

Aligning paper and electronic conveyancing requirements

Consultation Paper



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Disclaimer

This publication has been prepared for discussion purposes and to elicit stakeholder feedback. It may not necessarily reflect the final policy outcome.

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Land Victoria, within the Department of Transport, Planning and Local Infrastructure, manages the Victorian Government's program for land administration and property information. Land Victoria's responsibilities include the operation of the Victorian Land Registry which provides land registration services under the *Transfer of Land Act 1958*.

Overview of the consultation process

Land Victoria is committed to open, accountable and responsive decision-making, informed by effective communication and consultation between Land Victoria and its key stakeholders.

This Consultation Paper outlines a number of proposed changes to conveyancing requirements and mortgage provisions in Victoria.

The consultation process began with the release of an introductory paper on 22 October 2013 (copies of the Introductory Paper can be obtained at www.dtpli.vic.gov.au>Land titles>Publications). That Introductory Paper gave a high level overview of the proposals outlined in this Consultation Paper.

This Consultation Paper sets out specific proposals related to aligning paper and electronic conveyancing processes, adopting national uniform requirements and changing mortgage provisions. This paper is available at www.dtpli.vic.gov.au>Land titles>Publications and has been emailed to key industry bodies.

The release of this Consultation Paper will be followed by an information session on 26 November 2013. Details of the information session (time, location and advice on how to RSVP) are available at www.dtpli.vic.gov.au>Land titles>Publications and have been emailed to key industry bodies.

Stakeholders are invited to make written submissions to Land Victoria by 1 February 2014 (details of how to make a submission can be found on page 5).

Following consideration of stakeholders' feedback, Land Victoria will issue a response to stakeholder submissions. Submissions from stakeholders will inform the Government's legislative agenda.

The proposed policy changes outlined in this Consultation Paper reflect Land Victoria's proposed approach. The Victorian Government will not reach a final position on these issues until after the consultation process has concluded.

The timetable for the consultation process is set out below:

Paper topic	Release date	Closing date for submissions from stakeholders	Information session
Introductory Paper	22 October 2013	N/A	N/A
Consultation Paper (<i>this paper</i>)	22 November 2013	1 February 2014	26 November 2013
Response to submissions from stakeholders	7 March 2014	N/A	N/A

Key stakeholders

Relevant stakeholders include, but are not limited to:

- conveyancers;
- lawyers;
- financial institutions and other mortgage providers;
- professional indemnity and fidelity fund insurers;

- information and search brokers;
- real estate agents; and
- relevant government departments and agencies.

Call for submissions

Land Victoria invites your written comments on this Consultation Paper.

How to make a submission

Submissions should be emailed to policy.lv@dtpli.vic.gov.au

There is no particular format that submissions need to follow. You may wish to address the consultation questions listed in this paper.

The closing date for submissions is **1 February 2014**.

Use of submissions

Unless requested not to, Land Victoria will treat all submissions received as public documents. Land Victoria reserves the right to make submissions (in part or in full) available to other parties and the general public.

1 Introduction

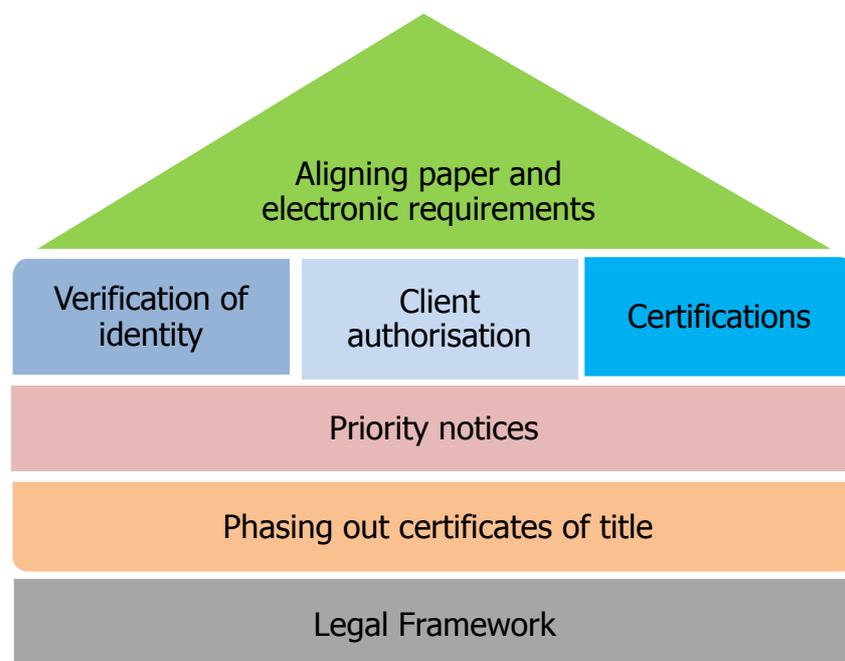
This Consultation Paper proposes aligning paper and electronic conveyancing requirements and, as far as practicable, adopting uniform national requirements to minimise inconsistencies between jurisdictions. This Consultation Paper also outlines a small number of changes to mortgage provisions. Some of these proposals will require legislative changes while others can be achieved by a change in administrative procedures.

Traditionally, conveyancing in Victoria culminates in the relevant parties physically lodging paper documents with Land Victoria. Since 2007 it has been possible to electronically submit documents to Land Victoria (electronic conveyancing). Currently, only a small percentage of conveyancing transactions are completed electronically; however, this is expected to substantially increase in the near future when national electronic conveyancing becomes fully operational. A sizeable percentage of conveyancing transactions will still be completed through paper conveyancing for the foreseeable future.

The introduction of electronic conveyancing has resulted in different practices and requirements for paper and electronic conveyancing. Land Victoria's preference is to have one set of requirements covering both paper and electronic conveyancing transactions. This will facilitate a smooth transition and efficiencies between the two lodgement mediums. It will also avoid complexity and costs to the conveyancing industry in dealing with two separate processes and requirements.

In looking at the alignment of paper and electronic processes, this Consultation Paper will consider what safeguards are needed to enable the phasing out of certificates of title for all property transactions, both paper and electronic, so that the integrity of the Torrens title system is maintained.

The following diagram sets out the building blocks for achieving the alignment of paper and electronic conveyancing requirements.



2 Phasing out certificates of title

What is proposed

The long-term preference of the Registrar of Titles (the Registrar) is to abolish paper certificates of title. It is proposed that this will occur when other safeguards, including verification of identity, client authorisation, certifications and priority notices are fully implemented and the majority of conveyancing transactions are being completed electronically.

As an interim solution, the Registrar proposes to make paper certificates of title optional for all subscribers authorised to lodge electronically via an electronic lodgement network ; for example PEXA. For all other parties, paper certificates of title will continue to issue. The nomination of electronic certificates of title to electronic conveyancing transactions will also no longer be required.

The interim solution is already supported by legislation.

The *Transfer of Land Act 1958* currently enables the Registrar to not produce a certificate of title under certain circumstances, as set out in Sections 27B and 44D:

27B Certificates of title

(7B) The Registrar is not required to produce a certificate of title for a folio of the Register if —

- (a) the person entitled to receive the certificate of title requests that no certificate of title be produced; and*
- (b) the Registrar is satisfied that the non-production of a certificate of title is appropriate in the circumstances ...*

44D Powers of Registrar

(3) Nothing in Section 27B requires the Registrar to produce a certificate of title in respect of the registration of an electronic instrument.

However, a legislative amendment for the interim solution is proposed for Section 27B – to remove (7B)(a) and add a new provision allowing a person to request the production of a paper certificate of title.

Legislative amendment will also be required for the long term solution, which is to give the Registrar the power to dispense with issuing certificates of title from a specified date. The specified date will be published in the *Victoria Government Gazette* and certificates of title will have no relevance after that specified date.

It is also proposed to give the Registrar the power to specify the classes of instruments to be lodged electronically.

Rationale for the proposal

For a typical paper conveyancing transaction to proceed, the relevant certificate of title must be produced. The certificate of title must also accompany the instruments lodged for registration at Land Victoria.

The paper certificate of title is seen to perform a number of functions including:

- a means of authenticating the relinquishing party in a transaction;

- evidence of the right to deal with the land;
- acting as a baton to pass control of the paper certificate of title from one party to another at the time of settlement (possession of this unique baton serves to protect the interests of the incoming purchaser and mortgagee between settlement and lodgement by ensuring that another dealing transferring that estate or interest does not gain priority);
- acting as a safeguard against multiple sales of the same parcel of land; and
- acting as a confirmation of registration of the conveyancing transaction.

In the current environment, the paper certificate of title is often the only document that is used to identify owners.

While possession of the paper certificate of title is treated as evidence of ownership and hence the right to deal, it does not prove that the person transacting with the property is the person named in the Register of land as the registered proprietor (or otherwise entitled to deal); it only shows that person has access to the certificate of title. Despite the inherent weakness of relying on certificates of title, the perception of their importance in a conveyancing transaction is seen to contribute to the control of fraudulent transactions.

