# Updated Guide Available

## Guide to Removal of Easements by Non-Use or Abandonment

Land Use Victoria (LUV) has published an updated ‘Guide to Removal of Easements by Non-Use or Abandonment’, available online at [land.vic.gov.au](https://www.land.vic.gov.au/home).

Key updates include:

* New section 4.3 providing information on removing rights saved under the Local Government Acts
* New section 5 outlining critical deficiencies and lodgment requirements.

# Clarification of an article in CIB 224 - Severance of joint tenancies

Customers are reminded that this type of transfer cannot be lodged electronically using an Electronic Lodgment Network (ELN). Instead, it must be prepared as a paper transfer instrument and lodged using the section 104 Generic Residual Document available in the PEXA ELN.

The article in CIB 224 incorrectly referred to the consideration as “non-monetary”, which consideration applies only to transfers that are lodged electronically. For a severance of joint tenancy, the paper instrument should state the consideration as "to sever the joint tenancy."

The Registrar’s expectation is that conveyancers and lawyers will obtain a Client Authorisation from the person who is unilaterally severing the joint tenancy, and verify identity and right to deal for this person.

# Disclaimer of onerous freehold property

Onerous freehold property refers to land that is burdened by onerous covenants or is unsaleable or not readily saleable. This type of property may be disclaimed by either:

* a trustee in bankruptcy of an individual under section 133 of the *Bankruptcy Act 1966 (Cth) (Bankruptcy Act)*, or
* a liquidator of a company under sections 568 to 568F of the *Corporations Act 2001 (Cth) (Corporations* Act*)*.

A disclaimer of property ends the rights, interests, and liabilities of the bankrupt or insolvent registered proprietor. It also releases the trustee in bankruptcy or liquidator from personal liability in relation to the disclaimed property.

## Notifying Registrar of Titles of disclaimer

To notify the Registrar of Titles of a disclaimer of onerous property, the trustee in bankruptcy or liquidator must lodge an application under section 106(1) of the *Transfer of Land Act 1958* (TLA) to request the recording of a Registrar’s caveat.

Use the application type:
Application to request action by the Registrar – Registrar’s Caveat – Transfer of Land Act – section 106

The application must include:

* Evidence of the appointment of the trustee in bankruptcy or liquidator
* A notice of disclaimer:
	+ under section 133(3) of the *Bankruptcy Act*, or
	+ under section 568A(1)(d) of the *Corporations Act*

Recording a Registrar’s caveat prevents the registered proprietor(s) from dealing with the disclaimed property. However, it does not prevent another party with a legitimate interest in the property from dealing with it.

## Dealing with disclaimed property

A disclaimer does not affect the rights or liabilities of other parties with an interest in the property—except as necessary to release the bankrupt or insolvent entity from the property.

For example, a registered mortgagee’s interest remains valid and can be enforced, including the exercise of power of sale.

Any person (other than the former registered proprietor) with an interest in the disclaimed property may apply to the court for a vesting order under:

* sections 133(9)–(11) of the *Bankruptcy Act*, or
* section 568F of the *Corporations Act*

Once obtained, a vesting order can be used to support an application under section 59 of the TLA to become the registered proprietor of the property.

# Requirements for interstate conveyancers lodging instruments

Amendments to the *Mutual Recognition Act 1992 (Cth)*, made by the *Mutual Recognition Amendment Act 2021 (Cth)*, mean that interstate conveyancers no longer need to apply separately to be licensed in Victoria. Instead, they are automatically deemed to be licensed in Victoria based on their registration or licence in their home jurisdiction.

Version 7 of the Victorian Participation Rules for Electronic Conveyancing defines a Licensed Conveyancer (however described) as having the meaning given in the relevant legislation of the jurisdiction in which the land is located. This includes real estate settlement agents under the *Settlement Agents Act 1981 (WA)*. This definition has been added to Version 12 of the Registrar’s Requirements.

As a result, an interstate conveyancer or settlement agent may submit instruments for lodgment in Victoria. However, they must comply with both the laws of their home jurisdiction and Victorian laws regarding the scope of work a Licensed Conveyancer can perform.

In Victoria, section 4 of the *Conveyancers Act 2006* defines what constitutes conveyancing work. All Licensed Conveyancers, including those from interstate, must ensure they comply with section 4 of the Act when preparing and lodging instruments.

Customer Information Bulletin 196 contains more detailed information on what constitutes conveyancing work, including limitations on lodging caveats.

# Contact us

For contact details, please go to <https://www.land.vic.gov.au/contact-us>.