

Registrar's requirements for paper conveyancing transactions

Version 2 of the Registrar's requirements for paper conveyancing was determined on 22 March and published on 23 March. A copy showing the changes since version 1 and a clean copy are available at www.delwp.vic.gov.au/publications

The main changes to the requirements are:

- amendments to requirements 5 (Certifications), 8 (Client Authorisations) and 9 (mortgagee certifications) so they take effect from the introduction of the national mortgage form on 26 May 2017
- introduction of a transition period for approved forms of instrument signed on or before 31 December 2017 for requirements 5, 8 and 9
- that certifications cannot be included on an annexure page – approved forms including certifications must be used
- re-finances between ADIs must be lodged electronically from 1 August 2017
- all ADI mortgages are included in the requirements – commercial mortgages were previously exempt
- introduction of an additional exception to requirement 6.2 that certain instruments must be lodged electronically when the relevant folio of the Register cannot be dealt with electronically
- new form printing requirements in requirement 10.3
- amendment to Schedule 4 so that certifications will be the same as those in the national mortgage form.

The Registrar's requirements will be next amended when Version 4 of the Model Participation Rules for electronic conveyancing is finalised. The Australian Registrars' Working Group is currently considering feedback received on consultation draft 4 of the Model Operating Requirements and consultation draft 4 Model Participation Rules.

Transition to 100% digital lodgement

In line with the Victorian Government's digital strategy, the Registrar has consulted with stakeholders about transitioning to 100% digital lodgement. The agreed requirements and timelines are as follows:

2017

26 May

- National Mortgage Form to be implemented.
- Client Authorisations required for paper conveyancing.
- Certifications required for paper conveyancing, including those for mortgages under section 74(1A) of the *Transfer of Land Act 1958*.

There will be a transition period for implementation of the National Mortgage Form, Client Authorisations and certifications from 26 May to 31 December.

July

- A second bulk conversion of paper Certificates of Title to electronic Certificates of Title (eCT) will be undertaken. This will involve paper Certificates of Title held by authorised deposit-taking institutions (ADIs) other than the four major banks (ANZ, CBA, NAB, Westpac and their brands). Please note that conversion of paper Certificates of Title held by the four major banks was undertaken in October 2016.

1 August

- Commercial mortgages, refinance transactions (including commercial mortgages) to be lodged electronically where the mortgagee(s) is an ADI. This requirement applies to ADIs and conveyancers and lawyers acting for an ADI.

November

- Survivorship applications, transmission applications and change of name functionality will be available in PEXA.

1 December

- Standalone caveats and withdrawals of caveat to be lodged electronically. This requirement applies to PEXA subscribers, and conveyancers and lawyers acting for a party or for themselves and PEXA Subscribers.
- Non-ADI standalone discharges of mortgage, standalone mortgages and refinance transactions are to be lodged electronically. This requirement applies to conveyancers and lawyers acting for a non-ADI and non-ADIs who are PEXA Subscribers.

2018

1 January

- Transition period for mortgage (NMF), Client Authorisations and certifications ends.

1 March

- All survivorship applications, transmission applications and standalone transfers must be lodged electronically. This requirement applies to conveyancers and lawyers acting for a party or themselves and PEXA Subscribers.

1 October

- All combinations of transactions available in PEXA to be lodged electronically. For example, a case comprising a withdrawal of caveat, discharge of mortgage, transfer and mortgage. This requirement applies to conveyancers and lawyers acting for a party or themselves and PEXA Subscribers.

2019

1 August

- All transactions to be lodged electronically. This requirement applies to conveyancers and lawyers acting for a party or themselves and PEXA Subscribers.

The exception will be when there is an existing paper instrument that has been signed prior to the date when electronic lodgement of that particular class of instrument or transaction is required.

Client Authorisations and certifications

The Registrar's requirement for Client Authorisations for paper conveyancing transactions will come into effect on 26 May 2017. A Client Authorisation will authorise a conveyancer or lawyer to act as their client's agent and to sign paper conveyancing transactions on their client's behalf. Conveyancers and lawyers will be required to sign paper instruments when they have a Client Authorisation in place.

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

Client Authorisation and certification requirements are already in place for electronic conveyancing transactions. Certifications must form part of an approved form and cannot be placed on annexure sheets.

Transition period

There will be a transition period in Victoria (26 May to 31 December 2017) for Client Authorisations and certifications. Transactions can be lodged in new forms containing certifications supported by a Client Authorisation if applicable or those forms (that do not contain certifications) approved by the Registrar prior to 26 May 2017.

From 1 January 2018 the following will apply:

- a) LUV will accept forms that contain certifications supported by a Client Authorisation if applicable or
- b) LUV will accept forms approved by the Registrar (approved prior to 26 May 2017) when parties have signed on or before 1 January 2018.
- c) When parties have signed after 1 January 2018, LUV will not accept forms that do not contain certifications.

Customers are encouraged to start using Client Authorisations from 26 May 2017. This means that a conveyancer or lawyer will have a Client Authorisation in place if they need to sign either an electronic or paper instrument on behalf of their client.

Forms

National Mortgage Form

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) has published an updated version of the National Mortgage Form (NMF) Specification (December 2016).