The need to use paper certificates of title in an electronic lodgement network prevents the creation of a fully automated system. Therefore, the removal of the paper certificate of title is a necessary element of an electronic lodgement network. It was achieved in Victoria with the concept of electronic certificates of title. This was supported by functionality to convert paper certificates of title to electronic certificates of title, and functionality to nominate electronic certificates of title to electronic and paper conveyancing transactions.

The electronic certificate of title is an electronic record held within the Victorian Online Titles System (VOTS) that records who controls the title. Only subscribers to an electronic lodgement network can be recorded as the controlling party of an electronic certificate of title. When a paper or electronic transaction is lodged with Land Victoria, VOTS performs a validation to confirm that the controlling party of the electronic certificate of title has 'produced it' through a nomination. Without the nomination the transaction will not proceed.

The process involved in maintaining an electronic record of who controls the title and validating it upon lodgement provides a significant improvement over the processes associated with paper certificates of title, where no validation can be undertaken.

One of the hurdles of removing the paper certificate of title is the perception held by industry and members of the public that paper certificates of title prevent fraud. However, this is a fallacy. It presumes that most fraud is perpetrated by forging the paper certificate of title and experience shows this is often not the case.

Most of the time a fraud occurs when someone has access to the certificate of title and they purport to be the registered proprietor by forging their signature(s). This shows that the paper certificate of title can potentially contribute to fraud due to the reliance placed on it as an authentication of the relinquishing party and evidence of an entitlement to deal with the land. In fact, it merely shows that the person was able to obtain access to the certificate of title.

The Registrar's view is that phasing out paper certificates of title will create efficiencies for industry and Land Victoria, and strengthen the current system as a result of the additional safeguards proposed in Sections 4 to 8 of this Consultation Paper.

Four options have been considered for phasing out certificates of title and the advantages and disadvantages of each:

Option 1 – do nothing and retain the paper certificate of title

The 'do nothing' option is considered in the context of an interim position, with an eventual move into one of the other options. This option does not support a fully automated system for electronic conveyancing transactions.

Advantages:

- no procedural changes to internal and external processes; and
- no business system changes.

Disadvantages:

- it is not practical for electronic conveyancing;
- more resources will be required to maintain current levels of production; and
- there will likely be pressure to introduce process improvements.

Option 2 – abolish paper certificates of title for all folios encumbered by a mortgage and retain them for all non-mortgaged folios

This option is considered as both a permanent position as well as an interim position, and in the context of implementation for paper and electronic conveyancing transactions. Paper certificates of title would not be issued for any folios encumbered by a mortgage (except private mortgages). For all non-mortgaged folios, a paper certificate of title would continue to issue and would need to be presented for each conveyancing transaction.

Advantages:

- in the short term, only the financial industry component of the client base would be effected;
- it eliminates storage and retrieval costs for mortgagees;
- it eliminates the costly process of replacing lost certificates of title for mortgagees;
- no variation will be required in the issuing of paper certificates of title;
- a reduction in the printing and delivery of certificates of title by approximately 60 per cent; and
- removal of the processing functions associated with delivering certificates of title secured by mortgages.

Disadvantages

- private mortgagees and some financial institutions may still want paper certificate of titles for security;
- it will require dual processes for the printing of paper certificates of title;
- business practices and business system changes will be required for industry and Land Victoria; and
- it only partially supports a fully automated system for electronic conveyancing.

Option 3 – optional issue of paper certificates of title for subscribers to an electronic lodgement network

This option is considered in the context of a permanent position as well as an interim position, and in the context of paper and electronic conveyancing transactions. Subscribers to an electronic lodgement network would have the option of not having a paper certificate of title. For all other parties, paper certificates of title will continue to issue. The nomination of electronic certificates of

title to electronic conveyancing transactions will no longer be required. Other nomination processes would continue to be required.

Advantages

- it provides subscribers with access to an electronic lodgement network with the option of not having a paper certificate of title;
- only known and verified parties can choose to not have a paper certificate of title;
- reduces storage and retrieval costs for paper certificates of title;
- eliminates the costly process of replacing lost certificates of title;
- no variation will be required in the issuing of paper certificates of title;
- reduction in the printing and delivery of certificates of title by more than 60 per cent; and
- removal of the processing functions associated with delivering certificates of title.

Disadvantages

- there are no specific business rules regarding when a paper certificate of title would be printed (these requirements would need to be specified in the lodgement or nomination);
- continuing dual processes for the printing of paper certificates of title;
- business practices and business system changes are required for industry and Land Victoria; and
- it only partially supports a fully automated system for electronic conveyancing.

Option 4 – abolish paper certificates of title

This option is considered as a permanent position and in the context of implementation for paper and electronic conveyancing transactions. It requires the full implementation of the safeguards outlined in Sections 4 to 8, together with the management of consents outlined in section 9, of this Consultation Paper and the majority of conveyancing transactions being completed electronically. With the safeguards in place, the paper certificate of title would no longer be required to be produced as proof of the right to deal, and issuing paper certificates of title can be abolished.

Advantages:

- it eliminates storage, retrieval and printing costs for paper certificates of title;
- it eliminates the costly process of replacing lost certificates of title;
- it facilitates a move towards a complete electronic environment;
- it eliminates the ability of fraud by use of a paper certificate of title; and
- it creates efficiencies and a consistent process for paper and electronic conveyancing transactions.

Disadvantages

- it is a major change for industry to accept, in a relatively short timeframe;
- it requires implementation of the safeguards outlined in Sections 4 to 8 and the majority of conveyancing transactions being completed electronically may take several years;
- settlement and lodgement of a paper conveyancing transaction could be from an 'unknown' or non-verified person, causing greater risks to industry and Land Victoria;
- significant business practices and business systems changes are required for industry and Land Victoria; and
- a significant training and education program would be required.

Preferred interim option and long term solution

Option 3 is the preferred interim solution. Option 3 is preferred because it will allow time for the safeguards including verification of identity, client authorisation, certifications and priority notices to be fully implemented prior to paper certificates of title being abolished.

Option 4 is the preferred long term option and will be implemented when the safeguards are fully operational and the majority of conveyancing transactions are being completed electronically. Legislative amendment will be required to support Option 4 to give the Registrar the power to dispense with issuing certificates of title from a specified date. Certificates of title will have no relevance after the specified date.

How it will work

Preferred interim option – option 3

The following tables describe the different scenarios for paper and electronic conveyancing transactions and what each scenario requires if Option 3 (optional issue of paper certificates of title for subscribers to an electronic lodgement network (ELN)) was implemented.

For example, the ticks in column 2 for Scenario 1 show that it is a paper conveyancing transaction, a paper certificate of title exists and the controller of the certificate of title is a party to the transaction. The column headed Requirements, sets out what is required for this scenario.

Variables	Scenario 1	Requirements
Paper conveyancing transaction	✓	The paper certificate of title must be provided for the transaction
Electronic conveyancing transaction		The paper certificate of title must be presented with the paper conveyancing transaction at lodgement
Paper certificate of title exists	✓	If the incoming controlling party of the certificate of title is not a subscriber to an ELN a new paper certificate of title will issue
Paper certificate of title does not exist		
Controller of the certificate of title is a party in the transaction	✓	If the incoming controlling party of the certificate of title is a subscriber to an ELN the default position will be no paper certificate of title The incoming controlling party of the certificate can override the default position and request a paper certificate of title
Controller of the certificate of title is not a party to the transaction		

Variables	Scenario 2	Requirements
Paper conveyancing transaction	✓	The paper certificate of title must be nominated through the 'made available' system
Electronic conveyancing transaction		If the nominating party of the certificate of title is not a subscriber to an ELN, a new paper certificate of title will issue
Paper certificate of title exists	✓	
Paper certificate of title does not exist		If the nominating party of the certificate of title is a subscriber to an ELN the default position will be no paper certificate of title
Controller of the certificate of title is a party in the transaction		
Controller of the certificate of title is not a party to the transaction	✓	The nominating party of the certificate can override the default position and request a paper certificate of title

Variables	Scenario 3	Requirements
Paper conveyancing transaction	✓	The electronic certificate of title must be nominated in the ELN to the paper conveyancing transaction
Electronic conveyancing transaction		If the incoming controlling party of the certificate of title is not a subscriber to an ELN, a new paper certificate of title will issue
Paper certificate of title exists		
Paper certificate of title does not exist	✓	If the incoming controlling party of the certificate of title is a subscriber to an ELN, the default position will be no paper certificate of title
Controller of the certificate of title is a party in the transaction	✓	
Controller of the certificate of title is not a party to the transaction		The incoming controlling party of the certificate can override the default position and request a paper certificate of title

