

CONVEYANCING SERIES 2021

Mastering the essentials

Conveyancing title issues

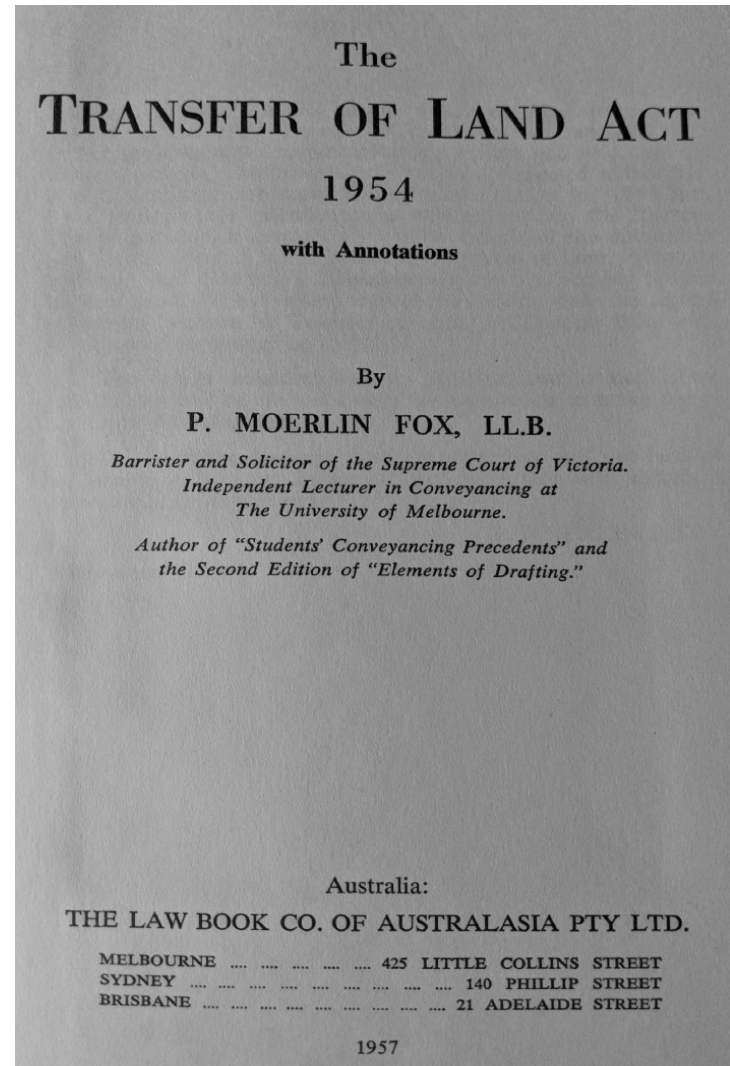
Presented by | Phil Nolan, Risk Manager, LPLC



Quote

The Torrens system was designed to remedy defects in the general law system of conveyancing.

- P. Moerlin Fox



Introduction

Have you checked the certificate of title?

Zoom poll

When supervising a conveyancing clerk do you check the details in the certificate(s) of title?

- (a) Yes – always.
- (b) Yes – sometimes.
- (c) Yes – if the clerk raises an issue.
- (d) No.



Five key points

1. Check the title for crucial information.
2. Cross check the title against other information.
3. Include a register search statement in the section 32 statement.
4. Not sure about a title issue? Ask for help.
5. Use a checklist to help you be aware of title issues.



Agenda

1. Claims

3. Compare the title

5. Other issues

2. Crucial title information

4. Section 32 statement

6. Spot the title issue

Claims

- Oversight
- Lack of understanding



Check the title for crucial information

- Check name of registered proprietor.

If a company:

- Obtain company search.
- Check company is registered.

If a trust:

- Check trust deed.
- Check trustee is the registered proprietor.



Check the title for crucial information

- ❑ Check for 'estate fee simple'.

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors



- ❑ Check for interest title.

