



Land & Property
Information

Conveyancing rules

Section 12E *Real Property Act 1900*

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Effective from 1 May 2016

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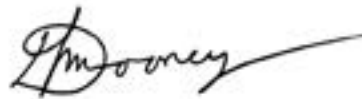
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Real Property Act 1900

Section 12E

These Conveyancing Rules are made in NSW pursuant to section 12E of the *Real Property Act 1900* and will come into effect on and from 1 May 2016.

A handwritten signature in black ink, appearing to read 'Des Mooney', with a long horizontal flourish extending to the right.

Des Mooney
Registrar General
28 March 2016

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Conveyancing Rules

1. Preliminary

These Conveyancing Rules are made by the Registrar General pursuant to section 12E of the *Real Property Act 1900* and may be referred to as the Conveyancing Rules.

2. Commencement

These Conveyancing Rules come into force on and from 1 May 2016. Individual Rules take effect from the dates specified in the Rule.

3. Definitions and Interpretation

3.1 Definitions

3.1.1 In these Conveyancing Rules capitalised terms have the meanings set out below:

ADI means authorised deposit-taking institution as defined in the *Banking Act 1959 (Cth)*.

Australian Credit Licence has the meaning given to it in the *National Consumer Credit Protection Act 2009 (Cth)*.

Australian Legal Practitioner has the meaning given to it in the Legal Profession Uniform Law (NSW).

Business Day has the meaning given to it in the ECNL.

Client means a person who has or persons who have appointed an Australian Legal Practitioner, a Law Practice or a Licensed Conveyancer as their Representative.

Client Agent means a person authorised to act as the Client's agent but does not include a person acting solely as the Client's Representative.

Conveyancing Transaction has the meaning given to it in the ECNL.

Document has the meaning given to it in the ECNL.

Duty Authority means the Chief Commissioner of State Revenue of NSW.

ECNL means the Electronic Conveyancing National Law (NSW).

ELN or Electronic Lodgment Network has the meaning given to it in the ECNL (NSW).

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 4 (within Schedule 8 of the Participation Rules).

Identity Agent means a person who is an agent of a Representative and who:

- (a) a Representative reasonably believes is reputable, competent and insured in compliance with Insurance Rule 2; and
- (b) is authorised by a Representative to conduct verification of identity on behalf of the Representative or mortgagee in accordance with the Verification of Identity Standard.

Identity Agent Certification means the certification set out in Schedule 9 of the Participation Rules.

Identity Declarant means a person providing an Identifier Declaration.

Identity Verifier means the person conducting a verification of identity in accordance with the Verification of Identity Standard.

Insurance Rules means the Rules set out in Schedule 6 of the Participation Rules.

Law Practice has the meaning given to it in the Legal Profession Uniform Law (NSW).

Licensed Conveyancer means a person licensed or registered under the *Conveyancers Licencing Act 2003*.

NCCP Act means the *National Consumer Credit Protection Act 2009 (Cth)*.

National Credit Code has the meaning given to it in the NCCP Act.

Participation Agreement has the meaning given to it in the ECNL.

Participation Rules means the participation rules determined under the Electronic Conveyancing National Law (NSW).

Party means each person who is a party to an instrument, but does not include a Representative or an agent.

Person Being Identified means any of the persons required to be identified under Rule 4.1.2.

RPA means the *Real Property Act 1900*.

Representative means an Australian Legal Practitioner, a Law Practice or a Licensed Conveyancer who acts on behalf of a Client.

Verification of Identity Standard means the standard set out in Schedule 8 of the Participation Rules.

3.2 Interpretation

In these Conveyancing Rules, unless a contrary intention is evident:

- 3.2.1 A reference to these Conveyancing Rules is a reference to these Conveyancing Rules as amended, varied or substituted from time to time.
- 3.2.2 A reference to any legislation or to any provision of any legislation includes:
 - (a) all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
 - (b) any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision.
- 3.2.3 A word importing:
 - (a) the singular includes the plural; and
 - (b) the plural includes the singular; and
 - (c) a gender includes every other gender.
- 3.2.4 A reference to a party includes that party's administrators, successors and permitted assigns.
- 3.2.5 If any act pursuant to these Conveyancing Rules would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day, and when an action is required by a party within a specified period of Business Days, the period will be deemed to commence on the Business Day immediately following the day on which the obligation is incurred.
- 3.2.6 Where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning.
- 3.2.7 A reference to two or more persons is a reference to those persons jointly and severally.
- 3.2.8 A reference to a Rule or schedule is a reference to a Rule of, or a schedule to, these Conveyancing Rules.
- 3.2.9 A reference to a Rule includes a reference to all of its sub-requirements.
- 3.2.10 Where general words are associated with specific words which define a class, the general words are not limited by reference to that class.
- 3.2.11 Notes included in these Conveyancing Rules do not form part of the Rules.
- 3.2.12 The word 'or' is not exclusive.

