



Department of Transport, Planning and Local Infrastructure

Ref: JA14/6939

Victorian Law Reform Commission
GPO Box 4637
MELBOURNE VIC 3001

(By email: law.reform@lawreform.vic.gov.au)

Land Victoria
570 Bourke Street
Melbourne 3000
GPO Box 527
MELBOURNE VIC 3001
Telephone: (03) 8636 2010
ABN 17 441 396 042
DX 250639

Dear Sir or Madam

THE FORFEITURE RULE CONSULTATION PAPER MARCH 2014

Thank you for the opportunity for Land Victoria to provide comment as part of the Victorian Law Reform Commission review of the Forfeiture Rule.

The majority of the intricacies and effect of the rule do not impact on Land Victoria. As a result, I have not addressed the questions outlined in your paper, as most relate to matters of policy outside the Registrar of Titles' remit. I am, however, keen to ensure that its effect on the registered proprietorship of freehold land held by joint tenants is clearly articulated and understood.

In the past this office has been approached by distressed members of a deceased's family keen to ensure that the person who has unlawfully killed the deceased cannot deal with the whole of the land. Land Victoria considers that the best way to avoid any untoward dealing with land subject to the rule would be to have an automatic severance of the joint tenancy pursuant to legislation. A severance of the joint tenancy is something that can be reflected in the Register of land.

If instead the proposal that the person committing the unlawful killing should hold the land on trust is favoured, this is not something which can be reflected in the Register. Section 37 of the *Transfer of Land Act 1958* prohibits the recording of a trust in the Register. In these circumstances the only option available to a beneficiary of the deceased would be to lodge a caveat. Caveats can be removed by various means and are therefore not a foolproof protection.

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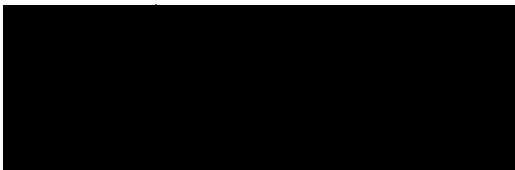
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I recognise that severance of the joint tenancy works well where there are only two joint proprietors. However, in the rarer circumstances, where there are more than two joint proprietors, severance would result in a proprietorship not contemplated by the other joint proprietors at the outset of the joint tenancy. Having said that, the deceased's legal personal representative would be able to take this into account when further dealing with the land.

If you would like clarification, or additional information, in relation to this response please contact Ms Jane Allan, Manager Land Victoria Legal, on telephone (03) 8636 2010.

Yours sincerely



CHRIS McRAE
Registrar of Titles
Executive Director Land Victoria

9/5/2014