

Title Registration Services Customer Information Bulletin

Change in practice where a company is a mortgagor

It has been a long-standing practice for Land Registry to require a company search for a mortgagor company, where the amount secured is \$1 million or more. The same practice applies where a further advance in a variation of mortgage amounts to \$1 million or more.

The stamp duty assessment stamp currently sets out the amount secured. Land Registry uses this information to establish whether a company search is required or not. However, as from 1 July 2004 stamp duty is not payable on mortgages in Victoria.

As a result, from **1 July 2004** Land Registry will require the following for either a mortgage or a variation of mortgage where the amount secured is varied:

Where the amount secured by companies is less than \$1 million, either:

- The mortgage or variation of mortgage should contain a statement that the amount secured is less than \$1 million at the date of the mortgage or variation; or
- If the mortgagee is represented, the mortgagee's current practitioner should confirm in writing, using his/her letterhead,

Dating of all mortgages

By way of reminder, all mortgages and variations of mortgage should be dated prior to lodging. This will assist Land Registry in assessing whether a mortgage or variation of mortgage needs to be referred to the State Revenue Office and will avoid any unnecessary refusal or requisition.

that the amount secured was less than \$1 million at the date of the mortgage or variation; or

- Where the mortgagee acts for itself, the mortgagee should confirm in writing, on the mortgagee's letterhead, that the amount secured was less than \$1 million at the date of the mortgage or variation; or
- A certified copy of a company search for the mortgagor company should be provided. The company search must have been obtained no earlier than fourteen days prior to the date of the mortgage.

Where the amount secured by companies is \$1 million or more:

- A certified copy of a company search for the mortgagor company should be provided. The company search must have been obtained no earlier than fourteen days prior to the date of the mortgage.

Please note that Land Registry's requirements relating to other types of company transactions where the consideration stated is \$1 million or more remains unchanged.

Where a caveator claims an interest as mortgagee or chargee, the date of the instrument relied on should be set out in the grounds of claim.

Edition 86 July 2004

INSIDE

- Change in practice where a company is mortgagor
- Dating of all mortgages
- No duplicate or triplicate instruments to be lodged
- Transfer of Land (General) Regulations 2004
- Superfluous markings on documents
- Important notice to users of the Combined Form (T1 Transfer and Notice of Acquisition)
- Adverse possession applications - Section 60 of the Transfer of Land Act 1958 (TLA)
- Important change to Land Registry practice - New Approved Forms

ISSN 1441 - 1504
PP 349181/01650

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No duplicate or triplicate instruments to be lodged

Under recent legislation, the *Transfer of Land (Electronic Transactions) Act 2004*, Sections 35(1) and (2) of the *Transfer of Land Act 1958* ["TLA"] were repealed.

This amendment was made to support changes and update lodging requirements in Land Registry resulting from the following developments:

- from 1 July 2004, duty on mortgages is to be abolished in Victoria. After that date, there will be no counterpart stamping of a duplicate mortgage and no need for up-stamping of mortgage documents;
- proposed electronic lodgement under Land Victoria's Electronic Conveyancing Project will involve only electronic instruments and there will not be any need for paper duplicate instruments.

As a result of these changes from **1 October 2004**, duplicate and triplicate instruments will not be accepted for lodgement and registration in Land Registry.

Customers may continue to retain duplicate or triplicate instruments for their own records but these instruments will not be accepted for recording under the *Transfer of Land Act 1958*.

Transfer of Land (General) Regulations 2004

The new Transfer of Land (General) Regulations 2004 No. 37 (Vic) have been made under the *Transfer of Land Act 1958* No. 6399 (Vic).

The Regulations:

- (a) prescribe new forms;
- (b) prescribe the quality and size requirements of instruments lodged with the Registrar;
- (c) prescribe the manner of application to the Registrar for the Registrar to take a certain action;
- (d) require documents evidencing the shares in a building subdivision to be lodged prior to the issuing of a certificate of title in respect of a stratum estate;
- (e) specify requirements for applications for approval of forms under s. 121 of the Act; and
- (f) make further miscellaneous provisions in relation to forms.

The Regulations also revoke the Transfer of Land (General) Regulations 1994 No. 65 (Vic) and the Transfer of Land (General) (Amendment) Regulations 1998 No. 165 (Vic).

The new 2004 regulations can be viewed on the Victorian Government Legislation page at www.dms.dpc.vic.gov.au.

Superfluous markings on documents

Many customers present documents for registration which have ticks, crosses and "sign here" etc. against various fields and components.

These markings, usually in pencil, are often large and at times

interfere with core components of the transaction such as the folio reference, party names or signatures etc. Sometimes the original is illegible, or the image will become illegible, as text and markings all appear as black.

To avoid Dealing Refusal it is vital that customers ensure that all relevant information contained within a document is, and will remain, legible.

Important notice to users of the Combined Form (T1 Transfer and Notice of Acquisition)

A Combined Form (T1 Transfer and Notice of Acquisition of an interest in land) was introduced as part of a Land Registry/State Revenue Office pilot project in 2001. Since its introduction, the Combined Form has had very little use by customers and as such Land Registry has

decided to withdraw the form from use.

