|  |  |
| --- | --- |
| |  | | --- | | Land Victoria  Customer Information Bulletin  Edition 159 August 2016 | |

Registrar’s requirements for paper conveyancing transactions

Following are the requirements and dates on which the Registrar’s Requirements took or will 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.

22 October

* Bulk conversion of some paper Certificates of Title to electronic Certificates of Title.

December

* Implement priority notices.

2017

May

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

August

* Refinance transactions to be lodged electronically.

Lodging mortgages and discharges of mortgage

As previously advised, 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 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.

Land Victoria has two guides to assist mortgagees, their conveyancers, lawyers and lodging agents understand Land Victoria’s changes to lodging requirements for mortgages and discharges of mortgage:

* *Guide to mortgage*
* *Guide to discharge of mortgage*.

The guides are available [here](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-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

Many properties in Victoria are mortgaged and the Certificates of Title (CTs) are therefore held by first mortgagees. The four major banks (ANZ, CBA, NAB, Westpac and their brands) hold approximately two million CTs in Victoria.

Following consultation and agreement with these banks, on 22 October 2016 Land Victoria will facilitate a bulk conversion of paper CTs (pCTs) of which the banks are the first mortgagee.

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 CTs will be void and of no effect from 22 October 2016. From then on, all CTs held by the four major banks will be electronic CTs (eCTs) and the relevant bank will be recorded as the eCT Control – the party entitled to control the eCT.

Any transaction involving one of these major banks as first mortgagee to be lodged on or after 22 October will be supported by an eCT. After registration of the transaction at Land Victoria, when one of the major banks is the incoming mortgagee, only an eCT will issue.

In other cases, after registration of a transaction a Certificate of Title can be issued in one of the following ways.

* An eCT can issue:
  + from an electronic transaction to an eCT Control if a subscriber to an ELN\* has chosen to retain the CT in electronic format
  + from a paper transaction when the party entitled to possession of the CT is a PEXA subscriber who provides their VOTS customer code, established for use in PEXA for issuing purposes.
* A pCT can issue:
  + from an electronic transaction if the pCT option is selected in the lodgement instructions
  + from a paper transaction to which an eCT has been nominated if the lodging party provides their VOTS customer code, which has not been established for use in PEXA.

**\*Currently, the only ELN is PEXA. In order to lodge through PEXA you must be a subscriber. For further information go to PEXA Ltd’s website at www.pexa.com.au.**

After 22 October the vast majority of CTs in the marketplace will be eCTs. Customers should ensure they understand the implications of this change, including:

* how to identify whether or not the CT is electronic
* who is the eCT Control
* how to ensure the correct nomination is in place.

The guides listed below provide more information on dealing with eCTs. They are available [here](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-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.

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

Introducing priority notices

Priority notices will be introduced in Victoria in December 2016 and Land Victoria is currently developing a comprehensive guide for customers about the use of priority notices. The following information is an introduction.

A priority notice is notification of an intended dealing or dealings with land, which is lodged with the Registrar of Titles at Land Victoria. Once recorded, a priority notice will temporarily prevent registration of any other dealing over the cited folio. A priority notice will not prevent recording of an instrument that does not require a supporting Certificate of Title (for example caveats, warrants and land tax charges).

A priority notice can apply to all instrument types and will:

* protect the interests of parties to an intended instrument or transaction, from the time the priority notice is lodged until that instrument or transaction is lodged
* alert interested parties who search the Register that an intended instrument or transaction is pending
* assist in fraud prevention because details of an intended instrument or transaction will appear on a search of the Register.

Requirements of a priority notice

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. If necessary, the priority notice can be withdrawn and a new priority notice lodged in its place.

When the intended instrument or transaction is lodged, it must match the details contained in the priority notice; otherwise, the intended instrument or transaction will not be registered or recorded.

All instruments cited in the priority notice must belong to the same transaction and be set out in order of lodgement. There will be neither provision in the priority notice to cite particular instruments to which the applicant consents, nor a mechanism for the applicant to provide consent to subsequent instruments.

Priority notices must be lodged using an ELN, irrespective of whether the intended instrument or transaction will be lodged in paper or electronically.

A subscriber to an ELN can lodge on behalf of a registered proprietor or any incoming party.

Duration of a priority notice

Priority notices will be effective for 60 calendar days from the day after the date of lodgement.

A priority notice:

* will automatically expire when the intended instrument or transaction is registered, or at midnight on the 61st calendar day from the day the priority notice is lodged (whichever is sooner)
* will cease to have effect upon its withdrawal – it must be withdrawn by the subscriber who lodged it
* can be removed by a court order.

Section 60 applications – critical deficiencies

Plan Acceptance no longer undertakes pre-lodgement checks for section 60 (adverse possession) applications. The Application and Survey Branch carries out preliminary checks of section 60 applications. To date, approximately 25 per cent of applications have had critical deficiencies. Common examples include lack of necessary deeds of assignment of possessory rights, possession not being for 15 years and survey plans being out of date.

If the evidence lodged in support of the application is critically deficient, urgent requisition(s) are sent to the lodging party and the application is stopped, pending compliance.

If the requisitions are satisfied within the standard nominated 30-day period, the application will be placed in the queue for full examination.