4. Verification of Identity and Authority - Representatives in Paper Conveyancing

These Conveyancing Rules are made by the Registrar General pursuant to section 12E of the *Real Property Act 1900* and may be referred to as the Conveyancing Rules.

Real Property Act 1900 Section 12E(1)

(1) Making of conveyancing rules

The Registrar-General may from time to time determine, in writing, rules for or with respect to the preparation and lodgment otherwise than electronically of paper documents to give effect to conveyancing transactions (the conveyancing rules), including rules for or with respect to the following:

- (a) the verification of identity and authority, including:
 - (i) the standards to which identity and authority are to be verified, and
 - (ii) the classes of persons in respect of whom identity and authority are to be verified, and
 - (iii) the classes of paper documents in relation to which verification of identity and authority requirements apply, and
 - (iv) the classes of persons who can undertake verification of identity and authority, and
 - (v) any supporting evidence and retention requirements.

4.1 Verification of Identity

4.1.1 This Rule takes effect on 1 May 2016. However, the Registrar General is allowing a transition period of 3 months with full compliance required on and from 1 August 2016. Nothing in this Rule shall be taken to detract from any professional responsibility or due diligence requirement applying to Representatives with respect to Clients or others.

4.1.2 A Representative must take reasonable steps to verify the identity of:

- (a) Clients: each Client or each of their Client Agents; and
- (b) persons to whom certificates of title are provided:
 - (i) any Client or Client Agent, prior to a Representative giving a certificate of title to that Client or Client Agent; and
 - (ii) where a Representative acts for a mortgagee, any existing mortgagor, former mortgagor or their agent, prior to the Representative giving a certificate of title to that existing mortgagor, former mortgagor or their agent.

4.1.3 For the purposes of complying with Conveyancing Rule 4.1.2, a Representative can either:

- (a) apply the Verification of Identity Standard; or
- (b) verify the identity of a person in some other way that constitutes the taking of reasonable steps.

Subject to Conveyancing Rule 4.1.4 the Verification of Identity Standard can be applied by a Representative, its Identity Agent, or by both in combination.

- 4.1.4 A Representative must undertake further steps to verify the identity of a Person Being Identified and/or any Identity Declarant where:
- (a) the Representative knows or ought reasonably to know that:
 - (i) any identity Document produced by the Person Being Identified and/or any Identity Declarant is not genuine; or
 - (ii) any photograph on an identity Document produced by the Person Being Identified and/or any Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
 - (iii) the Person Being Identified and/or any Identity Declarant does not appear to be the person to whom the identity Document(s) relate; or
 - (b) it would otherwise be reasonable to do so.
- 4.1.5 A Representative need not re-verify the identity of the Person Being Identified if:
- (a) the Representative complied with Conveyancing Rules 4.1.2, or with the corresponding Participation Rule 6.5.1, within the previous 2 years; and
 - b) the Representative takes reasonable steps to ensure that it is dealing with the Person Being Identified.

4.2 If the Verification of Identity Standard is used:

- (a) a Representative, may use an Identity Agent; and
- (b) where an Identity Agent is used, the Representative must direct the Identity Agent to use the Verification of Identity Standard; and
- (c) the Identity Verifier must be the:
 - (i) Representative and/or the Representative's Identity Agent; or
 - (ii) where a Representative represents a mortgagee, that mortgagee and/or that mortgagee's Identity Agent; or
- (d) the Representative must receive from any Identity Agent:
 - (i) copies of the Documents produced to verify the identity of the Person Being Identified and/or any Identity Declarant signed, dated and endorsed as a true copy of the original by the Identity Agent; and
 - (ii) an Identity Agent Certification.

