. The NMF ‘smartform’ is currently being updated to align with the specification and will soon be available on the ARNECC website.

Implementation of the NMF in all jurisdictions is scheduled for May 2017, to coincide with PEXA Release 6.0.

Priority notices

Priority notices will be implemented in December 2016. A priority notice is a notification of intended dealings with land. Once recorded, a priority notice will prevent the registration of any other dealing over the cited folio for a period of 60 calendar days. This restriction does not extend to instruments that do not currently require a supporting certificate of title, for example caveats, warrants and land tax charges.

Priority notices are available for all instrument types. To have effect, the information in the priority notice must be accurate and complete. Amendments or corrections to lodged priority notices will not be permitted. All instruments cited in the priority notice must belong to the same transaction and be set out in the proposed order of lodgement.

Priority notices must be lodged using an ELN, irrespective of whether the intended instrument or transaction will be lodged in paper or electronically. Currently, the only ELN is PEXA. An ELN subscriber can lodge on behalf of a registered proprietor or any incoming party.

Fees will apply to the lodgement and withdrawal of priority notices.

Further details will be provided in future Customer Information Bulletins.

Client authorisations and certifications

The Registrar is proposing to introduce in May 2017 client authorisations for paper conveyancing transactions. The client authorisation will authorise a conveyancer or lawyer to act as their client’s agent and sign paper conveyancing transactions on their behalf.

At the same time, the Registrar is proposing to introduce certifications for paper conveyancing transactions. This will require a conveyancer, lawyer, an ADI and an ELN subscriber to provide certifications for each paper conveyancing transaction they sign.

Client authorisation and certification requirements are already in place for electronic conveyancing transactions and the Registrar intends to mirror those requirements for paper conveyancing transactions.

Refinance transactions to be lodged electronically

Section 106A(1) of the *Transfer of Land 1958* enables the Registrar to determine requirements for paper conveyancing transactions, including the classes of instrument that must be lodged using an ELN.

The Registrar is proposing to expand the requirements for ADIs by requiring all refinance transaction instruments (discharges of mortgage and mortgages) signed on or after the 1 August 2017, when both parties in the transaction are ADIs, to be lodged using an ELN.

Forms approval

On 1 July 2013, the Registrar of Titles ceased approving the use of the T1 Transfer of Land and old-style Discharge of Mortgage and Mortgage forms – refer to [Customer Information Bulletin](http://www.dtpli.vic.gov.au/property-and-land-titles/land-titles/customer-information-bulletins) 141 June 2013 at [www.delwp.vic.gov.au/property](http://www.delwp.vic.gov.au/property) >Land titles>Customer Information Bulletins.

From 1 July 2016, all approvals for use of the T1 Transfer of Land and old-style Discharge of Mortgage form will have expired, including the ‘run off’ period of 12 months. Accordingly, any instrument presented after 1 July 2016 in the form of the T1 Transfer of Land and old-style Discharge of Mortgage form will not generally be acceptable for lodgement.

Pending the introduction of the National Mortgage Form in May 2017, the Registrar of Titles has extended the approval date for all Mortgage forms approved prior to 1 July 2013. The approval period for all such forms is now 30 September 2016. After that date, the forms will be considered expired. Any expired mortgage form will have a ‘run off’ period of 12 months, during which time the form will still be acceptable for lodgement. Once the run off period passes (30 September 2017), an instrument produced using an expired form will not generally be accepted for lodgement.

Introduction of a Crown folio for Crown land records

Land Victoria is implementing a change to the way Crown land records are held within its systems. This is to provide the broader property market reliable Crown land records, with online access to Crown land reports in the same manner that Torrens folios are available through LANDATA.

The existing ‘Crown Land Status Online’ (CLSO) report will be replaced with a ‘Crown folio’ report. Transactional activity will be recorded on an endorsement-based system, as per the Torrens Register of land. The Crown folio will contain all the information that the existing CLSO report holds. However, the presentation has been altered to adopt the format of existing Torrens folios.