Variables	Scenario 4	Requirements
Paper conveyancing transaction	✓	<p>The electronic certificate of title must be nominated in the ELN to the paper conveyancing transaction</p> <p>As the nominating party of the certificate of title is a subscriber to an ELN the default position will be no paper certificate of title</p> <p>The nominating party of the certificate can override the default position and request a paper certificate of title</p>
Electronic conveyancing transaction		
Paper certificate of title exists		
Paper certificate of title does not exist	✓	
Controller of the certificate of title is a party in the transaction		
Controller of the certificate of title is not a party to the transaction	✓	

Variables	Scenario 5	Requirements
Paper conveyancing transaction		<p>A nomination is not required. The controller of the paper certificate of title will authenticate the paper certificate of title and provide a certification in the lodgement instructions for the electronic conveyancing transaction that they have destroyed or invalidated the paper certificate of title</p> <p>As the incoming controlling party of the certificate of title is a subscriber to an ELN the default position will be no paper certificate of title</p> <p>The incoming controlling party of the certificate of title can override the default position and request a paper certificate of title</p>
Electronic conveyancing transaction	✓	
Paper certificate of title exists	✓	
Paper certificate of title does not exist		
Controller of the certificate of title is a party in the transaction	✓	
Controller of the certificate of title is not a party to the transaction		

Variables	Scenario 6	Requirements
Paper conveyancing transaction		The paper certificate of title must be nominated to the electronic conveyancing transaction through the 'made available system'
Electronic conveyancing transaction	✓	
Paper certificate of title exists	✓	If the nominating party of the certificate of title is not a subscriber to an ELN a new paper certificate of title will issue
Paper certificate of title does not exist		
Controller of the certificate of title is a party in the transaction		If the nominating party of the certificate of title is a subscriber to an ELN the default position will be no paper certificate of title
Controller of the certificate of title is not a party to the transaction	✓	
		The nominating party of the certificate of title can override the default position and request a paper certificate of title

Variables	Scenario 7	Requirements
Paper conveyancing transaction		A nomination is not required
Electronic conveyancing transaction	✓	
Paper certificate of title exists		As the incoming controlling party of the certificate of title is a subscriber to an ELN the default position will be no paper certificate of title. The incoming controlling party of the certificate of title can override the default position and request a paper certificate of title
Paper certificate of title does not exist	✓	
Controller of the certificate of title is a party in the transaction	✓	
Controller of the certificate of title is not a party to the transaction		

Variables	Scenario 8	Requirements
Paper conveyancing transaction		<p>A nomination is not required</p> <p>The controlling party of the certificate of title is not required to participate in the workspace</p> <p>As the controlling party of the certificate of title is a subscriber to an ELN the default position will be no paper certificate of title</p>
Electronic conveyancing transaction	✓	
Paper certificate of title exists		
Paper certificate of title does not exist	✓	
Controller of the certificate of title is a party in the transaction		
Controller of the certificate of title is not a party to the transaction	✓	

Preferred long-term option – Option 4

The following table describes the different scenarios for paper and electronic conveyancing transactions and the requirements for each for Option 4 – abolish paper certificates of title. Option 4 will commence when other safeguards including verification of identity, client authorisation, certifications and priority notices are fully implemented and the majority of conveyancing transactions are being completed electronically. Certificates of title will have no relevance after a specified date, which would be published in the *Victoria Government Gazette*.

Customers lodging paper conveyancing transactions with Land Victoria will need to be 'known and verified' or have their identity verified by an authorised verifier and provide certification of their identity from the authorised verifier.

Variables	Scenario 9	Scenario 10	Scenario 11	Scenario 12	Requirements
Paper conveyancing transaction	✓	✓			Verification of identity, client authorisation and certifications completed for all conveyancing transactions
Electronic conveyancing transaction			✓	✓	
Controller of the certificate of title is a party in the transaction	✓		✓		Paper certificates of title abolished
Controller of the certificate of title is not a party to the transaction		✓		✓	Nominations no longer required

Questions

- 2.1: Do the proposed safeguards outlined in Sections 4-8 of this Consultation Paper adequately replace the functions of the certificate of title?**
- 2.2: Are there any other options that should be considered?**
- 2.3: Are there any other safeguards that need to be considered prior to paper certificates of title being abolished?**

3 Applying electronic conveyancing requirements to paper conveyancing

What is proposed

The *Participation Rules* for electronic conveyancing determined by the Registrar of Titles under the *Electronic Conveyancing National Law (Victoria)* set out the requirements for verification of identity, client authorisation and certifications. The Registrar intends to apply these same requirements, modified only as necessary, to paper conveyancing transactions.

The *Participation Rules* are available at www.dtpli.vic.gov.au>Land titles>Publications.

Rationale for the proposal

The implementation of verification of identity, client authorisation and certifications for paper conveyancing transactions will align with the requirements for electronic conveyancing transactions and allow a smooth transition between the two lodgement mediums. This is because, initially at least, a conveyancer, lawyer or mortgagee may not know if a particular transaction is going to progress in paper or electronically. It will also give conveyancers, lawyers and mortgagees greater certainty in a paper conveyancing transaction when they deal with other parties. These safeguards will assist in maintaining the integrity of the Torrens title system, are important fraud mitigation measures and support the phasing out of paper certificates of title.

How it will work

Sections 4 to 6 of this Consultation Paper describe how this will work.

Question

3.1: Should the requirements for paper and electronic conveyancing transactions be aligned? If not, why not?

4 Verification of identity for paper conveyancing transactions

What is proposed

The Registrar of Titles (the Registrar) proposes to introduce verification of identity requirements for paper conveyancing transactions from 1 January 2015.

Verification of identity requirements are already in place for electronic conveyancing transactions and the Registrar intends to mirror those requirements, modified only as necessary, for paper conveyancing transactions.

Legislative amendment is not a prerequisite to introducing verification of identity requirements for paper conveyancing transactions, because Section 27AB of the *Transfer of Land Act 1958* (the Act) provides that the Registrar need not register an instrument if he is not satisfied about the identity of a transacting party. However, it is proposed to replace Sections 27AB(2) and (3) of the Act with a requirement for the Registrar to publish in the *Victoria Government Gazette* any verification of identity requirements he determines.

Rationale for the proposal

Land Victoria considers that verification of identity is a vitally important fraud mitigation and consumer protection measure. In addition, introducing verification of identity for paper transactions will align paper and electronic processes.

How it will work

Who can verify identity?

The Registrar proposes that the following persons can verify identity:

- conveyancers;
- lawyers;
- authorised deposit-taking institutions (ADIs); and
- Subscribers to an Electronic Lodgment Network operating under the Electronic Conveyancing National Law (Victoria).

These parties are known as 'Verifiers' in this consultation paper. As the Registrar proposes utilising the Verification of Identity Standard set out in Schedule 8 of the *Participation Rules*, the term 'Subscriber' has been amended for paper conveyancing transactions – see the definition later in this section.

Who must have their identity verified?

The Registrar proposes that the following persons should have their identity verified:

- clients;
- mortgagors;
- Persons who sign on behalf of conveyancers, lawyers and mortgagees
- Persons to whom a paper certificate of title is given, except for conveyancers, lawyers, authorised deposit-taking institutions and Subscribers to an Electronic Lodgment Network; and
- where the Verification of Identity Standard is used, any Declarant.

These parties are known as 'Persons Being Identified' in this Consultation Paper and in the Verification of Identity Standard set out below.

How must verification of identity be conducted?

A Verifier must take reasonable steps to verify the identity of a Person Being Identified.

Compliance with the Verification of Identity Standard set out below will be deemed to constitute taking reasonable steps for the purposes of the Registrar's verification of identity requirements. If the Verification of Identity Standard is not followed, a Verifier may need to prove that they have taken reasonable steps.

Regardless of whether the Verification of Identity Standard is used or not, a Verifier or their agent must undertake further steps where the Verifier or their agent knows or ought reasonably to know that:

- any identity document is not genuine; or
- any photograph on an identity document is not a reasonable likeness of the Person Being Identified; or
- if it would otherwise be reasonable to do so.

Supporting evidence and document retention

Any material supporting verification of identity, or a copy where appropriate, must be retained for at least seven years from the date of lodgement of the instrument concerned.

Certifications

Please refer to the Section 6 of this Consultation Paper on certifications.

A conveyancer or lawyer will be required to provide a certification that they have taken reasonable steps to verify the identity of the party they represent and that they have retained the supporting evidence.

For a mortgage, a mortgagee will be required to provide a certification that they have taken reasonable steps to verify the identity of the mortgagor and that they have retained the supporting evidence.

Non-represented parties

See Section 8 for the proposed requirements for non-represented parties.

Questions

- 4.1: Is it reasonable to introduce verification of identity requirements for paper conveyancing transactions? If not, why not?**
- 4.2: Is the proposed list of Verifiers appropriate? Are there any other categories of persons who should have the authority to verify identity?**
- 4.3: Is the proposed list of situations where identity must be verified appropriate? Are there any other situations where verification of identity should be required?**
- 4.4: Is the proposed seven year period for retention of documents appropriate? If not why not, and what would be appropriate?**

Verification of Identity for Paper Conveyancing Transactions

For a paper Conveyancing Transaction the following definitions replace those in the Verification of Identity Standard in the Participation Rules set out below.

