

Land Victoria

Customer Information Bulletin

Notice of Acquisition

This year has seen an increase in the number of Notice of Acquisition forms being directly lodged with or posted to the State Revenue Office.

Under the *Land Tax Act 2005* and the Land Tax Regulations 2005, a Notice of Acquisition form must be lodged with the Registrar of Titles, **not** lodged with or sent to the State Revenue Office. The form must be lodged with the Registrar within one month of a person acquiring the property. Ideally, this should be done in conjunction with lodging the Transfer of Land.

The Local Government (General) Regulations 2004 also requires a copy of the Notice of Acquisition to be sent to the relevant municipal council within one month of a person acquiring a property.

Any enquiries about Notices of Acquisition forms should be directed to the State Revenue Office on 132161.

Please note: refer to Customer Information Bulletin No. 89 (December 2004), which advised customers of requirements for lodging the Notice of Acquisition form.

Powers of Attorney

Customer Information Bulletin No 132 September 2011 advised customers that Land Victoria no longer requires production of a copy of a Power of Attorney in some cases. Customers should refer to that bulletin for full details of the new practice.

Customer feedback indicates that two points of clarification are required:

The first is that, in cases where a copy of the Power of Attorney is not required to be produced, the instrument must contain a recital that clearly discloses that execution is pursuant to:

- a General Power of Attorney in the form of Schedule 12 of the *Instruments Act 1958*; or
- an Enduring Power of Attorney in the scheduled form (pre 01/04/2004) or the prescribed form (post 01/04/2004), and that the attorney has no notice of revocation.

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 of which the attorney has no notice of revocation, 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 of which the attorney has no notice of revocation, in the presence of:

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The second point of clarification is that Land Victoria does require a certified copy of a Power of Attorney to be produced in any case where an instrument has been signed by an attorney on behalf of a company or other corporate person. The only exception is when 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.

Please note: for more information, a detailed article on company Powers of Attorney appeared in Customer Information Bulletin No. 84 (November 2003).

Caveat by registered proprietor

Customer Information Bulletin No. 116 (February 2009) contained the following paragraph:

'A registered proprietor is only able to caveat in certain limited circumstances, most commonly when the (duplicate) Certificate of Title is lost or stolen, or when the registered proprietor fears an improper or fraudulent dealing is about to take place or has taken place.'

Land Victoria records caveats when the registered proprietor is the caveator and when the grounds of claim state that the proprietor is not in possession of the Certificate of Title and the purpose of the caveat is to prevent improper dealings.

However, in a number of recent examples, it has been found that the folio is affected by a registered mortgage. The Certificate of Title would normally be in the possession of the mortgagee. If a mortgage affects the land in the Certificate of Title, the grounds of claim should detail the circumstances that give rise to the loss of the Certificate of Title or a fear of an improper dealing being presented.

Please note: for more information on caveats, please refer to Customer Information Bulletin No. 116 (February 2009).

Restricted and accessory lots

A restricted lot should always be transferred together with its associated accessory lot (usually a car parking space). However, an accessory lot can sometimes be overlooked in a conveyancing transaction. This results in the main restricted lot being transferred and the accessory lot remaining un-transferred and in the registered proprietorship of the vendor or, over time, even a previous registered proprietor.

If a restricted lot and an associated accessory lot are not transferred together, an application under Section 47 (completed purchase) of the *Transfer of Land Act 1958* will not be considered unless normal conveyancing practice cannot occur. Instead, the purchaser should seek a transfer of the accessory lot from its current registered proprietor or their legal personal representative if they have since died.

Please note: it is no longer possible to create restricted and accessory lots because the strata titles legislation has been repealed.

Evidence in bankruptcy transmission applications

Questions have recently been asked regarding acceptable supporting evidence in transmission applications under Section 51 of the *Transfer of Land Act 1958*.

Acceptable evidence is either:

- a National Personal Insolvency Index extract, together with a statutory declaration identifying the registered proprietor and the bankrupt as the same person; or
- a Certificate of Appointment of Trustee together with a statutory declaration by the trustee, declaring that the registered proprietor and the bankrupt is the same person and that:
 - the bankrupt is not discharged; or
 - the bankrupt is discharged, but the property has not re-vested in the bankrupt.

Contra proferentem rule

The contra proferentem rule of construction is the rule by which terms are construed against the party who is to benefit from them. The rule is used when there is some ambiguity about the extent of powers conferred on the benefiting party.

Land Victoria applies the contra proferentem rule in its examination of powers of attorney to ensure that an attorney does not overstep the powers given to him or her by the donor.

An example of when this applies to Land Victoria is an execution of a mortgage by a mortgagee as attorney for the mortgagor. Another is when a mortgagee seeks to sign a T1 transfer as attorney for the registered proprietor mortgagee.

If it is not clear from the terms of the Power of Attorney that the specific action is permitted, Land Victoria will not accept execution by the attorney.

Land Victoria stock mortgage memorial register and register of crops and wool liens

Under the Commonwealth reform of interests in personal property securities (PPS), a single national online PPS Register is being established under the *Personal Property Securities Act 2009 (Cth)* (PPSA). This reform is changing the law and practice for securing financing involving personal property.

Effectively, when the PPS Register commences registrations of crop and wool liens and stock mortgages at Land Victoria under Parts 7 and 8 of the *Instruments Act 1958* will cease. In respect of the stock mortgages, mortgagees are encouraged to lodge discharge memorials of those securities that have been discharged as soon as possible (and before the commencement of the final migration of the stock security data from early December).

Please note that only the stock mortgage register data is being migrated to the new PPS Register – registered crop and wool liens are not being migrated because they have a short statutory lifespan. The transitional provisions preserve the current priority of registered security interests that are migrated to the PPS Register and also the priority of registered crop and wool liens.

Proposed key dates

The proposed key dates for the migration of data from the existing state and territory registers and commencement of the new Commonwealth PPS Register are:

- close of the existing registers from end of business on **27 January 2012**;
- commencement of new PPS Register on **30 January 2012**.

Further advice will be provided if there is any change to these dates.

Further information on the new PPS register is available on the Australian Government website: www.ppsr.gov.au.

Please note: Customer Notice No. 01 (April 2011) contained information on changes to existing stock mortgage, crop and wool lien registers maintained at Land Victoria.

Victorian Water Register

Customers lodging a transfer of water share for recording in the Water Register are reminded of the following information.

If a mortgage affects the water share, then either of the following must be lodged:

- a Discharge of a Mortgage of Water Share form with the appropriate lodging fee; or
- the mortgagee's consent to the transfer (in writing), with the transfer.

The correct lodging fee(s) must be paid to the Victorian Water Registrar. The current fee for lodging a Transfer of Water Share is \$106.40 and a Discharge of a Mortgage of Water Share is \$53.30.

The transfer must be executed/signed by both the transferor/s and transferee/s, and all signatures properly witnessed by an independent adult person.

If the transferor or transferee is a corporate body, the transfer must be appropriately executed by a company in accordance with the Corporations Law, and other incorporated bodies in accordance with their rules.

If additional space is needed to complete the execution then the space on page two of the transfer should be used, or an approved annexure sheet attached to the other pages of the transfer.

The transfer must be lodged with the Victorian Water Registrar (Level 9, 570 Bourke Street, Melbourne 3000) **before the expiry of approval date** displayed on the bottom left-hand corner of the front page.

Please note: the pre-filled sections of the transfer must not be amended.

For further information on completing a transfer or lodging requirements please contact the Victorian Water Registrar on 8636 2010.