Check the title for crucial information

- ❑ Check mortgage details:
 - Number of mortgages
 - Name(s) of mortgagee(s)

Tips – acting for vendor:

- Section 27 statement information
- Discharge authority



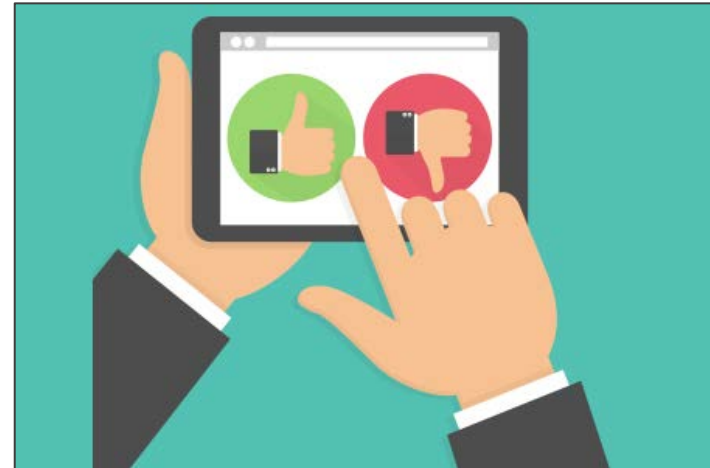
Check the title for crucial information

- ❑ Check any registered easements, covenants or similar restrictions.

Zoom poll

Is a lease a similar restriction?

- (a) Yes
- (b) No
- (c) Don't know



Check the title for crucial information

❑ Check the diagram location.

Zoom Q&A

Background

Note the reference in section 32I(a) of the SLA to provide the document or 'part of' the document referred to as the diagram location.

Question

For the sale of an apartment in a 20-storey building, for 'part of' the document referred to as the diagram location what do you need to attach to the section 32 statement?



Check the title for crucial information

- ❑ Check whether title is eCT or paper.

ADMINISTRATIVE NOTICES

NIL

eCT Control 16320Q WESTPAC BANKING CORPORATION
Effective from 23/10/2016

Compare the title details to assessments / certificates / searches

- ❑ Check council rates details match title details

LAND INFORMATION CERTIFICATE

This certificate provides information regarding valuation, rates, charges and other moneys owing under the Local Government Act 1989, the Local Government Act 1958 or under a Local Law of the Council and is for the financial year ending on the 30th June 2019.

This certificate is not required to include information regarding planning, building, health, land fill, land slip, flooding information or service easements. Information regarding these matters may be available from Council or the relevant authority. A fee may be charged for such information.

Title:	LOT: 1 PS: 415480U
Capital Improved Value:	\$1,560,000.00
Site Value:	\$1,110,000.00
Net Annual Value:	\$78,000.00
Operative Valuation Date for Rating:	01/07/2018
Level of Value Date:	01/01/2018



Compare the title details to assessments / certificates / searches

- ❑ Check the land tax assessment / certificate



Land Tax Clearance Certificate

Land Tax Act 2005

Land Id	Lot	Plan	Volume	Folio
22744486	1	415480	10377	720

Include a register search statement in the section 32 statement

Legislation - S.32I SLA

Zoom poll

When will a register search statement be out of date for the purposes of complying with section 32I of the SLA?

- (a) Never.
- (b) 3 months after it is issued.
- (c) 6 months after it is issued.
- (d) Any time after it is issued.




Session break: 3 steps to recharge

1. Get your circulation going

- Stand up and stretch your arms way up high
- Try some jumping jacks
- Bend down and try to touch your toes

2. Reduce eye strain

- Look away from your computer and gaze at an object in the distance  at least 20 seconds
- Adjust your computer display settings – like brightness or contrast

3. Remember to stay hydrated

- Drink a big glass of water
- Have a refill ready for the next part of the session!



Other title issues

Warnings on titles

Some titles contain a warning including:

- Folio is subject to the qualification(s)
- Warning as to Dimensions
- Warning as to Subsisting Interests

Some warning arise where general law land has been converted to Torrens title.