Client Authorisation means a Document that is in the form required by the Registrar of Titles by which a party to a paper Conveyancing Transaction authorises a Subscriber to do one or more things on the party's behalf.

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

Person Being Identified means:

- (a) each of the Subscriber's Signers, prior to the initial allocation of the authority to act as a Signer; and
- (b) where the Subscriber is a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent at or before the signing of the mortgage or the variation of mortgage; and
- (c) where the Subscriber represents a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent at or before the signing of the mortgage or the variation of mortgage; however, the Subscriber or the Subscriber Agent need not take reasonable steps to verify the identity of each mortgagor or their agent if the mortgagee has already taken reasonable steps to verify the identity of each mortgagor or their agent; and
- (d) for a transfer of mortgage, where the Subscriber is the transferee or where the Subscriber represents the transferee, each mortgagor or their agent who signed the mortgage sought to be transferred; and
- (e) each Client the Subscriber intends to represent or each of their Client Agents at or before the signing of the Client Authorisation; and
- (f) where the Subscriber gives a paper certificate of title to any other Person who is not a subscriber to an electronic lodgement network, Representative or an ADI, that Person prior to providing the paper certificate of title; and
- (g) where the Verification of Identity Standard is used, any Declarant at the face-to-face in-person interview with the Subscriber or the Subscriber Agent.

Signer means a Person authorised by the Subscriber to sign, and where it is required, certify, Documents on behalf of the Subscriber.

Subscriber means an ADI, an Australian Legal Practitioner or a Licensed Conveyancer.

Verification of Identity Standard (as included in the Participation Rules)

1. Definitions

In this Verification of Identity Standard capitalised terms have the meanings set out below:

ADI or authorised deposit-taking institution has the meaning given to it in the *Banking Act 1959 (Cth)*.

Adult has the meaning given to it in the ECNL.

Australian Consular Officer has the meaning given to it in the *Consular Fees Act 1955 (Cth)*

Australian Diplomatic Officer has the meaning given to it in the *Consular Fees Act 1955 (Cth)*.

Australian Legal Practitioner has the meaning given to it in the *Legal Profession Act 2004*.

Australian Passport means a passport issued by the Australian Federal Government.

Bank Manager means a Person appointed to be in charge of the head office or any branch office of an ADI carrying on business in Australia under the *Banking Act 1959 (Cth)*.

Client means a Person who has or Persons who have appointed a Subscriber as their Representative pursuant to a Client Authorisation.

Client Authorisation has the meaning given to it in the ECNL.

Category means the categories of identification Documents set out in Verification of Identity Standard paragraph 3, as amended from time to time.

Commonwealth has the meaning given to it in the ECNL.

Community Leader means, in relation to an Aboriginal or Torres Strait Islander community:

- (a) a Person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community, an elected member of the council; or
- (c) a member, or a member of staff, of a Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Commission Act 2005 (Cth)*; or
- (d) a member of the board, or a member of staff, of Indigenous Business Australia established under the *Aboriginal and Torres Strait Islander Commission Act 2005 (Cth)*; or
- (e) a member of the board, or a member of staff, of an Indigenous Land Corporation established under the *Aboriginal and Torres Strait Islander Commission Act 2005 (Cth)*; or
- (f) a member, or a member of the staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*.

Competent Officer has the meaning given to it in the *Defence Force Regulations 1952 (Cth)*.

Court Officer means a judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court in Australia.

Declarant means a Person providing an Identifier Declaration.

Defence Force has the meaning given to it in the *Defence Act 1903 (Cth)*.

Doctor means a Person who is registered under any Commonwealth, State or Territory law as a practitioner in the medical profession.

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the Application Law, as amended from time to time.

Foreign Country has the meaning given to it in the ECNL.

Verification of Identity Standard (as included in the Participation Rules)

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 4.

Insurance Rules means the insurance rules set out in the Participation Rules, as amended from time to time.

Land Council Officeholder means a chairperson or deputy chairperson of an Australian land council or land and sea council established under any Commonwealth, State or Territory law.

Licensed Conveyancer means a Person licensed or registered under the *Conveyancers Act 2006*.

Local Government Officeholder means a chief executive officer or deputy chief executive officer of a local government.

Member of the Defence Force has the meaning given to it in the *Defence Force Regulations 1952 (Cth)*.

Nurse means a Person registered under any Commonwealth, State or Territory law as a practitioner in the nursing and midwifery profession.

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

Person has the meaning given to it in the ECNL.

Person Being Identified means any of the Persons required to be identified under Participation Rule 6.5.1 (a) to (f).

Police Officer means an officer of any Commonwealth, State or Territory police service.

Proof of Age Card is a card issued by any State or Territory showing a photograph of the holder and enabling the holder to evidence their age.

Public Servant means an employee of the Commonwealth, a State or Territory.

Relative means a Person's spouse or domestic partner or a child, grandchild, sibling, parent or grandparent of the Person or of the Person's spouse or domestic partner.

Representative means a Subscriber who acts on behalf of a Client.

Signer means a User authorised by the Subscriber to Digitally Sign, and where it is required, certify, electronic Documents on behalf of the Subscriber.

State means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Statutory Declaration has the meaning given to it in the ECNL.

Subscriber has the meaning given to it in the ECNL.

Subscriber Agent means a Person authorised by a Subscriber to act as the Subscriber's agent.

Territory has the meaning given to it in the ECNL.

Verification of Identity Standard means this verification of identity standard, as amended from time to time.

2. Face-to-face regime

2.1 The verification of identity must be conducted during a face-to-face in-person interview between the Subscriber or the Subscriber Agent and the Person Being Identified.

2.2 Where Documents containing photographs are produced by the Person Being Identified, the Subscriber or the Subscriber Agent must be satisfied that the Person Being Identified is a reasonable likeness (for example the shape of his or her mouth, nose, eyes and the position of his or her cheek bones) to the Person depicted in those photographs.

Verification of Identity Standard (as included in the Participation Rules)

3. Categories of identification Documents

- 3.1 The Subscriber or the Subscriber Agent must ensure that the Person Being Identified produces original Documents in one of the following Categories, starting with Category 1.
- 3.2 The Subscriber or the Subscriber Agent must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.
- 3.3 The Subscriber or the Subscriber Agent must sight the originals of all Documents from Categories 1, 2, 3, 4, or 5 produced by the Person Being Identified.
- 3.4 The Documents produced must be current.

Category	Minimum Document Requirements
	For Persons who are Australian citizens or residents:
1	Australian Passport or foreign passport and an Australian visa grant notice evidencing an Australian resident visa <u>plus</u> Australian drivers licence or Proof of Age Card <u>plus</u> change of name or marriage certificate if necessary
2	Australian Passport or foreign passport and an Australian visa grant notice evidencing an Australian resident visa <u>plus</u> full birth certificate, citizenship certificate or descent certificate <u>plus</u> Medicare, Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
3	Australian drivers licence or Proof of Age Card <u>plus</u> full birth certificate, citizenship certificate or descent certificate <u>plus</u> Medicare, Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	<p>(a) Identifier Declaration <u>plus</u> full birth certificate, citizenship certificate, descent certificate <u>plus</u> Medicare, Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary.</p> <p>(b) Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(e) <u>plus</u> Medicare, Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary.</p> <p>Note: refer to Verification of Identity Standard paragraph 4</p>
	For Persons who are not Australian citizens or residents:
5	<p>(a) Foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary</p> <p>(b) Foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary</p>

4. The Identifier Declaration

- 4.1 Where the requirements of:
- (a) Categories 1 to 3 cannot be met, Category 4(a) may be used; and
- (b) Category 4(a) cannot be met, Category 4(b) may be used, including the provision of an Identifier Declaration in accordance with this paragraph.

Verification of Identity Standard (as included in the Participation Rules)

- 4.2 The Subscriber or the Subscriber Agent must ensure that both the Person Being Identified and the Declarant attends the same face-to-face in-person interview with the Subscriber or the Subscriber Agent.
- 4.3 The Subscriber or the Subscriber Agent must verify the identity of the Declarant in accordance with this Verification of Identity Standard except that the Subscriber or the Subscriber Agent cannot utilise Category 4 as set out in Verification of Identity Standard paragraph 3.
- 4.4 The Subscriber or the Subscriber Agent must undertake reasonable enquiries to satisfy themselves that the Declarant is:
- (a) an Adult; and
 - (b) an individual who has known the Person Being Identified for more than 12 months; and
 - (c) not a Relative of the Person Being Identified; and
 - (d) not a party to the Conveyancing Transaction the Person Being Identified has or is entering into; and
 - (e) where Category 4(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.
- 4.5 The Subscriber or the Subscriber Agent must ensure that the Declarant provides a Statutory Declaration detailing the following:
- (a) the Declarant's name and address; and
 - (b) the Declarant's occupation; and
 - (c) the Declarant's date of birth; and
 - (d) the nature of the Declarant's relationship with the Person Being Identified; and
 - (e) that the Declarant is not a relative of the Person Being Identified; and
 - (f) that the Declarant is not a party to the Conveyancing Transaction the Person Being Identified has or is entering into; and
 - (g) the length of time that the Declarant has known the Person Being Identified; and
 - (h) that to the Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
 - (i) where Category 4(b) is used, that the Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.

