

TRANSFERRING LAND

UPDATES
ELECTRONIC
CONVEYANCING
STAMP DUTY
CHANGES

&

CONTRACTS/FOREIGN
RESIDENT CAPITAL
GAINS WITHHOLDING

BILL MOODY

DBH | DUNCAN
BASHEER
HANNON

WHAT IS ELECTRONIC CONVEYANCING?

- From 4th November 2016 Real Property Act reforms allow for land transfers to be completed electronically
- How does this affect you?
 - » Duplicate Certificates of Title are no longer used or required for settlements.
 - » You are now required to verify your identity and sign a Client Authorisation for most transactions that need to be registered at the Lands Titles Office.
 - » You no longer need to sign transfers for lodging at the Lands Titles Office.



ELECTRONIC CONVEYANCING

CLIENT AUTHORISATIONS

CLIENT AUTHORIZATION	
<small>(When this form is signed, the Subscriber is authorized to act for the Client in a Conveyancing Transaction.)</small>	
Privacy Collection Statement: The information on this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.	
Subscriber Reference: SLM # _____	
CLIENT DETAILS	CLIENT 1 NAME _____ ADDRESS _____ ADDRESS _____
	CLIENT 2 NAME _____ ADDRESS _____ ADDRESS _____
	ACTIVITY TYPE <input type="checkbox"/> SPECIFIC AUTHORITY <input type="checkbox"/> STANDING AUTHORITY <input type="checkbox"/> GENERAL AUTHORITY
TRANSACTION DETAILS	CONVEYANCING TRANSACTION 1 PROPERTY ADDRESS: _____ PROPERTY TITLE: _____ PROPERTY USE: _____
	CONVEYANCING TRANSACTION 2 PROPERTY ADDRESS: _____ PROPERTY TITLE: _____ PROPERTY USE: _____
	CONVEYANCING TRANSACTION 3 PROPERTY ADDRESS: _____ PROPERTY TITLE: _____ PROPERTY USE: _____
ADDITIONAL INFORMATION	ADDITIONAL INFORMATION
I CERTIFY that: (a) I am the Client or Client Agent and (b) I have the legal authority to authorize the Subscriber to act in the Conveyancing Transaction and (c) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client. I AUTHORIZE the Subscriber to act on my behalf or where I am a Client Agent to act on behalf of the Client in accordance with the terms of this Client Authorization and any Participation Rules and any prescribed Requirements to: (a) sign Documents on my behalf as required for the Conveyancing Transaction(s) and (b) submit or authorize submission of Documents for judgment with the correct and required fees (c) facilitate any financial settlement involved in the Conveyancing Transaction(s) and (d) do anything else necessary to complete the Conveyancing Transaction(s).	
CLIENT AUTHORIZATION DATE AND SIGNATURE	CLIENT AUTHORIZATION DATE AND SIGNATURE
SUBSCRIBER	AGENT OF SUBSCRIBER
NAME: _____ ADDRESS: _____ ADDRESS: _____	NAME: _____ ADDRESS: _____ ADDRESS: _____
I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorization was signed by each of the Persons named above as Client or Client Agent. <small>(Signature and/or electronic signature of agent only.)</small>	
AGENT SIGNATURE	AGENT SIGNATURE
NAME: _____ ADDRESS: _____ ADDRESS: _____	NAME: _____ ADDRESS: _____ ADDRESS: _____

ELECTRONIC CONVEYANCING VERIFICATION OF IDENTITY

for Australian citizens or residents



Verification is valid for two years following which you must complete another VOI

- A VOI may only be completed by either a solicitor, a registered conveyancer or an identity agent who has a valid insurance. The following agents may be used ID Secure or Australia Post.
- An identity agent must carry professional indemnity insurance of at least \$1.5 million per claim.
- We use ID Secure. We arrange the meeting but we must have an email address to be able to facilitate the signing of the VOI and authorisation (usually the person who certifies the documents is a retired bank manager or JP). They will attend your farm or business or some convenient place, e.g the local pub.
- The agent will also complete the client authorisation.
- If a person does not have any photographic evidence then we can use a statutory declaration from a person who has known that person for more than 2 years (but cannot be a relative of the person being identified).
- The person making the statutory declaration will however have to complete a VOI to prove their identity.

