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| Guide to adverse possession |
| Section 60 *Transfer of Land Act 1958* |

This guide sets out the requirements to lodge an Adverse possession – TLA60 form, based on title by possession, under section 60 of the *Transfer of Land Act 1958.*

An adverse possession application is used when the applicant has acquired title by possession over land that is under the operation of the *Transfer of Land Act 1958*.

Because these are complicated applications, it is recommended that a legal practitioner prepares the application. The Law Institute of Victoria (LIV) has a referral service to legal practitioners experienced in this type of work. The LIV is located at Level 13, 140 William Street, Melbourne and can be contacted on (03) 9607 9311.

Do not use an Adverse possession – TLA60 form if:

* the possession is over General Law land, in which case an application should be made under section 15 of the *Transfer of Land Act 1958*
* the applicant’s Certificate of Title is affected by a ‘Warning as to dimensions’ and the applicant intends to acquire additional land by possession, in which case an application should be made under Section 26P of the *Transfer of Land Act 1958*.

Documents required by Land Use Victoria

Adverse possession – TLA60 form

The Adverse possession – TLA60 form must be fully completed and signed.

This form is available on the [Transfer of Land Act](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/transfer-of-land-act) page at www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees>Transfer of Land Act>Adverse possession.

Certificate(s) of Title

The Certificate(s) of Title for the subject (possessory) land is/are not required.

Verification of identity

All parties to a conveyancing transaction must have their identity verified.

When a conveyancer or lawyer represents a client, the conveyancer or lawyer is responsible for verifying their client’s identity. For further information, refer to Guide to verification of identity for paper conveyancing transactions for conveyancers, lawyers and mortgagees available at www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees>Overview.

If a party to a conveyancing transaction is not represented by a conveyancer or lawyer (a non-represented party), verification of identity needs to be undertaken by Australia Post – the Approved Identity Verifier. In addition, Australia Post will witness the non-represented party signing any conveyancing documents. For further information, refer to [Guide to verification of identity for people not using a conveyancer or lawyer](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees) available at www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees>Overview.

Adverse possession Section 60 checklist

The adverse possession checklist must be completed, signed and produced at lodgement.
The signed checklist is accepted by Land Use Victoria as indicating that the lodging party has taken responsibility for providing all the required documents. If the post-lodgement examination process reveals significant deficiencies in the lodgement, the application will be rejected, and fees forfeited. The checklist is available on the [Transfer of Land Act](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/transfer-of-land-act) page at [www.delwp.vic.gov.au/property-forms](http://www.dtpli.vic.gov.au/property-forms)>Transfer of Land Act>Adverse possession.

Survey based application

This method must be used if the claimed land comprises part of a title or is a whole title that does not meet the requirements of an application, not based on survey or request to waive survey.

The plan of survey should clearly and separately define the land claimed. Survey plans should reflect the current circumstances.

If the plan is more than two years old or there is other evidence available to the Registrar indicating that occupation has changed since the date of the last survey, the surveyor may be required to update the survey.

Survey based adverse possession applications must be supported by:

* a plan of survey, signed and dated by a licensed surveyor
* an abstract of field records including a depiction of the full enclosure of the property, which must be signed and dated by a licensed surveyor
* a surveyor’s report signed and dated by a licensed surveyor.

These documents must be lodged electronically by the surveyor through [SPEAR](http://www.spear.land.vic.gov.au) at www.spear.land.vic.gov.au

Non-survey adverse possession application

Survey documents and aerial photos are not required for this type of adverse possession claim; however, the land being applied for must be:

* a separately transferable parcel and be wholly enclosed by:
	+ land to which the applicant has title
	+ government roads
	+ Crown land
	+ a combination of any or all of the above
* an application made by:
	+ a mortgagee in possession
	+ a mortgagor may remove an outstanding mortgage that is statute barred, only if section 84(2) Transfer of Land Act 1958 cannot be used.
	+ one or more co-proprietors against the other co-proprietor(s).

Request to waive survey

If a person is proposing to apply for a whole parcel on the basis of possession, it may be possible for that person to use an aerial photograph in the place of a survey plan. For information regarding the use of aerial photographs see the Guide to Request to waive survey for an adverse possession application available on the [Transfer of Land Act](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/transfer-of-land-act) page at [www.delwp.vic.gov.au/property-forms](http://www.dtpli.vic.gov.au/property-forms)>Transfer of Land Act>Adverse possession.

Evidence
To be able to grant an adverse possession application the Registrar must be satisfied that the proprietor’s rights and those of any other interested party have been extinguished and that they have been excluded from using the land.
Supporting evidence is required;

See the Guide to evidence supporting an adverse possession claim on the [Transfer of Land Act](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/transfer-of-land-act) page at [www.delwp.vic.gov.au/property-forms](http://www.dtpli.vic.gov.au/property-forms)>Transfer of Land Act>Adverse possession.