Crown land records will be assigned a volume and folio reference (but they will not form part of the Torrens Register), providing a single recording system for all land parcels in Victoria. The Crown folio will be supported by a ‘Crown Diagram’, in a similar format to existing title plans. This will provide a more consistent approach to land information search products and facilitate enhancements to information recorded in the future. The change will also simplify tracking of land transactions between Torrens land and Crown land.

Further information will be provided closer to the release date of Land Victoria’s system changes.

If you have further questions please email APS.branch@delwp.vic.gov.au.

New practice for Not in Common Ownership plans (NICO)

From 1 October 2016, Land Victoria will not register a NICO plan unless all accompanying transactions are lodged to resolve the results of the NICO plan.

The required transactions would typically include discharges of mortgage, transfers and new mortgages. Transactions resolving NICO issues should be lodged at Land Victoria, level 23, 570 Bourke Street Melbourne, or electronically through an ELN.

Co-operatives National Law (Victoria)

The *Co-operatives National Law Application Act 2013* commenced on 3 March 2014. That Act replaced the *Co-operatives Act 1996* and adopted what is known as the Co-operatives National Law (Victoria).

Upon registration, co-operatives under section 14 of the Co-operatives National Law (Victoria) become incorporated. They have perpetual succession, may sue and be sued, and are capable of holding real and personal property.

Executing documents

1. Generally

When disposing of or acquiring estates or interests in land, the Registrar of Titles will accept instruments executed by co-operatives under section 49 of the Co-operatives National Law (Victoria). The following execution clause is acceptable:

Executed by [NAME OF CO-OPERATIVE] in accordance with the Co-operatives National Law (Victoria) and the rules of the co-operative.

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| Signature:Full name:Director/ Secretary | Signature:Full name:Director/ Secretary |

(b) When represented by a conveyancer or lawyer

Persons who sign instruments on behalf of represented co-operatives must have their identity verified by the
co-operative’s conveyancer or lawyer. This representative must also verify the authority of the co-operative to enter into the transaction.

From May 2017, representatives must also enter into client authorisations, sign instruments on behalf of the represented co-operative and provide certifications as set out in the [*Registrar’s Requirements Version 1*](http://www.dtpli.vic.gov.au/property-and-land-titles/publications) at [www.delwp.vic.gov.au/publications](http://www.delwp.vic.gov.au/publications).

(c) Unrepresented co-operatives

If a co-operative is not represented by a conveyancer or lawyer, persons who sign on behalf of the co-operative must have their identity verified and their signatures witnessed by Australia Post. The [*Guide to verification of identity for people not using a conveyancer or lawyer*](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees#verification) is available at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms) >Verification of identity.

When lodging instruments with the Registrar, unrepresented co-operatives must provide a copy of an extract of the co-operative from the Registrar of Co-operatives.

Dealings with land

In addition, there are a number of other events resulting in the following dealings being lodged with the Registrar of Titles:

| Event under national law  | Application |
| --- | --- |
| Change of name of co-operativeA co-operative may change its name under section 224 of the Co-operatives National Law (Victoria). | The co-operative may lodge an application under section 32 of the *Transfer of Land Act 1958* to effect a change of name in the Register of land. A copy of the replacement certificate of registration should be produced to support the application, unless the application is signed by the co-operative’s conveyancer or lawyer. Customers should note that a co-operative does not need to change its name in the Register of land prior to dealing with land. It is sufficient if a co-operative executes an instrument using its new name and states its previous name, e.g. formerly XYZ Co-operative. |
| External administration – appointment of administrator, receiver or controller An administrator may be appointed under Part 4.1 of the Co-operatives National Law (Victoria). If this occurs, Parts 5.3A and 5.9 of the *Corporations Act 2001* generally apply to the administrator appointed under Part 4.1. Also, a receiver or controller may be appointed with respect to a co-operative under Part 4.2 of the *Co-operatives National Law (Victoria)*. Part 5.2 of the *Corporations Act 2001* generally applies to a receiver or controller appointed under Part 4.2.  | An administrator may execute any document on behalf of the co-operative under section 442A of the *Corporations Act 2001.* Any instrument executed by an administrator should be accompanied by a statutory declaration by the administrator regarding their appointment. A receiver may execute any document on behalf of the co-operative under section 420 of the *Corporations Act 2001*. Any instrument executed by a receiver should be accompanied by a statutory declaration by the receiver regarding their appointment. |
| Merger and transfer of engagements Any two or more co-operatives may apply for a transfer of engagements or merger under Part 4.3 of the Co-operatives National Law (Victoria). Also, the Registrar of Co-operatives may direct a transfer of engagements under section 401.  | To give effect to a merger in the Register of land, a merged co-operative may make an application under section 59(2) of the *Transfer of Land Act 1958*. If there is a transfer of engagements, a transfer of land may be used to transfer interests in the Register to the transferee co-operative. If the transferor co-operative’s certificate of incorporation is surrendered prior to a transfer being lodged, a transferee co-operative may make an application under section 59(2) of the *Transfer of Land Act 1958.*  |
| Transfer of incorporation A co-operative may apply under section 403 of the Co-operatives National Law (Victoria) to be a company under the *Corporations Act 2001*, or a prescribed corporation.  | To give effect to a transfer of incorporation in the Register of land, the former co-operative may make an application under section 32 of the *Transfer of Land Act 1958.*  |
| Winding up and deregistration Division 4, Part 4.4 of the Co-operatives National Law (Victoria) concerns the winding up of co-operatives. Upon deregistration of a co-operative, any property of the co-operative vests in the State of Victoria [section 14 of the *Co-operatives National Law Application Act 2013* and section 453(d) of the Co-operatives National Law (Victoria)].  | Co-operatives should dispose of their assets including land when they are being wound up, prior to deregistration. If a co-operative does not dispose of land prior to deregistration, that land vests in the State of Victoria, subject to any encumbrances. The State of Victoria may then dispose of the land.  |

When lodging applications with the Registrar of Titles, co-operatives should set out clearly the grounds of their claim and provide any supporting documents, such as certificates of incorporation. If a co-operative is represented by a conveyancer or lawyer who executes an instrument for a co-operative under a client authorisation, supporting documents are not required.

Victorian Water Register

Signing a transfer of water share and other documents under the *Water Act 1989*

General procedural information

Customers are reminded that receiving an approval letter from a water corporation does not mean the transfer of water shares has been finalised. For a transfer of water share to be finalised, a document known as a Transfer of Water Share, provided by the water corporation, must be recorded by the Registrar, Victorian Water Register.

An owner of a water share may apply to the water corporation for approval to transfer a water share. Once the application has been approved, the water corporation will provide the transferor with an approval letter, a Water Share Transfer Checklist and a pre-filled Transfer of Water Share document. The Transfer of Water Share must then be signed by the transferor and the transferee and lodged with the Registrar, Victorian Water Register. The pre-filled Transfer of Water Share document must not be amended by the parties.

A Transfer of Water Share must be lodged in the Water Register within two calendar months from the date of the approval set out in the Transfer of Water Share.

Customers are reminded that if the Transfer of Water Share is not lodged within two calendar months from the date of approval, the water corporation’s approval lapses and the Registrar, Victorian Water Register is unable to accept the Transfer of Water Share for lodgement. Any fees paid will be forfeited. The transferor will need to lodge a new application for approval to transfer a water share with the water corporation, along with payment of the application fee.

Customers are also reminded they must obtain a transfer of a water allocation to be able to access water under the *Water Act 1989*. Customers are encouraged to contact their local water corporations if they have any questions about water allocations.

Execution of Transfer of Water Share and other *Water Act 1989* documents

The Registrar, Victorian Water Register has noticed a significant number of incorrectly signed *Water Act 1989* documents to be recordedparticularly, Transfers of Water Share. These documents have had to be returned to customers for amendment.

