

DISCLAIMER:

The views and opinions expressed by the following presenters does not necessarily reflect those of this organization or our affiliates.

The information presented should not be taken as legal advice. It is for discussion purposes only.

Participants are advised to undertake their own research.

A quick introduction!

- I am a Licensed Conveyancer from Victoria with over 25 years in the property and conveyancing industry
- I have run and operated my own conveyancing practice in the outer east of Melbourne since 2009.
- The Victorian Government intends to take control of all paper titles currently in circulation in Victoria.
- This has already been done in other states of Australia incl NSW, QLD, ACT and SA
- In Victoria we currently have an option to obtain a paper title.
- Once abolished, the Victorian government can take control of YOUR title.

History of Titles in Victoria

- **Crown land** is land that is held by the government. Selection of Crown land began in Victoria in 1860. Once the land has been sold ie alienated it passes to private ownership. Land that has not been alienated remains Crown land.
- **Freehold land** is land that has been alienated from the Crown, sold by the government and granted to an individual or other entity.
- Under the **General Law system**, land ownership was based on a set of deeds, which traced the history of ownership. Title was proven by producing the collection of deeds which had been held by successive owners eventually, all held by the person now appearing to be the owner. Every time land changed hands, the chain of deeds needed to be produced and new transfer deed needed to be drawn up by lawyers. This process added to the record of deeds, which was kept by the owner, resulting in an ever increasing collection of ownership documentations. There was risk of deeds being lost or destroyed. Land ownership in the General Law system was not and is not guaranteed by the Victorian Government.

HISTORY OF TITLES IN VICTORIA CONT.

- A system of recording and registering land ownership was introduced in Victoria under the Real Property Act 1862 and subsequently the Transfer of Land Act 1958. This was known as the Torrens system.
- Its purpose was to introduce and maintain a single register of information about land in private ownership (freehold land). Under this system, the State Government took control of land registration and guaranteed title ownership in the Torrens land Register (historically known as the Register Book).
- The Torrens System with its one title and Government guarantee created an 'Original' title which was held securely and permanently in the land Register and a 'Duplicate' title that was issued to the owner. Any successive land transactions on title needed to be lodged at the Titles Office for registration of the transaction.
- The Registrar of Titles under the provisions of the Section 5 (1) of the Transfer of Land Act 1958 is responsible for registration and management of land titles in Victoria under the Torrens system.
- Land Titles in paper format that were not digitally converted were updated by endorsement on the paper Land Titles through the registration of land transaction up until 2002.
- The endorsement of paper Land Titles ceased with the introduction of the Victorian Online Title System in 2002 (VOTS).



Electronic Conveyancing

- Electronic conveyancing was introduced in Victoria in 2013.
- EC was not well received so the Victorian government mandated its use on 1 October 2018
- As a conveyancer, I have no option but to use a platform known as Property Exchange Australia (PEXA) . A private commercial enterprise created to facilitate electronic transfer of Titles and other title dealings in Victoria (and other States)
- There is currently no competitor and PEXA is the only Electronic Lodgement Network Operator (ELNO) in Australia.
- At inception, PEXA was owned by the four major banks, the land registries of WA, NSW, VIC and QLD as well as some larger private investors.
- ARNECC is the regulatory authority that is run by the Registrars of each State and Territory.
- The Electronic Conveyancing National Law (ECNL) governs the provisioning and operation of electronic conveyancing in Australia. It is implemented by separate legislation in each State and Territory.
- With only one ELNO in operation, PEXA basically has control of the market with little accountability to consumers not to mention the clear conflict between PEXA and the entities that govern it.

Conversion of Paper Titles

- When electronic conveyancing was introduced, the Victorian government converted all Paper Titles (PCT's) held by the big 4 big banks into Electronic Titles (ECT's). In turn, the banks were ordered to destroy the PCT's they held.
- This conversion then moved onto smaller lenders over time and currently about 60% of titles are in electronic form – ie a virtual document located in the cloud
- The electronic register consists of around 3.3 million titles. Approximately 1.32M remain in paper form
- Currently, as a Licensed conveyancer I can request a paper title if unencumbered
- In 2021, consultation was undertaken by the Titles Office to determine the future management of the remaining PCT titles. The consultation only engaged stakeholders such as solicitors and conveyancers.
- Consumers were not consulted.
- The consultation paper can be found here together with the analysis of the responses:
https://www.land.vic.gov.au/_data/assets/pdf_file/0022/544027/Consultation-Paper-September-2021-FINAL-V3.pdf
https://www.land.vic.gov.au/_data/assets/pdf_file/0016/552301/Consultation-paper-Dec-2021-Feedback-table.pdf

What you can do?