NOTE: For advice and assistance on verifying the identity of a transacting party in a conveyancing transaction, including advice on using an Australian Embassy/High Commission/Consulate to verify the identity of an Australian or foreign national overseas, in accordance with this Rule (and Version 3 Model Participation Rules) see ARNECC MPR Guidance Note 2 - Verification of Identity at:

www.arnecc.gov.au/publications/mpr_guidance_notes

4.3 Authority (Right to Deal)

- 4.3.1 This Rule takes effect on 1 May 2016. However, the Registrar General is allowing a transition period of 3 months with full compliance required on and from 1 August 2016. Nothing in this Rule shall be taken to detract from any professional responsibility or due diligence requirement applying to Representatives with respect to Clients or others.
- 4.3.2 For each Conveyancing Transaction a Representative must take reasonable steps to verify that its Client is a legal person and has the right to enter into the Conveyancing Transaction.
- 4.3.3 A mortgagee, or a Representative of a mortgagee, must, for each mortgage, variation of mortgage or transfer of mortgage, take reasonable steps to verify that the mortgagor is a legal person and has the right to enter into the mortgage.

NOTE: For advice and assistance on determining the right of a transacting party to enter into a conveyancing transaction in accordance with this Rule (and the Version 3 Model Participation Rules) see ARNECC MPR Guidance Note 4 - Right to Deal at:

www.arnecc.gov.au/publications/mpr_guidance_notes

5. Supporting Evidence

Real Property Act 1900 Section 12E (1)

12E Making of conveyancing rules

- (1) The Registrar-General may from time to time determine, in writing, rules for or with respect to the preparation and lodgment otherwise than electronically of paper documents to give effect to conveyancing transactions (the conveyancing rules), including rules for or with respect to the following:
 - (d) the retention of documents supporting or authenticating paper documents generally, including periods of retention.

- 5.1 This Rule takes effect on 1 August 2016.
- 5.2 A Representative or, where there is no Representative, a Party must retain the evidence supporting the dealing for at least seven years from the date of lodgment of the dealing that is registered or recorded including any evidence supporting verification of a Party's identity.

NOTE: For advice and assistance on retaining evidence to support conveyancing transactions in accordance with Rule (and the Version 3 Model Participation Rules) see ARNECC MPR Guidance Note 5 - Retention of Evidence at:

www.arnecc.gov.au/publications/mpr_guidance_notes

6. Certifications

Real Property Act 1900 Sections 12E (1) (c) and 117 (1) (b)

12E Making of conveyancing rules

- (1) The Registrar-General may from time to time determine, in writing, rules for or with respect to the preparation and lodgment otherwise than electronically of paper documents to give effect to conveyancing transactions (the conveyancing rules), including rules for or with respect to the following:
 - (c) matters to be certified, or relating to the certification of matters, for the purposes of paper documents, including:
 - (i) the form of certifications, and
 - (ii) the classes of persons who may certify those matters, and
 - (iii) any supporting evidence and retention requirements.

117 Certificate of correctness

- (1) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any primary application, dealing, caveat or priority notice unless it is certified:
 - (b) if it is lodged in paper form - in accordance with the conveyancing rules.

6.1 Certifications on Paper dealings

6.1.1 This Rule takes effect on 1 May 2016.

6.1.2 The Registrar General may reject, or may refuse to accept or to take any action in relation to, any primary application, dealing or caveat lodged in paper form unless it bears the following certificates:

- (a) a certificate (signed by or on behalf of each person by whom the application, dealing or caveat has been executed) to the effect that the application, dealing or caveat is correct for the purposes of the RPA, and
- (b) a certificate (signed by each witness to the execution of the application, dealing or caveat) to the effect that:
 - (i) the witness is an eligible witness, and
 - (ii) the application, dealing or caveat was executed by the person to whose execution of the application, dealing or caveat the witness is attesting in the presence of the witness.

6.1.3 In this section, eligible witness, in relation to the execution of an application, dealing or caveat, means a person who:

- (a) is at least 18 years of age, and
- (b) is not a party to the application, dealing or caveat, and
- (c) has known the person to whose execution of the application, dealing or caveat the witness is attesting for more than 12 months or has taken reasonable steps to ensure the identity of that person.

- 6.1.4 Without limiting the generality of sub-rule 6.1.3 (c), a witness is to be considered as having taken reasonable steps to ensure the identity of the person whose execution of the application, dealing or caveat the witness is attesting if the person has taken the steps set out in this Rule. The witness must sight:
- (a) an original of a primary photographic identification document in respect of the other person, or
 - (b) an original of a primary non-photographic identification document in respect of the other person and an original of a secondary identification document in respect of the other person.
- 6.1.5 A document referred to in 6.1.4 does not include a document that has expired (other than in the case of an Australian passport that has been expired for less than 2 years).

NOTE: This Rule replicates and continues unchanged the certification requirements that, prior to 1 May 2016, were set out in section 117 of the RPA and Clause 22 of the *Real Property Regulation 2014*.