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Removal of 'purchaser' caveats

Customers have enquired about Land Victoria's practice when processing a Transfer of Land in which at least one of the transferees is the caveator in a prior recorded caveat, and where the caveator claims an interest as purchaser under a Contract of Sale.

Current practice is to remove the caveat on registration of the Transfer of Land. This is on the basis that the transfer gives effect to the interest claimed in the caveat. A withdrawal of caveat is not required.

A caveat will not be removed if a Transfer of Land is lodged where there has been a nomination in favour of an entirely different party than the caveator. In that instance, because there is no commonality between the caveator and the transferee(s), notice of the transaction is sent to the caveator unless a withdrawal of caveat is lodged with the transfer.

Caveats and a transfer by mortgagee

This article, which appeared in Customer Information Bulletin No. 125 – October 2010, contained an error. It is re-published below, with the error corrected.

When a transfer by mortgagee (T3 Transfer) is lodged and there is a caveat recorded on title, whether notice is given to the caveator depends on the order in which the caveat is recorded and the claim made in the caveat.

Where the caveat was recorded before the mortgage, notice will be given to the caveator.

If the caveat was recorded after the mortgage, whether notice of the transfer by mortgagee is given depends on the claim in the caveat.

No notice is given if the caveat claims an estate or interest by virtue of an unregistered mortgage, unregistered charge or unregistered document intended to create a security for the payment of monies. The caveat will lapse and the transfer by mortgagee will be registered. The only exception is where the unregistered security document was intended to bind the mortgagee.

For all other interests claimed in caveats, notice of the transfer by mortgagee will be sent to the caveator – see ss 90(1) and 91(2A) and (2B) of the *Transfer of Land Act 1958*.

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Land Victoria Stock Mortgage Memorial Register

Land Victoria is participating in an Australian Government-sponsored reform that will create a single national online Personal Property Securities (PPS) Register under the *Personal Property Securities Act 2009 (Cth)*.

The PPS reform will bring the different Commonwealth, state and territory laws and registers regarding security interests in personal property under one national system.

From October 2011, because of the reforms, a number of existing Commonwealth, state and territory personal property security registers will cease to accept new registrations. Security interests that are currently registered in those registers will be generally migrated to the national PPS Register.

The PPS Register will allow lenders and businesses to register their security interests. Secured parties, buyers and other interested parties can search the PPS Register to find out if a security interest is registered over the personal property.

Further information on the new PPS Register is available on the Australian Government website at <http://www.ppsr.gov.au>

The Victorian Government has enacted changes under the *Personal Property Securities (Statute Law Revision and Implementation) Act 2010 (Vic)* that facilitate the transition of these security interests from certain state registers to the national register.

For crop and wool liens and stock mortgages, Parts 7 and 8 of the *Instruments Act 1958* have been repealed; a new Part 15 – Savings and Transitional Provisions has been inserted in that Act. The schedules to the Act related to the prescribed forms of the memorials have also been repealed.

Land Victoria customers will receive updates on the data migration and changes to procedures in future Land Victoria Customer Information Bulletins and customer notices.