

Verifying the identity of mortgagors: mortgagee obligations

This fact sheet is designed to assist mortgagees including banks, credit unions, building societies and non-bank lenders such as private lenders to comply with section 56C of the *Real Property Act 1900*, which came into operation on 1 November 2011.

What is a mortgagee?

Mortgagees are persons or corporations who lend money (e.g. banks and credit unions) and protect their interest by registering a mortgage on the land title of the borrower or guarantor, who is called the mortgagor.

What obligations do mortgagees have to verify the identity of mortgagors?

From 1 November 2011 a mortgagee is required to verify the identity of the mortgagor or guarantor. The mortgagee is considered to have satisfied this obligation if it follows certain reasonable steps. The reasonable steps are set out in Clauses 11A and 11B of the *Real Property Regulation 2008*.

What are the obligations of mortgagees who are subject to the *Anti-Money Laundering/Counter-Terrorism Financing Act 2006*?

Incorporated bodies such as banks, building societies and credit unions who regularly lend money are already required to verify the identity of mortgagors under the Commonwealth's *Anti-Money Laundering/Counter-Terrorism Financing Act 2006* ('the AML/CTF'). The reasonable steps under clause 11A of the *Real Property Regulation 2008* only require them to comply with their existing AML/CTF obligations.

Mortgagees are not required to take steps to verify the identity of customers with whom they already had a business relationship prior to the commencement of the AML/CTF, if this is permitted under the AML/CTF.

Where a guarantor is to become the mortgagor, the reasonable steps under clause 11A require the mortgagee to verify the identity of the guarantor in accordance with AML/CTF document safe harbour provisions.

What are the obligations of mortgagees who are not subject to the *Anti-Money Laundering/Counter-Terrorism Financing Act 2006*?

Private lenders and other mortgagees who are not subject to the AML/CTF must take the steps set out in Clause 11B of the *Real Property Regulation 2008*. However any mortgagee can take these steps. The steps that must be taken differ depending on whether:

- the mortgagee is a 'natural person', that is, a private individual
- the mortgagee is an incorporated body
- the mortgage is signed by a natural person under power of attorney
- the mortgage is signed by an incorporated body as attorney.

The steps to be taken in each case are set out below.

Natural person(s)

Step 1: Collect the following information from the mortgagor:

- Full name
- Date of birth
- Residential address.

Step 2: Verify the mortgagor's name, date of birth and residential address.

The mortgagee should ask to see an official document that includes a photograph of the person, for example their driver licence or passport. The document must be either an original or certified copy and must be current, unless it is an Australian passport that has expired within the last two years.

See **Primary photographic identification documents** in the table at the end of this fact sheet for the full list of acceptable documents in this category. If the person shows the mortgagee a document in this category that confirms their identity, the mortgagee's obligations under Clause 11B will be satisfied.

If the person does not have a primary photographic identification document that confirms their identity, the mortgagee must ask to see two other documents:

- one original or certified copy of a primary non-photographic identification document such as a birth certificate and
- one original or certified copy of a secondary identification document such as a recent local council rates notice.

See the table at the end of this fact sheet below for the full list of acceptable non-photographic and secondary identification documents. If the person shows the mortgagee one document from each of these categories that confirms their identity, the mortgagee's obligations under Clause 11B will be satisfied.

Step 3: Verify that any document produced by the customer has not expired (unless it is an Australian passport that has expired within the preceding two years).

Incorporated bodies

Step 1: Confirm the details of the company including the registration number, registration status, address of registered office, address of principal place of business and details of current officers from a company search issued by ASIC or another authorised registration body within the last 30 days.

Step 2: Verify that the mortgage was executed for the company in an authorised manner.

Execution by natural person under power of attorney

Step 1: Confirm the name and address of the attorney from the registered power of attorney.

Step 2: Identify the person executing the mortgage as attorney in accordance with the steps for identifying natural persons set out above.

