Revised guides on VOI

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| Land Victoria  Customer Information Bulletin  Edition 156 March 2016 |

The following guides for verification of identity have recently been updated:

* *Guide to conveyancers and lawyers when dealing with people who are not represented*
* *Guide to verification of identity for people not using a conveyancer or lawyer*

The guides are on the [Forms, guides and fees](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-guides-and-fees) web page at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms).

Over-the-counter printing of Certificates of Title to cease

From Monday 4 April Certificates of Title will no longer be printed and supplied to regular customers (those with a VOTS customer code) over the counter.

Certificates of Title will be printed through the overnight batch print process and distributed to customers the following business day.

They will be distributed according to the distribution mode held for the customer in VOTS.

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 only exception is where the discharge is to be lodged with a transfer of land and/or a mortgage affecting the same folio(s). The practice of providing a discharge of mortgage to the registered proprietor to lodge at Land Victoria is no longer allowed.

Further, if the mortgagee is an ADI (authorised deposit-taking institution under the *Banking Act 1959* [Cth]):

* a discharge of mortgage signed on or after 1 August 2016 must be lodged electronically through an electronic lodgment network, except where the discharge of mortgage is to   
    
    
  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 electronically through an electronic lodgment network, except where the mortgage is to be lodged with any discharge of mortgage or transfer of land for the same folio(s) of the Register.

PEXA (Property Exchange Australia) is currently the only electronic lodgment network.

To ensure you are registered with PEXA and have completed the PEXA training prior to the commencement date, Land Victoria strongly recommends that all ADIs, their conveyancers and lawyers apply as soon as possible to become PEXA subscribers. Details can be found at [pexa.com.au/register](http://www.pexa.com.au/register).

For more information on the Registrar’s requirements for paper conveyancing go to [www.delwp.vic.gov.au/publications](http://www.delwp.vic.gov.au/publications).

Executions by foreign corporations in conveyancing transactions

Following feedback from customers, Land Victoria has revised its supporting evidence requirements for transacting parties that are foreign corporations. These requirements apply to bodies corporate that have been incorporated outside the Commonwealth of Australia, whether or not they have been registered under the *Corporations Act 2001* (‘foreign corporations’).

If such a corporation seeks to execute an instrument, Land Victoria requires a statutory declaration from an Australian Legal Practitioner stating that he or she has taken reasonable steps to verify that at the date the instrument was executed by the foreign corporation, in accordance with the law of the country of incorporation and any charter or other instrument constituting or regulating its affairs, the body corporate:

* was duly constituted and registered under the name appearing in the relevant instrument
* had the power to acquire or dispose of the estate or interest the subject of the instrument
* had validly executed the instrument
* was bound by the execution.

If the foreign corporation is a mortgagee not required to sign the mortgage, Land Victoria will accept a statutory declaration from an Australian Legal Practitioner stating that he or she has taken reasonable steps to verify that at the date the mortgage was granted, in accordance with the law of the country of incorporation and any charter or other instrument constituting or regulating its affairs, the foreign corporation:

* was duly constituted and registered under the name appearing in the relevant instrument
* had the power to acquire the estate or interest the subject of the instrument.

If a foreign corporation is a mortgagor not required to sign the mortgage under section 74(1A) of the *Transfer of Land Act 1958*, Land Victoria will accept a statutory declaration from an Australian Legal Practitioner stating that he or she has taken reasonable steps to verify that at the date the mortgage was granted by the foreign corporation, in accordance with the law of the country of incorporation and any charter or other instrument constituting or regulating its affairs, the foreign corporation :

* was duly constituted and registered under the name appearing in the relevant instrument
* had the power to acquire or dispose of the estate or interest the subject of the instrument.

Please also note that ADIs are excluded from the above requirements.

Execution by markspersons

Land Victoria has reviewed and simplified its requirements for transacting parties who are unable to execute or read an instrument in the ordinary way because of illiteracy, illness or physical impairment. Land Victoria no longer requires statutory declarations by persons witnessing the execution of the instrument.

Pre-April 2017

The Registrar’s requirements for paper conveyancing transactions that provide for Client Authorisations and Certifications come into effect on 3 April 2017. Prior to that date, the following execution or witness attestation clauses should be used, as appropriate:

1. If a party to an instrument is **able to read** but is **unable to sign**:

*Signed, in my presence, by [full name of party] by making [his/her] mark, as [he/she] is unable to sign this document.*

*Signature of witness:*

*Full name of witness:*

The party to the instrument may be represented by an Australian Legal Practitioner, Law Practice or Licensed Conveyancer or be non-represented.

2. If a party to an instrument is **unable to read** but is **able to make a mark or sign**:

*Signed, in my presence, by [full name of party]. [He/She] is unable to read [and sign] this document. I therefore read the full text of it to [him/her] before [he/she] [signed it/made [his/her] mark].*

*Signature of witness:*

*Full name of witness:*

The witness to such an execution must be an Australian Legal Practitioner, Law Practice or Licensed Conveyancer.

3. If a party to an instrument is **unable to sign or make a mark**, the person signing on their behalf must do so under a power of attorney or other authority. The attorney or authorised representative must be represented by an Australian Legal Practitioner, Law Practice or Licensed Conveyancer.

The execution clause must refer to the authority under which the instrument is being signed. For details refer to *Customer Information Bulletin*: No. 134 December 2011 and No. 150 September 2015 at [www.delwp.vic.gov.au/property](http://www.delwp.vic.gov.au/property)>Land titles>Customer information bulletins.

Post-April 2017

Following the introduction of Client Authorisations and Certifications, if any party to an instrument is represented by an Australian Legal Practitioner, Law Practice or Licensed Conveyancer, the Representative must execute the instrument having been satisfied as to its correctness. The standard execution clause must be used.

1. If a party to an instrument is **able to read** but is **unable to sign** and is not represented, the following execution clause must be used:

*Signed, in my presence, by [full name of party] by making [his/her] mark, as [he/she] is unable to sign this document.*

*Signature of witness:*

*Full name of witness:*

2. If a party to an instrument is **unable to read** but is **able to make a mark or sign**, the party to the instrument must be represented by an Australian Legal Practitioner, Law Practice or Licensed Conveyancer.

3. If a party to an instrument is **unable to sign or make a mark**, the party to the instrument or their attorney or authorised representative dealing with the land on their behalf must be represented by an Australian Legal Practitioner, Law Practice or Licensed Conveyancer.

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)>Property information>Contact Land Victoria.

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