- **If you live in Victoria, there is still time to let the Registrar of Titles and Planning Minister know that you are not happy with their intent to take control of any title YOU control (be it now or into the future)**
- **This should matter to you whether you own your home or not.**
- **Email the registrar and planning minister (and shadow planning minister) informing them of your thoughts**
To:advice.enquiries@servictoria.com.au
To:lizzie.blandthorn@parliament.vic.gov.au
Cc:david.davis@parliament.vic.gov.au

It has been brought to my attention that the minister, with the recommendation of the Registrar of Titles, will be transferring control of ALL remaining paper titles to an electronic title, with electronic control being passed to "Registrar of Titles".

There has been no consultation with Victorians, only stakeholders who have a commercial benefit to retaining electronic control of titles. The lack of transparency by this Government is deceitful and undermines the rights we have as citizens of this State.

As a property owner, I strongly object to any third party holding my title without express consent. Under no circumstances, DO I consent to the registrar (or a third party) having control of my title now or into the future and demand that all Certificates of Title continue to be held either in paper or electronic form which is a Consumers Right and provided for under the Transfer of Land Act 1958

All Victorian property owners who hold an unencumbered title, should be able to retain a paper title and not be forced to have a third party (Registrar or other) control same.



PROPOSED CHANGES AFFECTING PAPER CERTIFICATES OF TITLE

Thank you for your email of 1 September 2022 to Land Use Victoria, about proposed changes affecting paper certificates of title. As this matter is in my area of responsibility, I am responding on the Minister's behalf.

More than 20 years ago, Victoria began a transformation of its land registration system by converting the Register of Land (the Register) from a paper-based system to an electronic database. In 2011, Victoria, as part of a national initiative, began accepting land transactions digitally. Currently, 97 per cent of all transactions in Victoria are submitted digitally, with the objective of achieving 100 per cent digital lodgement in the near future. The existence of paper certificates of title is not conducive to attaining that objective.

At present, the Register consists of approximately 3.3 million folios held in the electronic database. Approximately 60 per cent of folios (or 1.98 million) have electronic certificates of title associated to them. These are held by subscribers (lawyers, conveyancers and banks). The remaining 1.32 million folios have paper certificates of title, a significant number of which are also held by lawyers or conveyancers on behalf of the registered proprietors of the land.

The proposal currently being considered involves the elimination of the remaining paper certificates of title. This change, if made, will allow a full electronic process for transacting in land. It is proposed that, from a date to be determined, all remaining paper certificates of title will be made invalid, meaning they will have no legal status. There will be no requirement for property owners to surrender or hand in their paper certificate of title; they will be able to retain them. It simply means those certificates will not be required to be produced when the land is next transacted.

It is proposed that, from the determined date, those folios that do not have an existing electronic certificate of title will gain one, control of which will be held by the Registrar of Titles (Registrar). When the land is next transacted, registered proprietors will be able to engage a lawyer or conveyancer to take control from the Registrar of the electronic certificate of title, to facilitate the transaction. Landowners will not lose any property rights or ability to control what happens to their land with this proposed change.

You may also be interested to know that only Victoria, Tasmania and the Australian Capital Territory still retain paper certificates of title; all other Australian jurisdictions have abolished them. Similar changes to those proposed in Victoria were introduced in New South Wales in 2021 without any adverse impacts. To achieve all the benefits of electronic conveyancing, including reductions in risk, cost and time for the Victorian community, the removal of paper certificates is critical.

I understand you are concerned that there has been insufficient consultation with the community about the proposed change. In September 2021 Land Use Victoria conducted a 60-day public consultation process using both the Engage Victoria and Land.Vic websites to seek feedback from the Victorian community about the next steps in electronic conveyancing, including the removal of paper certificates of title. The consultation paper, a summary of the feedback and the Registrar of Titles responses can be found here: www.land.vic.gov.au/land-registration/consultation-papers. Very little feedback was received from members of the public, and the feedback from the legal and conveyancing professions was supportive of the proposed changes.

I trust my response addresses your concerns, however if you have further question or would like more information about this matter, please email Land Use Victoria at advice.enquiries@servictoria.com.au.

Thank you again for writing.

Yours sincerely

Richard Jefferson
Deputy Registrar of Titles
Executive Director Land Registry Services

14/09/2022

Response from Deputy Registrar 14/9/22

EXTRACT

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The right to retain the “duplicate” title

- “Do you want the government (or third party) to Control your title” without your consent?
- Every home-owner should be concerned about this proposal
- Even if you have a registered mortgage, at some point in the future you will pay off that mortgage and you must defend your right to retain and control any title to any land in which you own or will own

QUESTION TIME:

- Please make note of any questions you may wish to ask and save them for the end of the presentation where everyone will have full opportunity to have all questions answered.