

Edition 113 October 2008

Customer Information Bulletin on email

If you'd like to receive the *Customer Information Bulletin* electronically or to unsubscribe, send your request via email trs.enquiries@dse.vic.gov.au, telephone (03) 8636 2812, or fax (03) 8636 2250.

ISSN 1441 - 1504
PP 349181/01650

Department of Sustainability
and Environment

Land Registration Services
Land Victoria
Level 9, 570 Bourke Street
Melbourne VIC 3000
PO Box 500
East Melbourne VIC 8002

Tel (03) 8636 2010
Fax (03) 8636 2250

www.dse.vic.gov.au
www.land.vic.gov.au

Authorised by the Victorian
Government, Melbourne

Printed by Stream Solutions

© The State of Victoria,
Department of Sustainability and
Environment 2008

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

A Victorian
Government
initiative



Victorian Water Register

Further extension of waiver for recording fee payable on a Discharge of Mortgage of Water Share

As advised in *Customer Information Bulletin Edition 109 January 2008*, the Water Registrar extended until 31 December 2008 the period for waiving the fee for recording a discharge of mortgage of water share, where the discharge related to a mortgage carried forward from the land at the time of unbundling.

The Water Registrar, under the Water (Resource Management) Regulations 2007, has now extended the period for which this fee will be waived to 31 December 2009.

This applies to unbundling in both the northern and southern irrigation districts.

If a mortgage that was carried forward is not required to remain on a water share and the lender/bank agrees to discharge that mortgage, or as part of the confirmation of ownership by agreement, a mortgage is to be discharged, then the discharge of mortgage will continue to be recorded free of charge if lodged with the Water Registrar for recording by 31 December 2009 (the normal fee is \$49.50).

Unconfirmed Ownership of Water Shares [Clause 17(1) (a) and (b)] in the Northern Victorian Declared Water Systems

As noted in earlier Customer Information Bulletins, where a water share was unbundled out of an existing irrigation right derived from a land holding some shares were issued on 1 July 2007 as Unconfirmed 17(1) (a) and (b). In those cases the irrigation holding was made up of two or more land folios, and some of the land folios had different owners or were owned in a different manner or had different mortgages.

In this situation all the owners and mortgage holders are known, but under the transitional arrangements in Schedule 15 to the *Water Act 1989*, all entitled parties are required to agree on the ownership structure and the ranking of mortgages. The Act further provides that in respect of shares that had not been confirmed by 31 December 2007, any one of the owners or mortgage holders could refer a dispute to arbitration (Schedule 15, Clause 19).

Importantly, if there is no agreement as to ownership and no referral of a matter to arbitration as at 31 December 2008 (for Unconfirmed 17 (1) (a) and (b) shares that were issued 1 July 2007), the Act further provides that the ownership structure is to be determined in accordance with Clause 17(3) of Schedule 15. That is, the owner of each parcel of land in the holding is deemed to hold the water share in equal undivided portions with the owner of each other parcel. If there is more than one owner for a portion of a share then those persons own that portion in the same manner as they held

the land parcel that entitled them to ownership of that portion of the share – Clause 17(3) (c). Further, any mortgage extended to the water share will be deemed to be apportioned in accordance with Clause 26(2), Schedule 15.

These changes to the ownership structure and mortgages may not be as water share owners or lenders/mortgagees intend, or require, for their current purposes.

The Water Registrar is therefore encouraging all water share owners and their lenders to reach agreement and complete an *Application to Confirm Ownership of a Water Share* and lodge it with the Water Registrar as soon as possible so that the agreed ownership structure and mortgage ranking (if applicable) can be recorded in the Water Register.

The form of application is available from the Water Register website at www.waterregister.com.au, as well as information on completing the form and other general information on unbundling. There is no fee payable on lodging an *Application to Confirm Ownership of a Water Share*.

Where a lender/bank agrees to discharge a mortgage, the discharge of that mortgage on the water share must be lodged for recording. Applicants should lodge the discharge form either before or at the same time they lodge the *Application to Confirm Ownership of a Water Share*. The *Discharge of Mortgage of Water Share* form is also available on the Water Register website. If your lender/bank agrees to discharge a mortgage, this will be recorded free of charge if lodged with the Water Registrar by 31 December 2009 (the normal fee is \$49.50).

Lodging documents for recording in the Water Register

Practitioners, conveyancers and agents for banks and lenders are reminded that they can lodge documents for recording in the Victorian Water Register in person and by correspondence with Land Victoria on Level 9, 570 Bourke Street Melbourne. They may also post them to Land Victoria, Box 500 East Melbourne VIC 8002 or via AUSDOC DX 25639 Melbourne.

It is the responsibility of a lodging party to complete the lodging details at the top of the approved form being lodged and to submit correct fees for recording. Documents that are deficient in some way or not accompanied by all necessary supporting documents or sufficient fees may be refused for lodging and will be returned to the lodging party with advice.

To enable prompt processing and effective recording of all documents, and to reduce the number of documents that are returned, the following Water Registrar's requirements must be followed:

- Any documents lodged for recording in the Water Register should be sufficiently and properly executed by all parties to the document - by individuals in any representative or attorney capacity, by companies, incorporated associations, and other statutory agencies or corporations in accordance with the *Corporations Act, Associations Incorporation Act 1981* and any other Act governing their operations. If there is insufficient space in any form, the approved Annexure page may be used and attached to the approved form. An approved Annexure page can only be used in a prefilled *Transfer of Water Share* if there is insufficient space on the prefilled form for execution by the parties.

