

Guidelines for preparing OCR-friendly bulk lodgement bundles

In October 2010, Land Victoria began using Optical Character Recognition (OCR) technology to assist in processing transactions submitted by customers through the 'bulk' registration processes.

The efficiency of processing bulk lodgements using OCR scanning and data capture is significantly improved if the customer's lodgement material is presented to Land Victoria in a way that easily facilitates the scanning process.

The benefit to customers and their clients is that processing time is reduced.

Preparation of a lodgement bundle using the following guidelines best suits the scanning process:

- Remove staples, paper clips, pins etc. so the bundle comprises loose sheets only;
- Remove all pencil marks and customer 'ticks' or 'crosses';
- Remove 'sign here' stickers and similar attachments;
- All documents, including supporting documents, should be single-sided and presented face up;
- Transactions related to a particular folio must be presented with the dealing intended to be registered first at the top, followed by the second dealing, followed by the third dealing etc.;
- Support documents for a particular transaction must immediately follow the particular transaction document to which they relate. For example, a Discharge of Mortgage, Transfer of Land executed under a Power of Attorney and Mortgage must be presented in the order (top to bottom):

Discharge of Mortgage
Transfer of Land
Notice of Acquisition
Power of Attorney
Mortgage

- All Certificates of Title should be separated from the relevant transaction documents and presented in one group at the bottom of the lodgement bundle. It is not necessary for the Certificates of Title to be in numerical or any other order.

Customer Information Bulletin No. 127 – April 2011 has detailed suggestions to assist customers completing Land Victoria forms. If followed, those suggestions will help to reduce the time taken to examine dealings, minimise the prospect of dealings being refused and improve the operational efficiency of the OCR software. Customers are encouraged to prepare documents in accordance with those suggestions.

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Name used by registered proprietor

In Customer Information Bulletin No. 109 – January 2008, customers were advised of new, simplified practices where a proprietor deals in a name different to the name in the Register.

In most instances, Land Victoria will accept a recital in the instrument or an accompanying statutory declaration as evidence of a change of name. Customers should refer to [Customer Information Bulletin No. 109](#) for full details of the practice and to [Customer Information Bulletin No. 127](#) for examples of acceptable recitals.

It is not usually necessary for a customer to make an application under Section 103(2) or Section 32 of the *Transfer of Land Act 1958*. The recital or statutory declaration is sufficient. Many customers are still presenting Section 103(2) or Section 32 applications in circumstances where they are not required. This is resulting in additional costs to customers in terms of document preparation and lodging fees, and additional work for Land Victoria in processing unnecessary applications.

To prevent unnecessary applications being prepared and lodged, any customer unsure if an application is required should check with Land Victoria Customer Service on 8636 2010.

Company searches

Land Victoria's current practice in transactions involving a transfer or mortgage by a company is to require customers to produce a certified copy of a company search where the consideration exceeds \$1,000,000. Where the consideration is less than that amount either recitals in the instrument or supporting letters are required.

Land Victoria is discontinuing this practice for regular customers (i.e. customers with a VOTS lodging code). In future, regular customers will not

need to routinely provide a certified copy company search or provide recitals or supporting letters. Land Victoria will accept that the party submitting the instrument of Transfer or Mortgage for registration will have made all appropriate enquiries concerning the company and is satisfied as to the proper execution of the instrument. Land Victoria may, of course, call for production of evidence in any given case.

WARNING: The removal of this requirement does not affect the professional duty of a customer to obtain a company search, where prudent practice requires one.

The requirement to produce a certified copy of a company search where the consideration exceeds \$1,000,000, or to provide either recitals in the instrument or supporting letters where the consideration is less than that amount, will continue where an instrument is presented for lodgement by a non-regular customer.

Powers of Attorney

Currently, Land Victoria requires production of a certified copy of a Power of Attorney in each case where an instrument presented for lodgement has been signed by an attorney. The only exception is where the Power of Attorney is one that has been entered in the Permanent Order Book and the instrument recites that it is executed pursuant to that Power of Attorney.

In addition to this exception, Land Victoria will not in future require production of a certified copy of a Power of Attorney in cases where:

1. The transaction is lodged for registration by a regular customer (i.e. customers with a VOTS lodging code); and
2. The Power of Attorney is:
 - an Enduring Power of Attorney in the form of Schedule 13 of the Instruments Act 1958 (pre 01/04/2004); or

- an Enduring Power of Attorney in the form approved under Section 125ZL of the Act (post 01/04/2004); or
 - a General Power of Attorney in the form of Schedule 12 of the Act; and
3. The recital in the instrument clearly discloses that execution is pursuant to a General Power of Attorney or an Enduring Power of Attorney as set out in 2 above and that the power has not been revoked.

Examples of acceptable forms of execution are:

Signed by John Citizen by being signed by John Smith pursuant to an Enduring Power of Attorney dated 11/08/2011, which is in the form authorised by Victorian legislation and which has not been revoked, in the presence of:

OR

Signed by John Citizen by being signed by John Smith pursuant to a General Power of Attorney dated 11/08/2011, which is in the form prescribed in Schedule 12 of the Instruments Act 1958 and which has not been revoked, in the presence of:

Land Victoria will accept that the party submitting the instrument for registration will have made all appropriate enquiries concerning the relevant Power of Attorney and is satisfied that the execution is valid and within scope. Land Victoria may, of course, call for production of evidence in any given case.

The requirement to produce a certified copy of a Power of Attorney will continue where an instrument is presented for lodgement by a non-regular customer.

Caveats and removal of caveats

Recording of caveats

A caveat will be recorded if on its face the grounds of claim could sustain the estate or interest claimed. The Registrar of Titles is not required to determine whether a caveat is justified and does not require or assess supporting material.