Land Registry will continue to accept for lodgement any Combined Form [T1/NoA] dated prior to 1 January 2005. To phase out the Combined Form customers

should from now on use only the Approved Form of Transfer [T1] and lodge a separate Notice of Acquisition with the dealing. The Notice of Acquisition form is available from the State Revenue Office or online at www.sro.vic.gov.au.

Adverse possession applications - Section 60 of the Transfer of Land Act 1958 (TLA)

To assist customers in the preparation of Adverse Possession applications, Land Registry has undertaken an analysis of data relating to the refusal of applications presented for lodgement and prepared a Lodgement Checklist for customers future use.

The Lodgement Checklist is to be completed and presented with the Application (Form 24) when lodging an Adverse Possession application in person or by correspondence. (Required documentation not supplied, or erroneous information, presented to the Plan Acceptance Officers will lead to non-acceptance of the application and result in delayed lodgement and registration at Land Registry).

The analysis identified that major reasons for the refusals were as follows:

- Insufficient evidence lodged to substantiate the claim for possession (50%).

Particular issues were:

- . Application was dependent on evidence from prior possessor/s, which was not supplied;
- . Deeds of Assignments were not presented to the State Revenue Office for stamping and denoting;
- . The application did not identify whether the Registered Proprietor of the subject land was under a legal disability;
- The application did not specify whether the estate was to be free of encumbrance or subject to existing encumbrances(20%);
- The Municipality, postal address or value of the subject land was not given (18%);
- The application did not identify the land claimed by reference to the plan of survey (15%);

- Where survey was required to identify the boundaries of the land claimed relevant survey documents were not supplied (5%);
- Prescribed form not used or form incorrectly completed (5%).

Particular areas of concern were:

- . Application was presented on a superseded form;
- . Volume and Folio of affected land not identified;
- The subject land was not under the TLA (5%).

Copies of the Lodgement Checklist and General Notes can be obtained from Reception, Level 9/570 Bourke Street Melbourne.

If any further information is required about the above matter please contact Title Registration Services on Tel 03 8636 2010.

Important change to Land Registry practice - New approved forms

The Registrar of Titles has approved new forms under section 121 Transfer of Land Act 1958 ("TLA") for general use from 30 June 2004.

The new forms include all the currently Approved Forms:

- A1 Annexure Page
- APA Application by Acquiring Authority
- APR Application by Legal Personal Representative
- ASP Application by Surviving Proprietor
- C Caveat
- DM Discharge of Mortgage or Charge
- MCP Memorandum of Common Provisions
- MIA Mortgage of Land
- MIB Mortgage of Land
- T1 Transfer of Land
- T2 Transfer of Land [creating or reserving easement or covenant]
- T3 Transfer of Land [by Mortgagee or Annuitant]
- WC Withdrawal of Caveat

The new Approved Forms include the following additional information:

- Privacy Collection Statement to facilitate Land Registry's compliance with the Information Privacy Act 2000;
- address and contact details of Land Registry - 570 Bourke Street, Melbourne 3000 Tel 03 8636 2010;
- changed Made Available / Change Control panel for Office Use Only where applicable.

An example of one of the new Approved Forms, the T1-Transfer of Land, is reproduced at the back of this bulletin. Copies of the new approved forms will be available from Reception, Title Registration Services on Level 9, 570 Bourke Street, Melbourne.

The transitional arrangements are as follows:

- forms purchased from commercial suppliers currently licensed to print and sell forms [blue print on white paper with a suffix "L" on the approval number] will be able to continue to be lodged;

- any form approved for use under section 121 TLA may continue to be used until the expiry of the approval under that section;

- after 1 January 2005, any new application or renewal of existing approvals under section 121 must be accompanied by an example of each form prepared in the format of the New Approved Forms.

Enquiries on the use of the previously Approved Forms, or requests for approval of forms under section 121 TLA should be made to:

Forms Officer, Specialist Registration,
Level 9, 570 Bourke Street,
Melbourne VIC 3000
Tel: 03 8636 2912

or contact Title Registration Services on 03 8636 2010 or 03 8636 2020 for callers outside Melbourne Metropolitan area.

TRANSFER OF LAND

Section 45 Transfer of Land Act 1958

Lodged by:

Name:

Phone:

Address:

Ref:

Customer Code:

Privacy Collection Statement

The information from this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

MADE AVAILABLE/CHANGE CONTROL

Office Use Only

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed and subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer.

Land: *(volume and folio reference)*

Estate and Interest: *(eg "all my estate in fee simple")*

Consideration:

Transferor: *(full name)*

Transferee: *(full name and address including postcode)*

Directing Party: *(full name)*

Dated:

Execution and attestation

Sample

Approval No. 325955A

ORDER TO REGISTER
Please register and issue title to

STAMP DUTY USE ONLY

T1



Signed

Cust. Code:

THE BACK OF THIS FORM MUST NOT BE USED
Land Registry, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

Customer Information Bulletin on email

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

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