If the requisitions are not completely satisfied within the 30 days:

* the application will be rejected
* documents lodged will be returned
* fees will be forfeited without further warning
* extensions to the nominated period will not be granted.

The Adverse Possession Section 60 checklist (found at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms)>Transfer of Land Act>Adverse possession) provides a comprehensive list of the evidence required. To avoid unnecessary delays in examination, the checklist needs to be properly completed prior to signing and lodging it with all necessary evidence at Land Victoria.

Section 60 applications often involve complex questions of law. If this is the case, Land Victoria recommends applicants seek the advice of an Australian legal practitioner who specialises in this area.

The guides listed below provide more information on adverse possession. They are available [here](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-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>Adverse possession.

* *Guide to adverse possession*
* *Guide to evidence supporting an adverse possession*

New practice for Not in Common Ownership (NICO) plans

As advised in Customer Information Bulletin Edition 158, 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 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 through an ELN.

This new practice means mortgagees will not have any difficulty exercising their power of sale.

Further information is available in the guide [What is NICO?](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-guides-and-fees/subdivision-act) available at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms)>Subdivision Act>Owners corporation.

Transfer by direction

Land Victoria no longer accepts transfers of land by direction. This is to align processes nationally.

In the interactive *Transfer of Land* form, the ‘Directing party’ panel still appears; however, the underlying functionality has been deactivated and the panel cannot be completed.

In the *Transfer of Land T2* form, the ‘Directing party’ panel still appears, but it must be left blank.

Transactions that may, in the past, have been reflected in a transfer of land by direction now need to be dealt with in two transfer instruments.

Changes to recording restrictive covenants on folios

From 1 August 2017, the Registrar is proposing to change the way in which restrictive covenants (called restrictions in the *Subdivision Act 1988*) are lodged for recording in a transfer or plan (except plans under section 23 of the *Subdivision Act 1988)*. Feedback on the proposed change is invited and can be made by 30 September 2016 – email Policy.LV@delwp.vic.gov.au.

From that date on, it is proposed that restrictive covenants must be included in a Memorandum of Common Provisions (MCP).

When restrictive covenants are included in an MCP, the MCP can be referenced in a plan of subdivision or subsequent transfers.

MCPs are already frequently used by property developers and their representatives to record restrictive covenants relating to siting, form and design of developments, as well as specific restrictions on the uses of individual land parcels.

The four key reasons for and benefits of this proposed change include:

* processing efficiencies for customers because the MCP will be examined up-front by Land Victoria, which will catch any issues before a plan or transfer is lodged – customers will only need to review the details of the restrictive covenant once
* minimising errors, which are often made when the full text of a restrictive covenant is included in a transfer, typically due to transcribing errors or omission of some of the terms of the restrictive covenant – correcting the errors is complex and may require an application to a court
* easy searching of one MCP instead of multiple transfer documents
* improved processing and recording at Land Victoria because the restrictive covenant’s details only need to be examined once rather than numerous times when they are included in a transfer.

The Registrar is proposing to include this change in the next version of the *Registrar’s requirements for paper conveyancing transactions*.

Compliance examinations of subscribers to an ELN

The Registrar will be undertaking *ad hoc* compliance examinations to:

* help subscribers meet their obligations and responsibilities under the participation rules for electronic conveyancing
* build trust and confidence in the ELN.

The Electronic Conveyancing National Law and the Participation Rules set out the scope and purpose of such examinations, and the obligation of subscribers to fully cooperate with them.

Selected subscribers will be notified in writing, identifying the instruments to be reviewed and requesting documents and other information to demonstrate compliance with the Participation Rules. Subscribers will be given at least 10 business days within which to comply and will then be notified in writing of the examination’s outcome.

The Australian Registrars’ National Electronic Conveyancing Council (ARNECC) recently published 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)*.*

Answering requisitions, stopped case notices and other correspondence

When responding to a requisition or stopped case notice, correspondence should only be sent to one of the following addresses:

Registrar of Titles  
Land Victoria  
GPO Box 527  
Melbourne 3001

OR

Registrar of Titles  
Land Victoria  
DX 250639 Melbourne

OR

Be delivered in person to Level 27, 570 Bourke Street, Melbourne 3000.

Correspondence relating to folios of the Register affected by a NARF (Notice of action in respect of a folio) should be sent to one the following addresses:

Warrants Officer  
Land Victoria  
GPO Box 527  
Melbourne 3001

OR

Warrants Officer  
Land Victoria  
DX 250639 Melbourne

OR

Be delivered in person to Level 27, 570 Bourke Street, Melbourne 3000.

Correspondence should not be emailed direct to the Registrar of Titles or anyone else at Land Victoria (unless specifically directed to do so).

Your correspondence will be delayed if you fail to send it to the appropriate address.

Contact us

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

Subscribe

To receive the Customer Information Bulletin 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.

|  |  |
| --- | --- |
| © The State of Victoria Department of Environment, Land, Water and  Planning 2016  byThis work is licensed under a [Creative Commons Attribution 4.0 International licence](http://creativecommons.org/licenses/by/4.0/). 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 other 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 DELWP Customer Service Centre 136 186, email [customer.service@delwp.vic.gov.au](mailto:customer.service@delwp.vic.gov.au), 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) |