

SUBDIVISION INFORMATION SHEET

Victorian law prevents a piece of land being sold unless that piece of land has its own Title. In other words, you cannot sell land that is part of a Title until the land has been subdivided from that Title and has a Title of its own.

Every subdivision must comply with the requirements of the Subdivisions Act, the fundamental requirement of which is preparation of a Plan of Subdivision by a licensed Surveyor. This Plan is then submitted to the municipal Council which acts as a “clearing house” for the various Authorities that provide services to the property, such as water, drainage, electricity etc. The Plan must satisfy all the requirements of any relevant planning permit and of all the responsible Authorities. When that is achieved the Council certifies the Plan and provides a Certificate of Compliance to the Surveyor who then advises the solicitor that the Plan has been certified by Council.

The solicitor then lodges the Plan with the Land Titles Office (LTO). It is usually registered within a relatively short space of time. If the Title to be subdivided is subject to a mortgage, we provide a copy of the Certified Plan to the lender, seek consent to the Plan and arrange for the Title to be “made available” at the LTO for creation of new Titles pursuant to the Plan. These new Titles will be endorsed with the mortgage and returned directly to the lender.

Pre-Selling

The land can be sold as a separate Title after Registration of the Plan, but it is also possible to “pre-sell off the plan”. This means that a Contract of Sale is entered into describing the land as a lot on the proposed Plan of Subdivision that is attached to the Contract.

The vendor is obliged to ensure that the Plan is registered, usually within the default period of 18 months, and the purchaser is then obliged to complete the purchase, usually within a period of 14 days after Registration of the Plan.

If the Contract relates to not only vacant land but also a building that the vendor is to arrange to be constructed on the land then the Contract will have to include additional documents, such as drawings and specifications in relation to the building, to adequately describe what is to be constructed. The Contract will require an additional settlement requirement of “14 days after the issue of an occupancy certificate”.

S.173 Agreements

It is possible for Council to certify a Plan and issue a Certificate of Compliance even if all of the requirements of Council and service providers are not as yet satisfied. This is achieved by the owner and the Council entering into a s.173 Agreement whereby the unsatisfied requirements are set out and recorded on Title. This gives the owner time to satisfy these requirements whilst undertaking subdivision or building works and may accelerate the subdivision process. Arranging for a section 173 Agreement is something that the developer’s Town Planning Consultant or Surveyor will arrange with the Council. The completion of the Section 173 Agreement will then usually be arranged by council solicitors in consultation with the developer’s solicitors. Ultimately the Section 173 Agreement must be registered on the “parent” Title so the developer’s financier will also need to be involved and the Agreement will also be registered on each of the new Titles that are created as a result of registration of the plan.

Costs

Our costs in preparing and lodging a Plan of Subdivision are \$770.00. If consent is required from a lender our costs are \$1,100.00. Lenders usually charge between \$300.00 - \$500.00 for giving consent and making the title available.

There is NO stamp duty on a Plan of Subdivision but LTO fees are quite high and depend upon the number of lots in the Plan. For instance:

2 Parcels (including roads, driveways etc) \$1,036.30 (\$640.30 plus \$198 per Parcel)

10 Parcels \$2,620.30