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| Land Use Victoria Customer Information Bulletin 186 April 2019 |
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# Bulk conversion of paper Certificates of Title to electronic Certificates of Title

On 22 March 2019, Land Use Victoria facilitated 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:

* AMP Bank Limited
* Credit Suisse AG
* HSBC Bank Australia Limited

Under section 27BAA of the *Transfer of Land Act 1958*, the Registrar of Titles has declared by notice in the *Victoria Government* *Gazette* that these pCTs will be void and of no effect after 22 March 2019. The Certificates of Title held by these banks will be eCTs and the relevant bank, its conveyancers or lawyers will be recorded as the eCT Control – the party entitled to control the eCT.

Transactions lodged on or after 22 March 2019 involving a folio of the Register, where one of 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.

# National electronic conveyancing - Model Participation Rules Guidance Notes

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) publishes Guidance Notes based on its Model Participation Rules (MPR) to assist Subscribers in understanding what is expected of them in complying with the MPR. In Victoria the Registrar has adopted the MPR as the Victorian Participation Rules.

ARNECC has published version 5 of each of the following guidance notes available at [www.arnecc.gov.au](http://www.arnecc.gov.au/)/publications – under MPR Guidance Notes:

*Guidance Note #1 – Client Authorisation*

*Guidance Note #2 – Verification of Identity*

*Guidance Note #3 – Certifications*

Guidance Note #4 – *Right to Deal*

Guidance Note #5 – *Retention of Evidence.*

Guidance Note #6 – *Compliance Examinations*

Subscribers should read the updated MPR Guidance Notes carefully.

# A conveyancer’s and lawyer’s obligation to know who their client is

It is important that a conveyancer or lawyer know who they are acting for **before** they sign instruments on a client’s behalf.

The examples below show when confusion has occurred:

**Example 1:**

If conveyancer or lawyer is acting for a vendor in the sale of a caveat affected property, in most cases they will not also act for the caveator.

A conveyancer or lawyer acted for the registered proprietor of land that had been sold. The land was affected by a caveat and a withdrawal of caveat was needed. The caveat was for a leasehold interest (caveator was the tenant). Further enquiries revealed that the lease had ended some time ago and the caveator company was de-registered. The person handling the file prepared an electronic withdrawal of caveat. Another person within the firm signed the withdrawal of caveat, which was then lodged. The caveator was not a client. There was no client authorisation, no verification of identity and no evidence of right to deal for the caveator.

**Example 2:**

If conveyancer or lawyer receives a paper withdrawal of caveat from another party, they do not act for the caveator.

A conveyancer or lawyer was provided with a paper withdrawal of caveat pursuant to court orders. Instead of lodging the withdrawal in paper or asking the caveator’s representative to prepare and lodge the caveat using an Electronic Lodgment Network (ELN), the conveyancer or lawyer prepared and signed an electronic withdrawal of caveat. The withdrawal was then lodged. The caveator was not a client. There was no client authorisation, no verification of identity and no evidence of right to deal for the caveator.

Both examples highlight numerous issues including: breaches of the *Electronic Conveyancing National Law (Victoria)* and the Participation Rules, potential negligence, improperly given certifications and possible breaches of professional conduct rules. Failure to comply with the *Electronic Conveyancing National Law (Victoria)* and the Participation Rules could result in restriction, suspension or termination as a Subscriber.

Conveyancers and lawyers should familiarise themselves with the *Electronic Conveyancing National Law (Victoria)* and the Participation Rules, as well as the MPR Guidance Notes mentioned above.

# Release of the first residual document

Functionality is being incrementally deployed, in the electronic lodgment network known as PEXA, during early 2019 to enable the remaining instrument types (residual documents) to be lodged electronically. Its use by conveyancers, lawyers, authorised deposit-taking institutions (ADIs) and subscribers will be required from 1 August 2019.

The first residual document, an application to record a section 173 of the *Planning and Environment Act 1987* agreement, became available in March 2019.

A guide outlining the requirements for this application (and other residual documents) has been published at [www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees](http://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees) under Overview - Residual Documents. This guide will be updated as other residual documents are made available.

**Joint Lodgments after October 2018**

How are joint lodgments handled following the October 2018 mandate? A joint lodgment typically involves a series of lodgments, undertaken by different parties.

One example is a discharge of mortgage to precede a plan of subdivision and a new mortgage to follow the plan.  The discharge and mortgage are to be lodged by the financial institution and the plan lodged by a conveyancer or lawyer.

Electronic lodgment requires one party in a multi-party transaction to assume responsibility for the lodgment.  While a discharge of mortgage and new mortgage can be lodged electronically (and must be, in most cases), a plan of subdivision can be lodged in paper.

The Registrar’s Requirements for paper conveyancing transactions discusses dealings lodged in combination, but in this context, this means a series of dealings with the same lodging party.  The example above involves different lodging parties and means the dealings are not ‘lodged in combination, in the context of the requirement.

The effect of the 1 October 2018 electronic lodgment mandate means that, in the example above, the discharge of mortgage and new mortgage are ‘stand-alone’ transactions, mandated for electronic lodgment and must be lodged electronically. The plan of subdivision is also a ‘stand-alone’ transaction that can be lodged electronically using the SPEAR Electronic Lodgment Network (ELN) or in paper.

In this example, the financial institution would need to electronically lodge the discharge of mortgage and maintain eCT control.  The eCT would then need to be nominated to permit the plan to be lodged, again with the financial institution maintaining eCT control.  Following lodgment of the plan, the new mortgage can be electronically lodged, again with the financial institution maintaining eCT control.

All parties will need to consider the impact of the Registrar’s Requirements when scheduling lodgments that involve some transaction types mandated for electronic lodgment and some that are not.

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