ELECTRONIC CONVEYANCING VERIFICATION OF IDENTITY

for Australian citizens or residents



CATEGORY 1	CATEGORY 2	CATEGORY 3
<ul style="list-style-type: none"> • Australian passport <p>PLUS</p> <ul style="list-style-type: none"> • Australian driver's licence or photographic Proof of Age card 	<ul style="list-style-type: none"> • Australian passport <p>PLUS</p> <ul style="list-style-type: none"> • Full birth, citizenship or descent certificate <p>PLUS</p> <ul style="list-style-type: none"> • Medicare, Centrelink or Veterans' Affairs card 	<ul style="list-style-type: none"> • Australian driver's licence or photographic Proof of Age card <p>PLUS</p> <ul style="list-style-type: none"> • Full birth, citizenship or descent certificate <p>PLUS</p> <ul style="list-style-type: none"> • Medicare, Centrelink or Veterans' Affairs card
<p>ALSO REQUIRED IF NAME CHANGED</p>		
<p>N/A</p>	<p>Change of name or marriage certificate</p>	<p>Change of name or marriage certificate</p>

ALL DOCUMENTS IN EACH CATEGORY ARE REQUIRED

VERIFICATION OF AUTHORITY

(RIGHT TO DEAL AND CAPACITY)



- Solicitor/conveyancer must receive documents confirming you (vendor) are the owner of the land
 - » Eg. you must provide document/s confirming you are authorised to sell the land
- Documents may include:
 - » Rate/utility notice
 - » If a company, ASIC search required to confirm directors' names
- For a purchaser, the solicitor/conveyancer will require a copy of the contract
 - » If purchaser is a company, ASIC search also required

PRIORITY NOTICE



- Due to duplicate certificates of title no longer being used, it is recommended that a priority notice be lodged on the title after the contract has been signed. It is critical that the name on the priority notice is the same as the intended purchaser. Assuming it is, the notice will automatically be discharged at settlement.
- A priority notice is only valid for 90 days. It may be extended. There is a fee of \$20.35 to lodge the notice and \$10 for an extension.
- Bendigo Bank will only settle if a priority notice has been lodged.

CAVEAT / POWER OF ATTORNEY

- A caveat may still be signed by a third party however the person lodging must verify the identity of the person wishing to lodge the caveat
- A person who has appointed an attorney must also be verified.
- Our view is with the changes it will no longer require the registration of the power of attorney at the Lands Titles Office.

ELECTRONIC CONVEYANCING CONTRACTS

- Often contracts are signed and/or nominee.
- It was a requirement that the letter of nomination pre dated the contract.
- RevenueSA now recognises a purchaser has a common law right to direct the vendor to transfer the land at settlement to any person or entity the purchaser desires.
- Accordingly even if the contract does not state “and/or nominee” you may still have a different person or entity acquire the land.

FOREIGN RESIDENT

CAPITAL GAINS WITHHOLDING

- For contracts entered into after 1st July 2016 with a market value of \$2 million dollars or more, a 10% non final withholding tax will be incurred on these transactions at settlement.
- This amount must be retained unless a clearance certificate from the Australian Taxation Office (ATO) has been obtained.
- A clearance certificate will confirm that the 10% withholding amount does not apply to the transaction.
- If a seller doesn't provide a clearance certificate the buyer at settlement will be required to withhold 10% of the sale price and pay this to the ATO.
- If a buyer fails to withhold when they should a penalty may apply equal to the amount that was required to be held and paid, plus interest will also apply.

WHO PROVIDES ELECTRONIC CONVEYANCING SERVICES? ?

PEXA

- Property exchange network allowing secure online lodgement and financial settlement

PEXA COST?

- Charges fees for each transaction, eg.:
 - » On the discharge of a mortgage AND on the transfer
- Fees vary depending on type of document being lodged
 - » eg. discharge of mortgage \$53.68 PLUS
 - » transfer \$107.80

This is in addition to LTO registration fees

SettleMe

ABOLITION OF DUPLICATE CERTIFICATES OF TITLE

STAMP DUTY CHANGES

18 June 2015, Government announced to abolish duty on transfers of:

1. Non quoted marketable securities
2. Non-real property
3. Phased abolition of duty on commercial properties
4. Units in unit trusts
5. Removal of the \$1 million landholder threshold



STAMP DUTY ON TRANSFERS

1. NON QUOTED MARKETABLE SECURITIES

- Non marketable securities are shares in proprietary limited companies
- Abolition from 18 June 2015

2. NON-REAL PROPERTY

- Plant and equipment not fixed to land
- Goodwill
- Intellectual property
- Receivables
- Statutory leases and licences such as fishing, taxi, and gaming machine licences and entitlements
- Abolition from 18 June 2015

STAMP DUTY ON TRANSFERS

3. PHASED ABOLITION OF DUTY ON COMMERCIAL PROPERTIES

- Phased in over a three year period
 - » 7 December 2015 duty rate reduced by $\frac{1}{3}$
 - » 1 July 2017 duty rate reduced by a further $\frac{1}{3}$
 - » 1 July 2018 duty rate will be abolished

WHAT IS A COMMERCIAL PROPERTY?

- Commissioner will use land use codes (obtained from the Valuer General's Department) to determine what is commercial property



STAMP DUTY ON TRANSFERS

4. UNITS IN UNIT TRUSTS

- 1 July 2018 duty rate will be abolished

5. REMOVAL OF THE \$1 MILLION LANDHOLDER THRESHOLD

- 1 July 2018 threshold will be removed



THANK YOU

BILL MOODY



THANK YOU
FOR YOUR TIME

**IF YOU HAVE ANY
QUESTIONS WE
WOULD LOVE TO
HEAR FROM YOU!**