Fees

Land Use Victoria fees are payable at lodgement.

Acceptable payment methods and lodgement fees are available on the [Forms, guides and fees](http://www.dtpli.vic.gov.au/property-and-land-titles/forms-guides-and-fees) page at www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees>Fees.

Land that can’t be claimed in an adverse possession application

Section 7, 7A, 7B, 7AB and 7C of the *Limitation of Actions Act 1958* and legal precedent govern land that can’t be claimed. This includes:

* Crown land, including government roads
* land owned by the Public Transport Corporation or Victorian Rail Track
* land owned by a water authority (defined by the *Water Act 1989*)
* land owned by the Roads Corporation (VicRoads) or any of its predecessors
* land of which a council (as defined in the *Local Government Act 1989*) is the registered proprietor
* any part of common property affected by an owners corporation by an owner of a lot affected by that owners corporation.

How to complete the Adverse possession – TLA60 form

If submitting in paper, the Adverse possession – TLA60 form should be completed online and printed for lodgement.

If the form is being completed manually rather than online:

* the writing must be clear and legible, and in BLOCK LETTERS
* only use black or blue pen
* correction fluid must not be used
* the back of the form must not be used.

If there is insufficient space in any panel an Annexure Page (A1) must be used, which is available on the [Forms, guides and fees](http://www.dtpli.vic.gov.au/property-and-land-titles/forms-guides-and-fees) page at www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees>Annexure Page PDF form.

Lodged by

This section is to be completed by the party lodging the application at Land Use Victoria.

Please insert the following:

* name, telephone number and postal address for contact details or for the return of any documents
* customer reference and your Land Use Victoria customer code (if applicable).

**Land**

Depending on the type of application there are three options available:

* Survey based application

Identify the subject parcel, the date of survey, the licensed surveyor and the folio reference as whole or part, *e.g. Land marked ‘A’ on Plan of Survey by licenced surveyor Joe Bloggs dated 13th August 2019 and being part of the land in Volume 12345 Folio 678.*

* Non-survey application

Where the whole of a folio is affected, insert folio reference(s) of affected folio(s), *e.g. Volume 12345 Folio 125*.

* Request to waive survey application

Identify the subject parcel(s) and insert folio reference(s) of affected folio(s) and describe the relevant Request to Waive survey dealing, *e.g. Crown Allotment 5 Section 10A Parish of Jika Jika being the land in Volume 12345 Folio 125 and being the possessory land identified in WS1256H.*

Multiple folios, numbered consecutively, may be inserted as a single range entry, *e.g. Volume 12345 Folio 125-132.*

Estate

Insert ‘an estate in fee simple in possession’; or, otherwise must specify.

Applicant

Insert the full name(s) and address(es) of the applicant(s). This information will appear on the new title if the application is successful. The address(es) will be where notices are mailed in the future.

Please note: a ‘care of’ or ‘post office box’ is not an acceptable address.

Encumbrances

Please specify whether the claimed land applied for is free of encumbrances and/or subject to existing encumbrances.

See ‘Dealing with encumbrances’ in the Guide to evidence supporting an adverse possession claim on the [Transfer of Land Act](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/transfer-of-land-act) page at www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees>Transfer of Land Act.

SPEAR number

The SPEAR reference number must be inserted, e.g. S000083E.

Waive Survey (WS) number

If the application is subject to an approved Request to waive survey, the WS reference number must be inserted, e.g. WS1078N.

Date

Insert the date the form is signed by the applicant, e.g. DD/MM/YYYY.

Signature of applicant

The form must be signed by the applicant(s), a legal practitioner or an agent of the applicant.

Signature requirements are:

* applicant signs – no witness required
* signature of an Australian legal practitioner (under the Legal Profession Uniform Law Victoria for the applicant) – full name and address must be given
* signature of an agent – letter of agency must be supplied.

Note: Section 4(3)(c) of the *Conveyancers Act 2006* excludes a licensed conveyancer from signing an application form for an order under section 60 of the *Transfer of Land Act* (adverse possession applications).

Further information

Additional information is available on the [Transfer of Land Act](http://www.delwp.vic.gov.au/property-and-land-titles/forms%2C-guides-and-fees/transfer-of-land-act) page at www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees>Transfer of Land Act>Adverse possession.

See:

* Adverse possession Section 60 checklist
* Guide to evidence supporting an adverse possession claim
* Guide to request to waive survey for an adverse possession application.

Contact us

For [location and contact details](http://www.dtpli.vic.gov.au/property-and-land-titles/contact-us), refer to www.propertyandlandtitles.vic.gov.au>Contact us.

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