Removal of caveats

There are four ways to remove a recorded caveat:

1. By obtaining a withdrawal from the caveator.
2. By an application under Section 89A of the *Transfer of Land Act 1958*.
3. On the caveat lapsing pursuant to Section 90(1) of the *Transfer of Land Act 1958*, following registration of a dealing.
4. By obtaining a court order under Section 90(3) of the *Transfer of Land Act 1958*.

There are two ways to remove a lodged but unrecorded caveat:

1. The lodging party can remove the caveat on written request to Land Victoria. A Withdrawal of Caveat form should not be used. A letter is sufficient.
2. By obtaining a court order under Section 90(3) of the *Transfer of Land Act 1958*.

Removal of caveats pursuant to Section 89A of the Transfer of Land Act 1958

A person with an interest in land affected by a caveat may make an application for its removal under Section 89A. The applicant is typically the registered proprietor, but applications from mortgagees are also

received. Such an application must be supported by a legal practitioner's certificate. On receiving the application, the Registrar gives notice of it to the caveator.

The caveat will lapse unless:

1. The application is withdrawn.
2. The caveator provides the Registrar with written notice, generally a letter, that: proceedings are on foot, in a court of competent jurisdiction, to substantiate the caveator's claim. The proceeding number must also be quoted. Supporting documentation is not required and should not be provided.

Section 89A(3)(b) is a mechanical section and is satisfied if the Registrar receives the requisite notice. It is not for the Registrar to assess whether the assertions contained in the notice are correct.

If the proceedings referred to in the Section 89A(3)(b) notice are later discontinued, withdrawn, struck out or dismissed, an application to have the caveat lapsed may be made under Section 89A(7)(b).

Removal of caveats pursuant to a Court Order

Section 90(3) of the *Transfer of Land Act 1958* enables a person adversely affected by a caveat to issue proceedings seeking the removal of that caveat.

Common problems experienced by the Registrar in Section 90(3) proceedings include:

1. Very late service.
2. Incorrect details of the caveat dealing number and/or the folio of the Register.
3. Ambiguity as to who is to do the removing and by what means.

To avoid ambiguity, the relief should specify who is to do the removing

of the caveat and avoid providing for alternative methods to remove the caveat. The usual interpretation of Section 90(3) is that the caveator is to do the removing of the caveat via a Withdrawal of Caveat. In some circumstances, it may be difficult to secure compliance with such an order. The party seeking the removal of the caveat may wish to consider obtaining an order in the following terms:

The Registrar of Titles is ordered pursuant to Section 90(3) of the *Transfer of Land Act 1958* to remove caveat [dealing number] from the land in folio of the Register Volume [vol] Folio [fol].

Occasionally, a party may seek the removal of a lodged but unrecorded caveat. In such circumstances, the party may wish to consider the following order:

The Registrar of Titles is ordered pursuant to Section 90(3) of the *Transfer of Land Act 1958* to remove caveat [dealing number] from the land in folio of the Register Volume [vol] Folio [fol]. In the event that caveat [dealing number] has not been recorded, the Registrar of Titles is ordered not to record Caveat [dealing number], to reject Caveat [dealing number] and to return Caveat [dealing number] to the lodging party.

The process for implementing such orders is the lodgement of an application under Section 103 of the *Transfer of Land Act 1958*, supported by the authenticated orders and the appropriate fee.

If orders are sought in the form set out above, there is no need to join the Registrar or give him notice of caveat proceedings, as the Registrar will comply with these orders.

Section 91(4) of the Transfer of Land Act 1958

Section 91(4) of the *Transfer of Land Act 1958* provides that a caveat that has lapsed or been removed by an order of a court cannot be renewed by the caveator for the same claim. The section creates a prohibition on the conduct of a caveator. It is not the Registrar's role to police this section.

Compensation for lodging caveat without reasonable cause

Section 118 enables a Court to order compensation to a person who sustains damage from a person lodging a caveat without reasonable cause. This would apply where a person lodges an unjustified caveat or breaches Section 91(4).

Court proceedings where the Registrar is joined for procedural reasons

It is common for parties to join the Registrar to proceedings for procedural reasons only. However, in these cases, there is no requirement to join the Registrar or to give him notice of the proceedings, as the Registrar will comply with any order of the Court, where it is possible for him to do so. The Registrar will not take an active role in such proceedings but may provide comments to ensure workable orders are made.

Orders requiring the Registrar to amend the Register should only be sought as a last resort. Instead, orders should be obtained that require parties to comply with normal conveyancing practice.

Where the Registrar is joined or is put on notice of court proceedings, he flags the relevant folio of the Register with an administrative notice, called a Notice of Action (in respect of a folio), to alert anyone searching the folio of the proceedings.

Costs

Where the Registrar has been joined to proceedings for procedural reasons and there is no allegation of wrongdoing against the Registrar, it is not appropriate to claim costs against the Registrar. It should be clear from the relief sought that no costs are claimed against the Registrar. Where it is not clear that no costs are claimed against the Registrar, he will ask the plaintiff or applicant to confirm in writing that no costs are claimed against the Registrar.

Building Scheme Covenants

A building scheme covenant allows a developer to create reciprocal restrictive covenants in a development. As a result, each lot has the benefit in relation to all other lots and is burdened by an identical covenant.

A building scheme covenant can be created in a plan of subdivision, by a T2 Transfer of Land or by agreement.

The Registrar has received a number of restrictive covenants which classically constitute a building scheme covenant but then go on to state that the "covenants are not intended to imply a building scheme". Clearly this statement is both erroneous and misleading. Such statements should not be included in any creation of a restrictive covenant, which results in the establishment of a building scheme covenant.

For guidance on drafting restrictive covenants, please refer to the Customer Information Bulletin, Edition 83 – October 2003.