The specification of the NMF is available for use by financial institutions and other organisations in readying their systems and procedures for implementation of new national arrangements for preparing and lodging real property mortgages in all Australian states and territories.

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 at the ARNECC website.

As previously advised, the 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.

Implementation of the NMF in Victoria is scheduled for paper mortgages on 26 May 2017 and for electronic mortgages to coincide with the PEXA Release 6.0 now scheduled for 10 June 2017. The PEXA release for all other jurisdictions is planned for July 2017.

Transition period

There will be a transition period in Victoria (26 May to 31 December 2017) for paper mortgages. During the transition period paper mortgages can be lodged in either the new NMF or forms approved by the Registrar prior to 26 May 2017.

From 1 January 2018 the following will apply:

- a) LUV will accept paper mortgages in the new NMF or
- b) LUV will accept paper mortgages in an approved form (approved prior to 26 May 2017) when parties have signed on or before 1 January 2018.
- c) When parties have signed after 1 January 2018, LUV will not accept paper mortgages that are not a NMF.

Availability and use of new forms

The Registrar will make available the NMF and all other instruments as approved forms containing certifications before 26 May 2017. All forms will be published online at www.delwp.vic.gov.au/property-forms.

These new forms can be used by external providers for forms package development. For information regarding the development procedure please email LUV.Forms@delwp.vic.gov.au or seek an update from your current forms provider.

Lodgement of paper transactions where the Certificate of Title is electronic (eCT)

Where a folio has an electronic Certificate of Title (eCT), nomination of the eCT using the electronic lodgement network (PEXA) is required before a paper instrument can be lodged for registration.

However, an exception will be made where a discharge of mortgage signed before 22 October 2016 is presented for lodgement, either alone or with other instruments. Where the exception applies, the redundant paper Certificate of Title must be produced at lodgement.

Changes to over-the-counter lodgements

Land Use Victoria is introducing changes to over-the-counter lodgements on 18 April 2017.

The changes will mean that, in a lodgement session, a customer will only be able to lodge a single 'case'.

A case is defined as one or more dealings affecting the same folio(s). For example, a single caveat presented for lodgement would be a case; a discharge of mortgage/transfer of land/mortgage affecting the same folio(s) presented for lodgement would also be a 'case'.

Customers using over-the-counter services need to ensure they allow sufficient time for their transactions to be completed by 4.00 PM, when the office closes to the public. Issuing of tickets will be managed to achieve this outcome.

We appreciate that these changes will impact customers who currently use the over-the-counter service. Customers are encouraged to lodge their transactions as bulk lodgements or electronically using the electronic lodgement network (PEXA).

The changes align with the Victorian Government's digital strategy to ensure efficient and productive online interactions with customers.

Land Legislation Amendment Bill 2017

The Land Legislation Amendment Bill 2017 was introduced into Parliament on 21 March. The Bill makes a number of small but important changes to the *Transfer of Land Act 1958*, *Subdivision Act 1988* and the *Valuation of Land Act 1960*. The Bill and its Explanatory Memorandum are available online at www.parliament.vic.gov.au/legislation.

The Bill amends the *Transfer of Land Act 1958* to:

- amend the provisions relating to the conversion of General law land into land under the operation of the *Transfer of Land Act 1958*
- amend section 27G to better reflect the processes associated with registering plans under the *Subdivision Act 1988*
- amend section 28 to reflect current practices in relation to the processing of Crown grants
- under section 47 enable vesting orders when the purchaser of property cannot provide proof of payment but the Registrar of Titles is otherwise satisfied there is an entitlement to a vesting order
- amend section 52 so that a court order against land (often a warrant) can be removed from the Register of land upon application to the Registrar of Titles of the judgement creditor without full satisfaction of the debt
- amend section 59 to simplify the process for persons who have land vested in them
- enable section 59A to apply where a successor in law is not a body corporate
- amend sections 74(1A), 87A and 87B to clarify mortgage provisions to ensure consistency with the Model Participation Rules for electronic conveyancing
- amend section 84(2) to enable the Registrar of Titles to remove a mortgage, if a discharge cannot be obtained, and section 20 of the *Limitations of Actions Act 1958* applies
- amend section 89A to include proceedings in the Victorian Civil and Administrative Tribunal (VCAT) if VCAT has jurisdiction
- amend section 90 to remove the requirement for a caveator's consent to be lodged with the Registrar of Titles
- amend section 91 to permit priority notices to be extended for one period of 30 days
- insert a standardised section permitting the recording of notices of a statutory charge and the removal of those notices
- make numerous miscellaneous and minor amendments.

The Bill amends the *Subdivision Act 1988* to:

- remove the requirement for certain owners corporation information to be provided in a separate document
- clarify the definitions of limited owners corporation and unlimited owners corporation

- provide clarity and flexibility to the provisions relating to easements implied under section 12(2) of the *Subdivision Act 1988*
- make numerous miscellaneous amendments.

The Bill will amend the *Valuation of Land Act 1960* to:

- enable the provision of releasable information from the valuation record in the same way as the provision of property sales information and consistent with Government policy on information accessibility.

Land Use Victoria is moving

After more than 15 years at 570 Bourke Street, Land Use Victoria is moving to 2 Lonsdale Street. The move will potentially occur in August but more information will be provided in future editions.

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