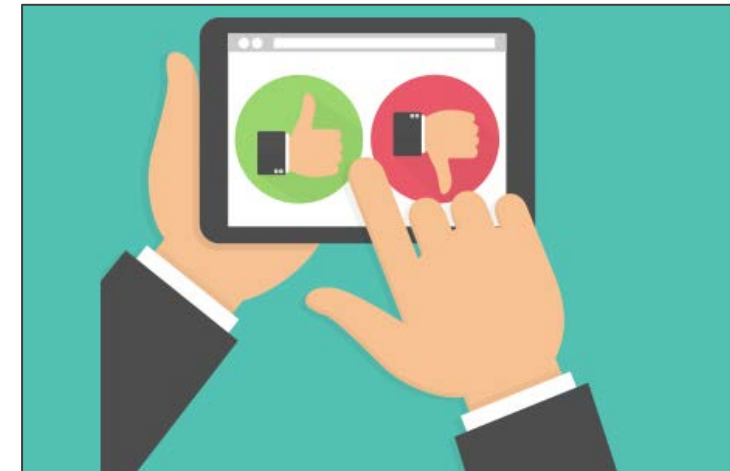
Other title issues

Paper titles

Zoom poll

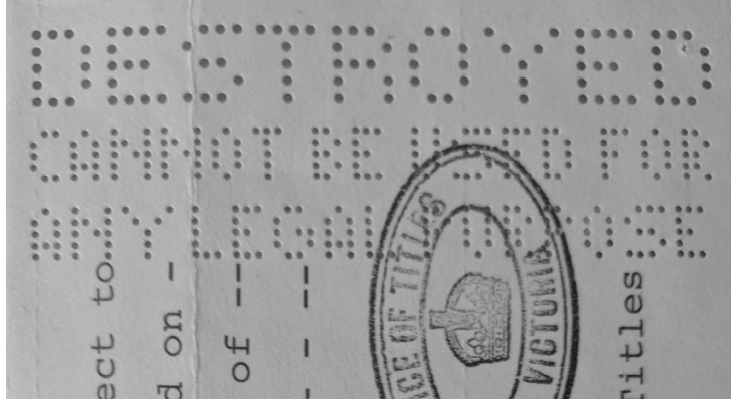
At what point in a conveyancing matter do you request that the vendor client provide you with any paper title(s)?

- (a) In the first letter to the client.
- (b) More than one month prior to settlement.
- (c) 14 days prior to settlement.
- (d) The day before settlement.



Other title issues

- Destroy / make invalid a paper title
- Issue search



This paper duplicate Certificate of Title has been superseded by a computer folio.

This historical document has been returned to you to keep for family or personal reasons.

It cannot be used for any legal purpose.

**JOHN HARTIGAN
REGISTRAR OF TITLES**

Other title issues

- Handing over titles
 - Checked identity.
 - Obtained authority.
 - Delivered by courier.
 - Kept records.



Zoom poll

Can you insist on a VOI of your former clients before handing over titles to another law firm?

- (a) Yes.
- (b) No.
- (c) Don't know.

Other title issues

- Missed encumbrances

COVENANT D070143 07/05/1968

CHARGE D085867 23/05/1968

AGREEMENT Section 173 Planning and Environment Act 1987
AF771740P 10/04/2008

Other title issues

- Separate interest titles

What to look for in the register search statement:

Estate Fee Simple

As to 1 of a total of 4 equal undivided shares

Additional information: (not part of the Register Search Statement)

OTHER TITLES WITH INTERESTS AFFECTING THIS LAND

Other title issues

- Separate interest titles

Zoom poll

Can you do a transaction on an ELNO, such as PEXA for one of a number of interest titles?

- (a) Yes.
- (b) No.
- (c) Don't know.



Other title issues

- Selling subject to a restriction

Strata titles

'.....Units may be defined as being restricted or accessory (car parks) units. Restricted units cannot be transferred unless transferred with an accessory unit.....'.



Other title issues

- Selling subject to a restriction

Planning permit



**PLANNING
PERMIT**

13. Areas set aside for car parking in the building shall be restricted to the parking of vehicles used by owners, occupiers, guests and persons engaged in the management and operation of the permitted use.

Other title issues

- Selling subject to a restriction

AGREEMENT Section 173 PLANNING AND ENVIRONMENT ACT 1987
T344798S 06/10/1994

Part 2 - Owner's Obligations

2.1 Restricted development and use

Despite anything in the Keilor Planning Scheme, the Owner must not develop or use the Land or allow the Land to be developed or used except for giving effect to the Permit and in accordance with that Permit and the endorsed plans to that Permit (or to any varied form of the Permit or its endorsed plans which the Council may agree to).