5. Execution by Body Corporate

Where a Client Authorisation or mortgage is to be executed by a body corporate, the Subscriber or the Subscriber Agent must:

- (a) confirm the existence and identity of the body corporate by conducting a search of the Records of the Australian Securities and Investments Commission or other regulatory body with whom the body corporate is required to be registered; and
- (b) take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the body corporate; and
- (c) verify the identity of the individual or individuals signing or affixing the seal on behalf of the body corporate in accordance with the Verification of Identity Standard.

Verification of Identity Standard (as included in the Participation Rules)

[Note: *body corporate* includes an incorporated association.]

6. Execution by an Individual as attorney

Where a Client Authorisation or mortgage is to be executed by an Individual as attorney under a power of attorney, the Subscriber or the Subscriber Agent must:

- (a) confirm from the power of attorney the details of the attorney and the Client Party; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) verify the identity of the attorney in accordance with the Verification of Identity Standard.

7. Execution by Body Corporate as attorney

Where a Client Authorisation or mortgage is to be executed by a body corporate as attorney under a power of attorney, the Subscriber or the Subscriber Agent must:

- (a) confirm from the power of attorney the details of the attorney and the Client Party; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) comply with Verification of Identity Standard paragraph 5.

[Note: *body corporate* includes an incorporated association.]

8. Verification of identity conducted in a Foreign Country

8.1 A verification of identity conducted in a Foreign Country must be conducted by either:

- (a) an Australian Consular Officer or an Australian Diplomatic Officer; or
- (b) where the Person Being Identified is a Member of the Australian Defence Force, a Competent Officer.

8.2 Category 4 cannot be used for verifications of identity conducted in a Foreign Country.

9. Use of Subscriber Agent

Where the Subscriber engages a Subscriber Agent to verify the identity of a Person Being Identified and any Declarant and witness the signing of the properly completed Client Authorisation where applicable, the Subscriber must:

- (a) appoint a Subscriber Agent who the Subscriber reasonably believes is reputable, competent and insured in compliance with the Insurance Rules; and
- (b) ensure that the Subscriber Agent does not limit its liability for negligence to less than the amount specified in paragraph 1.2(b) of the Insurance Rules or for fraud to less than the amount specified in paragraph 2.2(b) of the Insurance Rules; and
- (c) direct the Subscriber Agent to conduct the verification of identity in accordance with this Verification of Identity Standard; and
- (d) where a Client Authorisation is required, receive from the Subscriber Agent the completed Client Authorisation signed in the presence of the Subscriber Agent; and
- (e) receive from the Subscriber Agent copies of the Documents produced to verify the identity of the Person Being Identified and any Declarant signed, dated and endorsed as a true copy of the original by the Subscriber Agent, and a certification in the following form:

Verification of Identity Standard (as included in the Participation Rules)

"I, [full name of the Subscriber Agent], of [address of the Subscriber Agent] being a [occupation of the Subscriber Agent] hereby certify that:

- (a) the identification relates to [full name of the Person Being Identified or the Declarant]; and
- (b) the identification was carried out on [date]; and
- (c) the original current identification Documents as listed below were produced to me and copies of these Documents endorsed by me as true copies are attached to this certification; and
- (d) the verification of identity was conducted in accordance with the Registrar's Verification of Identity Standard [; and]

[I witnessed [full name of the Person] execute the completed Client Authorisation].

Date:.....

Subscriber Agent

List of identification Documents produced (see c) above):

Description of identity Documents produced and sighted	Page number in set of copies
<i>E.g. Australian Passport</i>	<i>1</i>

10. Further checks

The Subscriber or the Subscriber Agent must undertake further steps to verify the identity of the Person Being Identified or the Declarant where the Subscriber or the Subscriber Agent knows or ought reasonably to know that:

- (a) any identity Document produced by the Person Being Identified or the Declarant is not genuine; or
- (b) any photograph on an identity Document produced by the Person Being Identified or the Declarant is not a reasonable likeness of the Person Being Identified or the Declarant; or
- (c) if it would otherwise be reasonable to do so.

11. Previous verification of identity

The Subscriber or the Subscriber Agent need not verify the identity of the Person Being Identified in accordance with this Verification of Identity Standard if the Subscriber or the Subscriber Agent has a face-to-face in-person interview with the Person Being Identified and has within the previous 24 months verified the identity of the Person Being Identified in accordance with this Verification of Identity Standard.

5 Client authorisation

What is proposed

The Registrar of Titles proposes to introduce client authorisation requirements for paper conveyancing transactions in 2015. The client authorisation will authorise the conveyancer or lawyer to act as the client's agent and sign paper conveyancing transactions on their behalf.

Client authorisation requirements are already in place for electronic conveyancing transactions and the Registrar intends to mirror those requirements, modified only as necessary, for paper conveyancing transactions.

Legislative amendment to the *Transfer of Land Act 1958* is proposed to support the introduction of client authorisation requirements for paper conveyancing transactions. It is proposed to have similar client authorisation provisions for paper conveyancing transactions as those for electronic conveyancing transactions, as set out in Section 10 of the *Electronic Conveyancing National Law (Victoria)* and rule 6.3 of the *Participation Rules*.

Rationale for the proposal

The introduction of client authorisations in both the paper and electronic environments will allow a smooth transition between the two lodgement mediums for conveyancers and lawyers. This is because, initially at least, a conveyancer or lawyer may not know whether a particular transaction is going to progress in paper or electronically. The introduction of client authorisation for paper conveyancing transactions is an extension of existing practices, where for a number of conveyancing transaction types, the conveyancer or lawyer already executes the instrument on behalf of their client, for example: caveats.

How it will work

If a conveyancer or lawyer is representing a client, they will be required to enter into a client authorisation with their client.

The conveyancer or lawyer will be required to:

- use the client authorisation form for any client authorisation entered into; and
- enter into a client authorisation with their client before they sign any paper conveyancing transaction on behalf of their client, and
- comply with the client authorisation and act in accordance with its terms.

The conveyancer or lawyer will also need to take reasonable steps to establish that the client is entitled to enter into the conveyancing transaction identified in the client authorisation. Reasonable steps could include obtaining some form of proof that ties the client's identity to the land in the transaction.

It is proposed that the client authorisation form included in Schedule 4 of the *Participation Rules* for electronic conveyancing will be used for both paper and electronic conveyancing transactions.

The Australian Registrars' National Electronic Conveyancing Council (ARNECC), in consultation with industry peak bodies, is currently revising the form to make it suitable for both paper and electronic conveyancing transactions.

The latest draft of the Client Authorisation Form follows.

Question

5.1: Is the introduction of client authorisation requirements appropriate for paper conveyancing transactions? If not, why not?

CLIENT AUTHORISATION

When this form is signed, the Subscriber is authorised to act for the Client in a Conveyancing Transaction or Conveyancing Transactions.

Subscriber Reference: _____

CLIENT DETAILS		CLIENT 1	CLIENT 2
	NAME	_____	_____
	ABN/ACN/ARBN	_____	_____
	ADDRESS	_____	_____

TRANSACTION DETAILS	AUTHORITY TYPE <input type="checkbox"/> SPECIFIC AUTHORITY <input type="checkbox"/> STANDING AUTHORITY <input type="checkbox"/> BATCH AUTHORITY <small>(details of transactions to be provided below)</small> <small>AUTHORITY EXPIRATION DATE: ___/___/___</small> <small>(details to be attached)</small> <small>(details to be attached when available)</small>			
		CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2	
	PROPERTY ADDRESS	_____	_____	
	LAND TITLE REFERENCE(S) <small>(and/or property description)</small>	_____	_____	
	TRANSACTION TYPE(S)	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAW CAVEAT	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAW CAVEAT	
SPECIAL INSTRUCTIONS <small>(use for describing other transaction types)</small>	_____			

CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	<p>I CERTIFY that:</p> <p>(a) I am the Client or Client Agent; and</p> <p>(b) I have the legal authority to instruct the Subscriber in relation to the Conveyancing Transaction(s); and</p> <p>(c) If I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.</p> <p>I AUTHORISE the Subscriber to act as my agent, or where I am a Client Agent to act as the agent of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:</p> <p>(a) sign Documents on my behalf as required for the Conveyancing Transaction Type; and</p> <p>(b) submit or authorise submission of Documents for Lodgement with the relevant Land Registry; and</p> <p>(c) authorise any financial settlement involved in the Conveyancing Transaction(s); and</p> <p>(d) do anything else necessary to complete the Conveyancing Transaction(s).</p>	
	_____ CAPACITY: _____ DATE / / PRINT NAME: _____	_____ CAPACITY: _____ DATE / / PRINT NAME: _____

SUBSCRIBER DETAILS AND SIGNING	SUBSCRIBER	SUBSCRIBER AGENT (if used)
	NAME	_____
	ABN/ACN/ARBN	_____
	ADDRESS	_____
	<p>I CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the Person(s) named above as Client or Client Agent.</p>	
	_____ DATE / / PRINT NAME: _____	_____ DATE / / PRINT NAME: _____

Terms of this Client Authorisation

1. What is Authorised

The Client authorises the Subscriber to act as the Client's agent in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:

- (a) sign Documents on the Client's behalf as required for the Conveyancing Transaction Type; and
- (b) submit or authorise submission of Documents for Lodgement with the relevant Land Registry; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and
- (d) do anything else necessary to complete the Conveyancing Transaction(s).

