

Article Information

Service: Banking & Finance, Corporate & Commercial Finance

Sector: Financial Services

Future of eConveyancing in NSW- Are you ready for the cancellation of Certificate of Titles and CoRD consents? How does this impact on second mortgages?

From 11 October 2021, NSW will be transitioning to a paper-less conveyancing process. The use of Certificate of Titles ('CT') and the Control of the Right to Deal ('CoRD') consents will be abolished, and all land dealings will be lodged electronically. The shift to electronic lodging will ensure more efficient and secure processes.

What are the changes to the Land Title Systems?

The *Real Property Amendment (Certificates of Title Act) 2021* makes two main changes to the land titles system in New South Wales. As of 11 October 2021:

1. All Certificate of Titles and the Control of the Right to Deal framework will be cancelled;[\[1\]](#) and
2. All conveyancing will be conducted electronically by a subscriber (i.e. PEXA).

Do I still hold title over my property?

A Certificate of Title is a paper copy of the related computer folio displayed on the Torrens Title Register at the time it was issued. Traditionally, legitimate possession of the CT has been used to indicate that the person possessing it is entitled to deal with the land.

From 11 October 2021, all land dealings must be electronically lodged by a subscriber. This means that the land registry will no longer accept paper CTs. Existing CTs (paper and electronic) will not have any legal effect and CTs will no longer be issued. After this date, all CTs will be redundant because the subscriber (i.e. PEXA) acting for the parties must verify the party's identity and confirm that they are entitled to deal with the property. When documents are registered, the NSW Land Registry Service will issue an Information Notice which specifies the dealing number, dealing type and date of registration.

This change will not affect a person's ownership in land, as your land ownership details are recorded on the Torrens Title Register. A title search will provide conclusive evidence of a person's ownership in land.

Will I need a CoRD consent?

A Control of the Right to Deal Consent provides consent to the registration of registry instruments. CoRD consents are generally used when a CoRD Holder is involved in a transaction and are giving up control of the land or when they are not involved in the transaction but want to keep their right to control.

However, the CoRD framework will be abolished from 11 October. There will no longer be a need to request CoRD holder consent from the mortgagee and there will be no replacement for the CoRD framework. This means that if you are registering a second (or subsequent) mortgages, there is no requirement to obtain a CoRD consent from the first mortgagee. However, it is prudent for a borrower to check the terms of the first mortgagee finance documents to ensure the borrower's contractual compliance with any negative pledge or any restrictions as to financial indebtedness. This is a contractual matter between the parties (i.e. mortgagee and the borrower) and will not be policed by the Registrar General.

For strata plans and deposited plans of subdivision, mortgagee consent is still required. The changes do not affect the

requirement for consent on plans.

Why are we shifting to electronic lodgement?

There are three main reasons as to why NSW is transitioning to electronic lodgement and eliminating both CTs and CoRD consents.

1. **Efficiency** - Electronic lodgement reduces the time spent on physically lodging paper documents.
2. **Secure** - By using electronic lodgement network operators (i.e. PEXA), it reduces the risk of fraud. With paper CTs, there is a risk that fraud could be committed simply by forging the signature of the registered proprietor on a dealing form.
3. **Eliminates error** - Electronic lodgement eliminates errors such as incorrectly signing or misplacing documents.

Summary

- As of 11 October 2021, all CTs and the CoRD framework will be abolished and all conveyancing will be conducted electronically by a subscriber (i.e PEXA);
- No CoRD consent is required when registering a land dealing. If you are registering a second mortgage, you will **not** need a CoRD consent from the first mortgagee.

Read this article in conjunction with [Tacking: How Lenders can Protect their Future Advances](#). For further information relating to the lodgement of dealings, please contact Banking and Finance Partner, Greg Conomos.

[\[1\]](#) *Real Property Act 1900* (NSW) s 33AAA.