Other title issues

- Caveats

Claims

- Did not check title just prior to settlement
- Mortgagee sale and caveat does not lapse

- Water rights

Victorian Water Register

Other title issues

- GST withholding and meaning of crown allotments

One of many tax traps

Other traps include:

- Double duty where nomination occurs after land development
- Failure to advise a foreign purchaser of additional duty



Other title issues

- Are your suspicions aroused?

LIV ethics ruling - Powers of Attorney
Guidelines - 18 July 2013



Other title issues

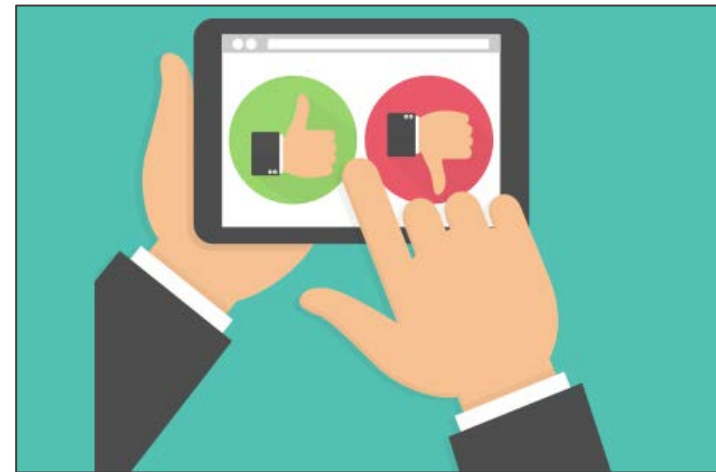
Background

You are notified by Australia Post that they could not verify the identity of your vendor client. The vendor client then contacts you and tells you they are coming to your office to collect the title they handed to you last week.

Zoom poll

What would you do in this situation?

- (a) Refuse to hand back the title.
- (b) Hand back the title.
- (c) Contact LIV ethics.
- (d) Notify LUV.
- (e) Notify the Police.



Note sure about a title issue?

Ask for help!

LUV contact details:

E: advice.enquiry@victorian.lrs.com.au

T: (03) 9102 0401



Checklist



Checklist – titles

Below is a list of matters that you need to consider for every title.

- Checked name of registered proprietor.
 - If a company:
 - Obtained company search.
 - Checked company is registered.
 - If a trust:
 - Checked trust deed.
 - Checked trustee is the registered proprietor.
- Checked for 'estate in fee simple'.

Spot the title issue no. 1



Order number: 7981587
Your Reference: 110786
07/12/11 11:28

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from the LANDATA REGD TM System. The State of Victoria accepts no
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of the information.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 03780 FOLIO 881

Security no : 124040177318F
Produced 07/12/2011 11:28 am

LAND DESCRIPTION

Lots 1 and 2 on Title Plan 423618H (formerly known as part of Crown Allotment C
Portion 11 Section 14, part of Crown Allotment C Portion 12 Section 14 Parish
of Cut-paw-paw).

PARENT TITLE Volume 03728 Folio 498
Created by instrument 742746 04/04/1914

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

AF524160Q 11/12/2007

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AF524161N 11/12/2007
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

MORTGAGE AH836765V 11/03/2011
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section
24 Subdivision Act 1988 and any other encumbrances shown or entered on the
plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE TP423618H FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

DOCUMENT END



Spot the title issue no. 2

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REGISTER SEARCH STATEMENT Land Titles Office, Victoria Page 1

Security no : 124000825998E

Volume 10618 Folio 568
Produced 14/03/2002 08:57 am

LAND DESCRIPTION

Lot 13 on Plan of Subdivision 431951P.
PARENT TITLE Volume 10558 Folio 096
Created by instrument PS431951P 08/12/2001

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

PS431951P 08/12/2001

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE W877289F 29/06/2000
WESTPAC BANKING CORPORATION