The Client acknowledges that the Client is bound by any Documents required in connection with a Conveyancing Transaction that the Subscriber signs on the Client's behalf in accordance with this Client Authorisation.

2. Mortgagees

The Client indemnifies the Subscriber for any loss resulting from the Client's failure to take reasonable steps to verify the identity of the mortgagor where:

- a) the Subscriber represents the Client in the Client's capacity as mortgagee and
- b) the Client represents to the Subscriber that the Client has taken reasonable steps to verify the identity of the mortgagor.

3. Revocation

This Client Authorisation may be revoked by either the Client or the Subscriber giving notice in writing to the other that they wish to end this Client Authorisation.

4. Privacy and Client Information

The Client consents to the Subscriber disclosing to the Duty Authority, the ELNO, the Land Registry and the Registrar any information relating to the Client that is required to complete a Conveyancing Transaction, including the Client's Personal Information.

5. Applicable Law

This Client Authorisation is governed by the law in force in the Jurisdiction in which the Property is situated. The Client and the Subscriber submit to the non-exclusive jurisdiction of the courts of that place.

6. Meaning of Words Used in this Client Authorisation

In this Client Authorisation, capitalised terms have the meaning set out below:

Australian Legal Practitioner has the meaning given to it in the relevant legislation for the Jurisdiction.

Batch Authority means an authority for the Subscriber to act for the Client in a batch of Conveyancing Transactions described in a schedule attached to this Client Authorisation.

Capacity means the role of the Client Agent (for example an attorney or a director of a company).

Caveat means a Document under the Land Titles Legislation giving notice of a purported claim to an interest in land that may have the effect of an injunction to stop the registration of a Registry Instrument in the Titles Register.

Client means the Person or Persons named in this Client Authorisation.

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

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

Discharge /Release of Mortgage means a Registry Instrument that discharges or releases a Mortgage.

Document has the meaning given to it in the ECNL.

Duty Authority means the State Revenue Office of the Jurisdiction in which the Property is situated.

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the application law, as amended from time to time.

ELNO means Electronic Lodgment Network Operator and has the meaning given to it in the ECNL.

Jurisdiction has the meaning given to it in the ECNL.

Land Registry means the agency of a State or Territory responsible for maintaining the Jurisdiction's Titles Register(s).

Land Titles Legislation has the meaning given to it in the ECNL.

Land Title Reference means the relevant Land Registry's unique identifier(s) for the Property.

Licensed Conveyancer means a Person licensed or registered under the relevant legislation of the Jurisdiction and includes a real estate settlement agent

for the purposes of the Settlement Agents Act 1981 (WA).

Mortgage means a Registry Instrument by which a Person charges an estate or interest in land as security.

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

Person has the meaning given to it in the ECNL.

Personal Information has the meaning given to it in the *Privacy Act 1988 (Cth)*.

Prescribed Requirement means any Published requirement of the Registrar that Subscribers are required to comply with.

Publish means, for any information, to publish the information on the Registrar's website.

Registrar has the meaning given to it in the ECNL.

Registry Instrument has the meaning given to it in the ECNL.

Representative means a Subscriber who acts on behalf of a Client.

Transfer includes the preparation of all documents required to effect a purchase or sale of land and the liaison with, where relevant, any proposed mortgagee.

Special Instructions means any instructions by the Client to the Subscriber not specifically provided for in this Client Authorisation.

Specific Authority means an authority for the Subscriber to act for the Client in completing the Conveyancing Transactions described in this Client Authorisation.

Standing Authority means an authority for the Subscriber to act for the Client for a period of time set out in the Special Instructions of this Agreement.

Subscriber is the Person named in this Agreement and has the meaning given to it in the ECNL or for a paper Conveyancing Transaction is an Australian Legal Practitioner or a Licensed Conveyancer.

Subscriber Agent means a Person authorised by a Subscriber to act as the Subscriber's agent.

Titles Register has the meaning given to it in the ECNL.

Withdrawal of Caveat means a Document under the Land Titles Legislation which removes a Caveat.

6 Certifications

What is proposed

The Registrar of Titles (the Registrar) proposes to introduce certification requirements for paper conveyancing transactions in 2015. This will require a conveyancer, lawyer and mortgagee to provide certifications for each paper conveyancing transaction they sign.

Certification requirements are already in place for electronic conveyancing transactions and the Registrar intends to mirror those requirements, modified only as necessary, for paper conveyancing transactions.

Legislative amendment to the *Transfer of Land Act 1958* (the Act) is proposed to support the introduction of certification requirements for paper conveyancing transactions. It is proposed to have similar certification provisions for paper conveyancing transactions as those already in place for electronic conveyancing transactions, as set out in Section 44K of the Act. Section 44K states:

The Registrar, by notice published in the Victoria Government Gazette, may specify—

- (a) any matters relating to an electronic instrument that must be certified under this Part; and*
- (b) the method of electronic certification required for those matters; and*
- (c) the class or classes of person who may certify those matters.*

Rationale for the proposal

The introduction of certifications for paper conveyancing transactions will align with the requirements for electronic conveyancing transactions and will give conveyancers, lawyers and mortgagees greater certainty when they deal with other parties to a paper conveyancing transaction. Relying parties and the Registrar can have confidence in and rely on the certifications provided.

How it will work

Conveyancers, lawyers and mortgagees will be required to provide certifications for each paper conveyancing transaction to be lodged. They must give the certifications in their own right, regardless of whether they are acting for themselves or a client in the transaction.

It is proposed that the same certifications as set out in Schedule 3 of the *Participation Rules* for electronic conveyancing will be used for paper conveyancing transactions. The term Subscriber, which is used in the certifications, has the meaning given to it in the *Electronic Conveyancing National Law (Victoria)* or for a paper conveyancing transaction is a conveyancer, lawyer or an authorised deposit-taking institution.

Any form approved by the Registrar will need to include the required certifications.

The following sets out the required certifications for the five most common conveyancing transactions; being, a discharge of mortgage, mortgage, transfer, caveat and withdrawal of caveat.

Certifications

Discharge of mortgage – mortgagee certifications (signing on behalf of self)

1. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Discharge of Mortgage – mortgagee certifications (representative signing on behalf of mortgagee)

1. The Subscriber has taken reasonable steps to verify the identity of the mortgagee.
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Mortgage - mortgagee certifications (signing on behalf of self)

1. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
3. The Subscriber or the mortgagee it represents:
 - (a) has taken reasonable steps to verify the identity of the mortgagor; and
 - (b) holds a mortgage, signed by the mortgagor, on the same terms as this Registry Instrument.

Mortgage - mortgagee certifications (representative signing on behalf of mortgagee)

1. The Subscriber has taken reasonable steps to verify the identity of the mortgagee.
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Subscriber or the mortgagee it represents:
 - (a) has taken reasonable steps to verify the identity of the mortgagor; and
 - (b) holds a mortgage, signed by the mortgagor, on the same terms as this Registry Instrument.

Transfer – transferor certifications (signing on behalf of self)

1. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Transfer – transferor certifications (representative signing on behalf of client)

1. The Subscriber has taken reasonable steps to verify the identity of the transferor.
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Transfer - transferee certifications (signing on behalf of self)

1. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Transfer -transferee certifications (representative signing on behalf of client)

1. The Subscriber has taken reasonable steps to verify the identity of the transferee.
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Caveat – caveator certifications (signing on behalf of self)

1. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Caveat – caveator certifications (representative signing on behalf of client)

1. The Subscriber has taken reasonable steps to verify the identity of the caveator.
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Withdrawal of caveat – caveator certifications (signing on behalf of self)

1. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Withdrawal of caveat – caveator certifications (representative signing on behalf of client)

1. The Subscriber has taken reasonable steps to verify the identity of the caveator.
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Questions

- 6.1: Is it reasonable to require certifications for paper conveyancing transactions? If not, why not?**
- 6.2: Are the proposed persons who can give certifications appropriate? Are there any other categories of persons who should have the authority to give certifications?**

7 Priority notices

What is proposed

The Registrar of Titles (the Registrar) proposes to introduce priority notices. This is one of a number of safeguards protecting parties' interests, as Victoria moves towards an electronic environment and paper certificates of title are phased out.