The most common error is where the transferor and/or the transferee is a company that does not use a company execution clause when signing.

All parties to a Transfer of Water Share or other *Water Act 1989* document must ensure the appropriate execution clause is used. This will vary depending on the type of party signing the document. Currently, the Transfer of Water Share sent to customers by water corporations only has the standard individual execution clause. In all other instances (e.g. a company or a person executing under a power of attorney), the applicable alternative execution clause should be prepared on an approved Annexure Page and signed appropriately. The same applies to all other *Water Act 1989* documents that do not contain the appropriate execution clause.

An approved Water Register Annexure page can be downloaded [here](http://www.dtpli.vic.gov.au/property-and-land-titles/victorian-water-registrar/water-registrar-forms-guides-and-fees) and at [www.delwp.vic.gov.au/property](http://www.delwp.vic.gov.au/property) >Victorian Water Registrar>water registrar forms, guides and fees.

Companies

Companies can sign Transfers of Water Share or any other *Water Act 1989* document under section 127 of the *Corporations Act* *2001 (Cth)* (“Corporations Act”).

1. **If a company does not have a common seal** – it should execute without a common seal in accordance with section 127(1) of the Corporations Act.

Section 127(1) of the Corporations Act allows for a company to execute a document without a common seal if the document is signed by:

1. two directors of the company, or
2. a director and a company secretary of the company, or
3. the sole director of a proprietary company who is also the sole company secretary.
4. **If a company does have a common seal, it can execute a document in one of the following ways:**
5. without a common seal in accordance with section 127(1) of the Corporations Act – see above
6. by affixing the common seal in accordance with section 127(2) of the Corporations Act.

Section 127(2) of the Corporations Act allows for a company to execute by affixing the common seal if the common seal of the company is affixed on the document in the presence of:

1. two directors of the company, or
2. a director and a company secretary of the company, or
3. the sole director of a proprietary company who is also the sole company secretary.

Persons signing for a company must print their name and the office they hold in the company.

Companies with a sole director and no company secretary may need to provide further evidence to satisfy the Registrar, Victorian Water Register that the transfer has been duly executed.

Powers of Attorney

Parties executing under a power of attorney must do so in a way that makes it clear the attorney is signing as an attorney for the principal, making reference to the instrument appointing them as the attorney.

Sample execution clauses

Companies

Company executing by using a common seal

Multi-person company: director and director or director and secretary

Executed on behalf of ABC Pty Ltd
Under Common Seal

Signer full name JOHN CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role DIRECTOR\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signer full name JANE CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role DIRECTOR/SECRETARY\*\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Execution date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\* Delete whichever is not appropriate.

*Sole person company: sole director and sole company secretary*

Executed on behalf of ABC Pty Ltd
Under Common Seal

Signer full name JOHN CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role SOLE DIRECTOR & SECRETARY\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Execution date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Sole person company: sole director/no company secretary*

Executed on behalf of ABC Pty Ltd
Under Common Seal

Signer full name JANE CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role SOLE DIRECTOR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Execution date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company executing without using a common seal

*Multi-person company: director and director or director and secretary*

Executed on behalf of ABC Pty Ltd

Signer full name JOHN CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role DIRECTOR\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signer full name JANE CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role DIRECTOR/SECRETARY\*\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Execution date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\* Delete whichever is not appropriate.

*Sole person company: sole director and sole company secretary*

Executed on behalf of ABC Pty Ltd

Signer full name JOHN CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role SOLE DIRECTOR & SECRETARY\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Execution date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Sole person company: sole director/no company secretary*

Executed on behalf of ABC Pty Ltd

Signer full name JANE CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role SOLE DIRECTOR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Execution date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Powers of Attorney

Executed on behalf of JOHN CITIZEN

Under general non-enduring power of attorney/enduring power of attorney\*

dated [date power made]

Signer full name JANE CITIZEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signer role ATTORNEY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Execution date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\* Delete whichever is not appropriate.

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