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section

24 Subdivision Act 1988 and any other encumbrances shown or entered on the
plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 PLANNING AND ENVIRONMENT ACT 1987
X587941U 10/07/2001

DIAGRAM LOCATION

SEE PS431951P FOR FURTHER DETAILS AND BOUNDARIES

DEALING ACTIVITY IN THE LAST 105 DAYS

DEALING		STATUS	DATE
PS431951P	PLAN OF SUBDIVISION	Registered	08/12/2001

STATEMENT END



Spot the title issue no. 3

Register Search Statement - Volume 11202 Folio 433

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 11202 FOLIO 433

Security no : 124082571564D
Produced 14/04/2020 02:01 PM

LAND DESCRIPTION

Lot 1433 on Plan of Subdivision 623208B.
PARENT TITLES ;
Volume 11188 Folio 618 Volume 11198 Folio 586
Created by instrument PS623208B 17/05/2010

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

AH584371U 28/10/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR414568Q 03/09/2018
AFSH NOMINEES PTY LTD

COVENANT PS623208B 17/05/2010

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AF163878Y 28/06/2007

AGREEMENT Section 173 Planning and Environment Act 1987
AF771740P 16/04/2008

DIAGRAM LOCATION

SEE PS623208B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: [REDACTED]



Spot the title issue no. 4

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958 Page 1 of 1

VOLUME 11755 FOLIO 994

Security no : 124056373060N

Produced 14/11/2016 02:32 pm

LAND DESCRIPTION

Lot 103 on Plan of Subdivision 746493M.
PARENT TITLE Volume 11607 Folio 661
Created by instrument PS746493M 29/04/2016

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

3000 AM214079X 04/04/2016

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AM214080P 04/04/2016
ABC BANK LTD

PRIORITY NOTICE AN021959M 11/11/2016 EXPIRES 11/01/2017

Applicant: GENERATOR INVESTMENTS AUSTRALIA LTD

Address: 2 JONES ROAD LYONVILLE VIC 3356

Transaction Instruments:

DISCHARGE OF MORTGAGE OR ANNUITY WHOLLY OR IN PART SECTION 84(1) TRANSFER OF LAND ACT
AM214080P

TRANSFER OF LAND SECTION 45 TRANSFER OF LAND ACT GENERATOR INVESTMENTS

AUSTRALIA LTD

MORTGAGE OR ANNUITY SECTION 74 TRANSFER OF LAND ACT EFG BANK LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section
24 Subdivision Act 1988 and any other encumbrances shown or entered on the
plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE PS324404T FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER	STATUS	DATE
AN021959M (E) PRIORITY NOTICE	Registered	11/11/2016

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: [REDACTED]

ADMINISTRATIVE NOTICES



Spot the title issue no. 5

VICTORIA
GOVERNMENT

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**REGISTER SEARCH STATEMENT (Title Search) Transfer of
Land Act 1958** Page 1 of 1


VOLUME 08648 FOLIO 655 Security no : 124089800038R
Produced 10/05/2021 02:46 PM

LAND DESCRIPTION

Lot 5 on Plan of Subdivision 061417.
PARENT TITLE Volume 08621 Folio 489
Created by instrument C566419 16/08/1966

REGISTERED PROPRIETOR

Estate Fee Simple
As to 1 of a total of 4 equal undivided shares
Joint Proprietors


AU143172A 16/03/2021

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE LP061417 FOR FURTHER DETAILS AND BOUNDARIES


ACTIVITY IN THE LAST 125 DAYS

NUMBER		STATUS	DATE
AU055588G	CONVERT A PCT TO AN ECT	Completed	17/02/2021
AU056309J (E)	NOMINATION TO PAPER INST.	Completed	17/02/2021
AU143172A	TRANSFER	Registered	17/03/2021
AT872075P	RECTIFY PROPRIETORSHIP	Abandoned	13/01/2021

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

OTHER TITLES WITH INTERESTS AFFECTING THIS LAND
8621/490, 11069/707, 11069/708

Street Address: 

ADMINISTRATIVE NOTICES

NIL



F E E D B A C K

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Conveyancing title issues

Presented by | Phil Nolan, Risk Manager, LPLC