A priority notice is a notification of intended dealings with land, which is lodged with the Registrar. Once recorded a priority notice will temporarily prevent the registration of any other dealings with the subject land that require a certificate of title.

Priority notices (or settlement notices) can currently be lodged in Tasmania and Queensland. Other Australian jurisdictions are considering their implementation.

Rationale for the proposal

The objectives for introducing priority notices include:

- protecting the interest of parties to an intended instrument or transaction from the time the priority notice is lodged until lodgement of that instrument or transaction;
- alerting interested parties who search the Register of land to the fact that an intended instrument or transaction is pending;
- assisting in fraud prevention because details of an intended instrument or transaction will appear on a search of the Register and thus increase the likelihood of a fraud being detected; and
- providing early advice of an intended instrument or transaction for specified properties through an 'alert service'.

It is expected that parties gaining an estate or interest in land will seek to protect that estate or interest to the full extent possible, and therefore the use of priority notices will become an integral consideration in prudent conveyancing practice.

How it will work

Priority notices will be optional

It is proposed that lodgement of priority notices will be optional, at the discretion of the person intending to lodge an instrument or transaction. In this way, a decision can be made on a case-by-case basis about whether it would be prudent to lodge a priority notice.

Priority notices will only be lodged electronically

It is proposed that priority notices will only be able to be lodged electronically by a subscriber authorised to lodge electronically via an Electronic Lodgement Network. This will ensure that priority notices are lodged by known and verified users.

In this way, industry can have confidence in the veracity of the priority notice.

It is envisaged that when priority notices are implemented, the ability to lodge electronically will be readily accessible to the conveyancing industry.

It is proposed that priority notices will be lodged electronically whether the subject instrument or transaction is to be lodged in paper or electronically.

Who can lodge a priority notice?

It is proposed that any person intending to lodge an instrument, or their conveyancer or lawyer, will be able to lodge a priority notice.

The Registrar intends to introduce legislative provisions similar to those in operation in Queensland and Tasmania to enable a person (or their conveyancer or lawyer) transacting with the registered proprietor, or a person entitled to deal with the land, to lodge a priority notice.

Similar to the legislation in other jurisdictions, the proposed legislative amendments will include that the Registrar is not required to satisfy him/herself that a person lodging is entitled or authorised to do so.

No notification of lodgement of a priority notice

It is proposed that notification of the lodgement of a priority notice will not be served on any person, including the registered proprietor.

Application of priority notices

It is proposed that lodgement of a priority notice will extend to all instrument types.

A priority notice will give priority to the registration or recording of the intended instrument(s) identified in the priority notice. Any instrument(s) lodged after the priority notice, but before the instrument(s) set out in the priority notice, will be processed after the instrument(s) set out in the priority notice. The priority notice will not affect processing of instrument(s) lodged before the priority notice.

A priority notice will operate for a specified period. During this period the priority notice will prevent registration, but not lodgement, of most other instrument(s) affecting an estate or interest in the land.

It is proposed that the following instruments will not be affected by a priority notice:

- any instrument that does not currently require a certificate of title to support its lodgement including caveats, warrants, statutory charges and notifications; and
- any instrument lodged but unregistered or unrecorded before the priority notice.

The ability to lodge a priority notice over a separately transferrable parcel within a folio will also be available. For off the plan sales, a priority notice can be lodged over a lot on an unregistered plan of subdivision, once the plan has been lodged.

It will not be possible to include in a priority notice a list of particular instruments to which the applicant consents or for the applicant to provide written consent to subsequent instrument(s).

Period of effectiveness

It is proposed that priority notices will be effective for 60 days from the date of lodgement in line with provisions already in place in Tasmania and Queensland. If more time is required, a subsequent priority notice can be lodged.

There will be no ability to extend a priority notice. However, a new priority notice can be lodged for the same transaction by the same (or a different) party. Meanwhile, any instrument(s) awaiting registration will be processed prior to the new priority notice taking effect.

A priority notice will cease to have effect once the 60 day period has lapsed.

Format and content of a priority notice

It is not intended for legislation to prescribe the format of a priority notice; however, the legislation will specify that a priority notice must be in an approved form.

A priority notice must include the volume and folio references for the folio(s) of the Register, the subject of the priority notice, a clear description of the land where part of a folio is being dealt with and details of the instrument(s) for which priority is being sought. The information in the priority notice will need to be accurate and complete to have effect. When the intended instrument (s) is/are lodged, it/they must match the instrument (s) details contained in the priority notice. If it/they does/do not match, it/they will not be registered. However, it would be possible to lodge a withdrawal of priority notice with the other instruments.

Fees for lodging priority notices

Fees attached to lodgement of the priority notice will be set in line with the Department of Treasury and Finance's cost recovery guidelines. This fee is expected to be less than the fee for lodging a caveat.

Information to be displayed on the Register

Priority notices will be recorded in the Register and will be searchable.

Historical information

Priority notices will appear on a folio history search.

How priority notices will cease

A priority notice will automatically expire on the registration of the dealings that are the subject of the priority notice, or 60 days after lodgement of the priority notice, whichever is the sooner.

Priority notices will also be able to be withdrawn by the lodging subscriber. Withdrawal of a recorded priority notice will attract a fee in line with the Department of Treasury and Finance's cost recovery guidelines.

The legislation will also enable any person adversely affected by a priority notice to bring proceedings in a court for the removal of that priority notice. The Registrar will give effect to any such order of the court.

No provision for removal of a priority notice by the Registrar

In line with the current Tasmanian provisions, it is not intended to include an administrative provision for their removal.

Frivolous or vexatious lodging of priority notices

Provisions similar to those in Section 118 of the Act will be included in legislation. This will allow a person who has sustained loss or damage as a result of a frivolous or vexatious priority notice to seek compensation.

No amendment or correction of details

Amendments or corrections to lodged priority notices will not be allowed. If necessary, the priority notice can be withdrawn and a new priority notice lodged in its place.

Supporting evidence

No supporting evidence will be required or accepted to support lodgement of a priority notice.

Lodgement of multiple priority notices

The lodgement of multiple priority notices over the same folio will be dealt with in order of lodgement.

Registration of dealings lodged following priority notices

Where a priority notice is recorded and a subsequent instrument(s) not the subject of the priority notice is lodged, that instrument(s) will remain unprocessed until the priority notice no longer has effect. If at that stage the dealing can no longer be registered, it will be rejected. If it could be registered, it will be processed. For example:

- A and B are the registered proprietors of a folio of the Register
- A and B have contracted to sell the land to C
- C lodges a priority notice setting out the proposed transfer from A and B to C
- A and B then enter into a mortgage with D
- The mortgage is lodged but not processed because of the priority notice.

Either:

- C lodges its transfer, which is processed and the mortgage to D is then rejected (because the mortgagors are no longer the registered proprietors); or more likely
- C lodges a withdrawal of priority notice, a discharge of mortgage from D and its transfer.

Questions

7.1: Should priority notices be introduced? If not, why not?

7.2: Should priority notices be optional? If not, why not?

7.3: Should it be possible to lodge priority notices in paper? If so, what processes should be employed to ensure that the lodging party is known and verified as is the case for a subscriber to an electronic lodgement network?

7.4: Should priority notices extend to all dealing types or only to transfers and mortgages?

7.5: Is the list of exceptions to a priority notice outlined in this Consultation Paper sufficient, or should they be expanded?

7.6: Is 60 days the appropriate time period for a priority notice? If not, what should the period be?

8 Non-represented parties

What is proposed

The Registrar of Titles (the Registrar) proposes to introduce verification of identity requirements for non-represented parties. A non-represented party will be required to have their identity verified and the execution of their paper conveyancing transaction witnessed by an authorised verifier. A non-represented party is a party who is not represented by a conveyancer or lawyer in a paper conveyancing transaction. An authorised verifier means a conveyancer, lawyer, authorised deposit-taking institution or anyone else approved by the Registrar.

Many of the proposals discussed in this consultation paper have no relevance to non-represented parties. A client authorisation only applies when a conveyancer or lawyer is representing a client. Certifications can only be given by a conveyancer, lawyer or authorised deposit-taking institution.

Also, the proposed priority notice process will not be available to a non-represented party. Priority notices will only be able to be lodged electronically by a subscriber authorised to lodge electronically via an Electronic Lodgement Network. However, a non-represented party would continue to be able to lodge a caveat when they claim to have acquired an interest in land.