Step 3: Verify that the execution of the mortgage was authorised by the power of attorney.

Execution by incorporated body as attorney

Step 1: Confirm the details of the attorney from the registered power of attorney.

Step 2: Identify the incorporated body executing the mortgage as attorney in accordance with the steps for identifying incorporated bodies set out above.

Step 3: Verify that the execution of the mortgage was authorised by the power of attorney and completed in an authorised manner.

What action should mortgagees take if there are discrepancies in the mortgagor's identification documents?

The mortgagee must be satisfied that any discrepancy between the mortgagor's personal information and identification documents can be reasonably explained. Mere mechanical compliance is not sufficient. A mortgagee will need to consider undertaking further checks in cases where:

- the prospective mortgagor claims to be the current registered proprietor of land but the name recorded on any document they rely on to confirm their identity is not exactly the same as the name of the current registered proprietor recorded on a title search
- the prospective mortgagor claims to have entered into an agreement for sale of land as purchaser but the name recorded on any document they rely on to confirm their identity is not exactly the same as the name of the transferee recorded on a transfer to be lodged for registration prior to lodgment of the mortgage
- the prospective mortgagor claims to hold an interest in a land title but the name recorded on any document they rely on to confirm their identity is not exactly the same as the name of the current holder of the interest as recorded on a title search

- the person who executes the mortgage appears to be of a different gender to the current registered proprietor or holder of the relevant interest recorded on title, as indicated by the name of the registered proprietor or holder of the interest or by any other information reasonably available to the mortgagee
- the person who executes the mortgage appears to be younger than the current registered proprietor or holder of the interest, as indicated by the date that the person was registered on title or by any other information reasonably available to the mortgagee.

Further checks may simply involve viewing a marriage certificate or obtaining evidence that a typographical error has been made in a document. If discrepancies cannot be satisfactorily resolved, the mortgagee should reassess its agreement with the prospective mortgagor.

What records must be kept by mortgagees?

All mortgagees are required to keep records of the steps they have taken to comply with their obligations. Records can include any written documentation, copies of identification sighted, or driver licence and passport numbers. These records must be kept for seven years, and be produced on request to the Registrar General.

The Registrar General may issue a request to inspect the records of a mortgagee to determine whether they have complied with their obligations.

What happens if mortgagees do not comply?

LPI will not check that a mortgagee has carried out their obligations when they lodge a mortgage for registration. However, if the registered mortgage is subsequently found to be fraudulent, and the Registrar General determines that a mortgagee has not carried out their obligations, the mortgage may be removed from the Register. This means that the mortgagee will lose their indefeasible interest and will not be able to seek compensation from the Torrens Assurance Fund.

Primary photographic identification documents	Primary non-photographic identification documents	Secondary identification documents
Current Australian or overseas driver licence Current Australian passport Australian passport expired within last two years Proof of Age Photo Card issued under the <i>Photo Card Act 2005</i> Passport issued by a foreign government or the United Nations, accompanied by English translation, prepared by accredited translator, if not written in English National identity card issued by a foreign government or the United Nations, accompanied by English translation, prepared by accredited translator, if not written in English.	Birth certificate or birth extract issued by an Australian state or territory Birth certificate issued by a foreign government or the United Nations, accompanied by English translation, prepared by accredited translator, if certificate is not written in English Australian citizenship certificate Foreign citizenship certificate accompanied by English translation, prepared by accredited translator, if certificate is not written in English Pension card issued by Centrelink.	A notice from the Australian Taxation Office issued within the last 12 months that shows the name and residential address of the person who has asked you to be a witness A notice from Centrelink issued within the last 12 months that shows the name and residential address of the person who has asked you to be a witness Rates notice or utility bill issued by a local council, water authority, gas or electricity provider within the last three months that shows the name and residential address of the person who has asked you to be a witness.

Information contained
in this document was correct at
time of publication, but may have
been superseded

Disclaimer

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