- Transfer of a Water Share – approved transfers are generated out of the water register system when the transaction is approved by a water authority after processing of the *Transfer of Water Share* application. The original transfer document issued and posted to the applicant party on approval is the only document that can be, when executed by the parties, submitted to the Water Registrar for recording. A photocopy or other copy or facsimile of the transfer is not acceptable and no details in the prefilled transfer can be altered or amended by addition or otherwise.
- Attach all supporting documents, e.g. statutory declaration, certified copy of Power of Attorney, to the relevant application document.
- Check that all documents are dated and executed/signed.
- The consent of all recorded mortgagees, or a discharge of any mortgage affecting a water share, must be produced with a *Transfer of Water Share* for recording. If consent is not produced prior to the expiry date of the transfer, the transfer will be rejected and a new transfer with all appropriate fees and steps will need to be submitted.

Forms, Guides and Fees

Approved forms for lodging water share transactions with the Water Registrar, guides to completing forms and fee details, are available from the Water Register website at www.waterregister.vic.gov.au, and refer to the Victorian Water Registrar linked pages.

Land Registration Services

Dealings on folios affected by various notices

Where a Notice by an Acquiring Authority under Section 10(1) of the *Land Acquisition and Compensation Act 1986* has been recorded on a folio, subsequent dealings with the land, with limited exceptions, are prohibited by Section 12 of the Act unless the authority consents.

Similar dealing restrictions apply to a folio affected by a notice recorded under Section 110 of the *Housing Act 1983* or Section 92 of the *Pipelines Act 2005*.

Accordingly, any dealing with such a folio (other than the exceptions listed below) must be accompanied by the consent in writing of the acquiring authority, Director of Housing or pipeline proponent (as appropriate). A dealing presented without consent will be refused.

The excepted dealings are:

- Discharge of Mortgage
- T3 Transfer
- Foreclosure Application (Section 79 *Transfer of Land Act 1958*)
- Transmission Application (Section 49 *Transfer of Land Act 1958*)
- Survivorship Application (Section 50 *Transfer of Land Act 1958*)
- Application by Trustee in Bankruptcy (Section 51 *Transfer of Land Act 1958*)
- Any dealing not requiring production of the Certificate of Title.

Refused Dealings

In addition to providing a customer with a Dealing Refusal Advice, any dealings that are refused will be marked as such when returned to customers. When that dealing is subsequently re-presented with the defect remedied, the customer should also produce the Dealing Refusal Advice. This will enable the re-presented dealing to be processed more quickly and efficiently.

New LANDATA® product: Verify Title Search

Have you been presented with a copy of a title search and been uncertain about its authenticity?

LANDATA® is developing a new product called Verify Title Search to provide customers with a way to confirm the validity of the title search.

When you purchase a Verify Title Search, all you will need to do is enter the security number of the copy of the title search to view the originally issued title search on screen and verify authenticity.

At the cost of a dealing search, the Verify Title Search will represent a significant saving for customers who would have previously needed to purchase a new title search to perform a similar check.

You will be able to contact a title broker and ask for a Verify Title Search or go to www.landata.vic.gov.au and select the Titles and Property Certificates link.

Customers will be advised when the new Verify Title Search product is available.

LANDATA® Planning Certificate delivers on authority, price and service

Remember when a title search required an expert to visit the titles office and interpret the photocopy returned to you? Times have changed, systems have improved and LANDATA® now delivers nearly 95 per cent of title searches (via national licensed information brokers) online while you wait.

As the producer of the authoritative planning certificate, LANDATA® has applied the same commitment to improving the product quality, price and delivery of the statutory Planning Certificate supplied on behalf of the Minister for Planning.

Customers no longer have to wait days for their Planning Certificate. LANDATA® currently delivers 97 per

cent of online Planning Certificate orders on the same day at a cost of only \$10.70 compared with \$17.20 for mail orders.

But why choose a LANDATA® Planning Certificate in preference to a zoning or property report or other commercial product?

	LANDATA® Planning Cert.	Zoning or property rpt.
State Guarantee	✓	✗
Planning scheme amendments	✓	✗
Currency	✓	✗
Abuttals	✓	✗
Zoning	✓	✓
Overlays	✓	✓
Price	\$10.70	Free

✓ **State Government statutory protection** - A LANDATA® Planning Certificate carries State Government statutory protection for all people relying on information contained in the Planning Certificate – not just the certificate buyer.

Did you know that if you rely on the zoning or property report you agree to the disclaimer, and assume the liability for any loss caused by error in the report?

✓ **Amendments** - A LANDATA® Planning Certificate identifies amendments under consideration that may affect the property in future.

✓ **Currency** – A LANDATA® Planning Certificate uses the current zoning and overlay maps (not an out of date copy).

✓ **Abuttals** - A LANDATA® Planning Certificate lists the zone/s abutting the property or the common property associated with the property.

Next time you're preparing a vendor statement, or representing a buyer, order the authoritative Planning Certificate online from LANDATA® and you'll never need to pay a premium or express fee again.

