

TS

Sale and purchase of property

1. Legal title over the fee simple estate is transferred through registration at the Land Titles Office of an:
 - a. Instrument of transfer; and
 - b. Certificate of title
2. Electronic instrument of transfer

A mortgage operates as a charge (provides security over property)

- Once registered, the mortgagee will be a registered mortgagee
- Once the mortgage is paid off, a discharge of mortgage needs to be lodged at LTO

E-conveyancing

There are three Electronic Lodgment Networks (ELNs) currently operating in Victoria
They allow electronic lodgment and registration of land transactions instruments and settlement for subscribers

Financial settlement also occurs online

Transfers using E-conveyancing

- Solicitors/conveyancers are subscribers to ELN
- Subscribers verify the identity of the vendor/purchaser (V/P)
- V/P complete a client authorisation form, allowing subscriber to complete documents on their behalf
- Subscribers then sign the instrument of transfer
- One subscriber controls the electronic Certificate of Title (eCT)

Indefeasibility

- Once registered, you have title immune from anyone claiming interest
- Once registered, the interest attracts immediate indefeasibility.
- Indefeasibility can exist in relation to the fee simple and mortgage.

Deferred indefeasibility

- Indefeasibility is deferred until registration is without attack.
- Abolished in Australia

Immediate indefeasibility - The current approach in Australia

- As soon as one is registered without fraud, they get indefeasibility above the owner

- Protects purchasers
- Requires registered owners to protect themselves

Frazer v Walker

- Forged mortgage.
- Once a void instrument is registered without fraud, RP obtains an immediately indefeasible title.
- Registration cures defects in underlying documents.
- New Zealand legislation (do not use this case for authority in assignment/exam)

Breskvar v Wall

- They had filled out the name of the instrument's title but **had not signed**. But it was capable of being registered and subject to indefeasibility.
- Registration, though effective, may be defeasible due to fraud.
- Their title may be challenged.
- If not challenged before selling, the RP may pass a good title to the new owner.
- The TS system is not a system of registration of title by a system of title by registration.

Compensation

The assurance fund was established with the purpose of compensating those who suffer detriment as a result of the potential harshness or unfairness of indefeasibility under the Torrens System. Any person claiming to be so entitled may apply directly to the registrar (s 111 TLA), bring an action against the Registrar as a nominal defendant, or may join the Registrar as a nominal co-defendant in any proceeding (s 110(2) TLA).

Entitlement to indemnity:

An individual is entitled to be indemnified under the assurance fund if they sustain damage as a result of (s 110(1) TLA)

- (a) Bringing land under the Torrens System.
- (b) Any amendment of the register
- (c) Any error/omission/misdescription of the register or the registration of any other person as proprietor
 - Registrar must make amendment if directed by:
 - A court under s103(1) or
 - VCAT under s103(1)AA
 - An error of the Registrar is capable of rectification per s103(2).
- (d) Any payment or consideration given on the faith of the register
- (e) The loss or destruction of any document lodged at the Office of Titles
- (f) Any mistake/omission/misfeasance of the registrar (or an officer).
- (g) The exercise by the registrar of any power conferred on him, where the person suffering loss or damage has not been a party or privy to the application

When are you NOT entitled to compensation?

Restriction on compensation: The Consolidated fund is not liable in circumstances under s 109(2) TLA

Neglect s110(3)(a) TLA

No indemnity is payable where the claimant, their legal practitioner, conveyancer or agent **caused or substantially contributed to the loss by fraud neglect or wilful default** (s 110(3)(a))

The neglect must be the **sole cause** of the loss OR a contributing cause (Fairless)

Where the neglect is a contributing cause, the contribution to the loss must be considerable large or big

- Neglect may include a failure to take care of your own interests or failure to do something you are obliged or required to do, judged on the facts of the case (Fairless)
- Have regard to previous dealings and level of trust (Fairless)
- Deliberate deception is important (Fairless)

Fraud of agents:

- Fraud by an agent will only disentitle the aggrieved party where the fraud was committed in the scope of their actual authority (express or implied) (Fairless)