Legislative amendment is not a prerequisite to introducing verification of identity requirements for paper conveyancing transactions submitted by non-represented parties. This is because Section 27AB of the *Transfer of Land Act 1958* (the Act) provides that the Registrar need not register an instrument if he is not satisfied as to identity of a transacting party. However, it is proposed to replace Sections 27AB(2) and (3) of the Act with a requirement for the Registrar to publish in the *Victoria Government Gazette* any verification of identity requirements he determines.

Rationale for the proposal

A small volume of paper conveyancing transactions are undertaken by individuals on their own behalf. While a range of dealing types can potentially be undertaken and/or submitted by a non-represented party, the transactions typically submitted include survivorship applications, caveats and withdrawal of caveats. The proposed changes are needed to ensure consistency and to minimise the risk of fraudulent or unauthorised paper conveyancing transactions being registered.

How it will work

A non-represented party will need to have his/her identity verified and the execution of their paper conveyancing transaction witnessed by an authorised verifier. The authorised verifier will be required to provide an identity certification (consistent with paragraph 9 of the Verification of Identity Standard - Use of a Subscriber Agent), which will then need to be submitted to the Registrar with the paper conveyancing transaction documents. For example, in a survivorship application, the applicant (the surviving proprietor) will be required to have his/her identity verified, execute the survivorship application and have it witnessed by the authorised verifier, obtain an identity certification from the authorised verifier and present the certification to the Registrar when lodging the survivorship application for registration.

In relation to discharges of mortgage, it is proposed that the instrument of discharge of mortgage be required to be lodged for registration by the discharging party. For example, when a loan to a financial institution is repaid the discharge of mortgage instrument, if it is a stand-alone transaction

document (i.e. not being submitted with any other transaction document), must be presented for registration by the discharging mortgagee. This will be a more efficient process than the current process used by many financial institutions, where the certificate of title and discharge of mortgage instruments are often handed to the registered proprietor, with an expectation that the registered proprietor will lodge the documentation for registration. Frequently, the registered proprietor fails to lodge the documents or the documents are misplaced and subsequent work is required, and costs incurred, in replicating the missing documents.

A suitable grace period will be provided to allow registered proprietors to lodge certificates of title and discharge of mortgage instruments that the mortgagee has prepared and previously given to them for lodgement.

Questions

- 8.1: Are the proposed requirements for non-represented parties reasonable? If not, why not?**
- 8.2: Who should be authorised verifiers for the purpose of verifying the identity of non-represented parties?**
- 8.3: Will the proposed requirements for non-represented parties assist conveyancers and lawyers in dealing with non-represented parties? If not, why not?**
- 8.4: Are there any other requirements that should be placed on non-represented parties? If so, what?**

9 Consents by mortgagees to conveyancing transactions

What is proposed

The Registrar of Titles (the Registrar) proposes to remove the requirement for consents from mortgagees to be submitted to the Registrar for dealings lodged under the *Transfer of Land Act 1958* (the Act). Instead, it is proposed that there will be a new legislative provision for any subsequent dealing with an estate or interest (instrument) to not be binding on a mortgagee, if the mortgagee has not consented to it. Consents by annuitants will be treated in the same way.

Currently, mortgagees are required to consent to various instruments under the Act. These instruments include creations and removals of easements, leases and restrictive covenants. A consent is not required for a subsequent mortgage. Since 2003 Land Victoria's business practice has been that production of the relevant certificate(s) of title and some form of consent constitute the requisite consent. Land Victoria does not examine the detail of consents submitted to it.

In summary, the proposal is that:

- Any requirement for the consent of a mortgagee to be provided and/or submitted to the Registrar will be removed from the Act.
- A new provision will be included in the Act to the effect that any subsequent instrument will not be binding on a mortgagee, if the mortgagee has not consented to the instrument in writing.
- Section 77(4) of the Act will be amended so that any transfer by a mortgagee will only remove any mortgage or charge lodged after the mortgage or charge under which the mortgagee is exercising its power to transfer.
- A new provision will be included allowing a mortgagee to apply for the removal or reinstatement of an easement, lease or restrictive covenant, where it is proved to the Registrar's satisfaction that no written consent was provided.
- Section 86 of the Act will remain unchanged, except to provide for electronic conveyancing.
- Sections 91(2A) and (2B) will be amended so that only caveats claiming an interest as chargee or mortgagee, lodged after the mortgage or charge under which the mortgagee is exercising its power to transfer, will be automatically removed.

Rationale for the proposal

In the majority of cases the consent of mortgagees is both sought and given.

It is currently difficult for both the Registrar and affected parties to assess whether instruments or caveats should continue to affect a folio when there has been a mortgagee sale. The proposed changes will simplify processes for all concerned and ensure that mortgagees do not lose any protection.

How it will work

Any creation or removal of a lease, easement or restrictive covenant will remain in effect if there is a later transfer by a mortgagee – see Section 77(4)(a) of the Act.

As a result, Section 77(4) of the Act will be amended to only refer to later mortgages and charges. This means that when a transfer by mortgagee is registered, only mortgages and charges lodged after the mortgage or charge under which the power to transfer is being exercised will be automatically removed. Sections 91(2A) and (2B) will be similarly amended to relate to only those later caveats that claim an interest as mortgagee or chargee. These caveats will also be automatically removed. All other instruments will remain in effect.

Land Victoria recognises that there may be instances where the written consent of a mortgagee is not sought; or if sought, is not given to an instrument and that instrument has a detrimental effect on the mortgagee's security. As a safeguard, it is proposed to introduce an administrative process by which a mortgagee in possession may seek to have such an instrument removed or reinstated. There appear to be two ways in which such a process could operate:

- The mortgagee could be required to provide evidence that its written consent was not provided; and/or
- Notice could be served on the party benefitting from the encumbrance requiring them to produce the mortgagee's written consent within a period of 30 days; failing which, the mortgagee's application will proceed.

Section 86 of the Act requires a first mortgagee to produce a certificate of title if it is required for a subsequent instrument. It is not proposed to alter this requirement. However, the section may need minor amendment to encompass electronic conveyancing.

Questions

9.1: Do you believe that the proposed changes simplify existing processes relating to consents? If not, why not?

9.2: Do mortgagees and annuitants continue to be adequately protected?

9.3: How should the administrative process operate? Why?

10 Mortgage provisions

What is proposed

The Registrar of Titles is proposing to amend the *Transfer of Land Act 1958* (the Act) in line with provisions already operating in New South Wales and Queensland. Under these provisions, a mortgage is void if the mortgagee fails to take the required steps to verify the identity of the mortgagor.

It is also intended to include a provision that aligns with the rules in the *Participation Rules* that require a mortgagee to establish that a mortgagor is a legal person and that the mortgagor is entitled to enter into the mortgage. In Victoria, a mortgagee would need to take reasonable steps to verify a mortgagor's identity, as set out in the Participation Rules for an electronic instrument or as set out in section 4 of this Consultation Paper for a paper transaction. These steps should uncover whether or not the mortgagor is a legal entity. Prudent practice will determine whether the mortgagor is entitled to deal with the land. In addition, where a mortgage is varied, the same steps will be required.

When a mortgage is transferred, it is intended that the transferee mortgagee should confirm that the transferor mortgagee undertook reasonable steps to verify the mortgagor, their legal status and their entitlement to deal.

The onus will be on the mortgagee to prove that it has taken reasonable steps.

In addition, where a mortgagee does take reasonable steps to verify the mortgagor's identity but a mortgage is otherwise fraudulent, it is proposed to limit the amount of interest due. The rate of interest would be limited to one that represents reasonable borrowing costs, i.e. the rate of interest the mortgagee should have had to pay if it had borrowed the money it then lent. The rate could be set as the Reserve Bank of Australia's official cash rate or the Bank Accepted Bills rate.

Legislative amendment will be required to introduce both proposals.

Rationale for the proposal

Verification of both identity and the right to deal are key fraud mitigation and consumer protection tools. Land Victoria considers that all mortgagees should currently be taking reasonable steps to identify the person seeking a mortgage and to ensure that the person is in fact the registered proprietor of the land or otherwise entitled to deal with the land (for example, a transferee). If reasonable steps are not taken, a mortgagee should not be able to benefit from the indefeasibility granted on the registration of the mortgage. The proposal will protect the interests of innocent registered proprietors. They will no longer need to pay out a fraudulent mortgage and/or make a claim for compensation under the Act. In doing so, public funds will not need to be expended unnecessarily.

Variations of mortgage and transfers of mortgage are included to prevent these transaction types being used to circumvent the effect of the proposed provisions.

In addition, introducing these provisions will provide consistency between the three eastern seaboard states.

When a mortgagee does take reasonable steps to verify the mortgagor's identity but a mortgage is otherwise fraudulent, limiting the interest due under the mortgage will protect an innocent registered proprietor and the government guarantee from expending more than what is reasonable in interest. In cases where mortgage fraud has occurred, the fraudster has often been willing to agree to a much higher than usual interest rate.

How it will work

Verification of Identity and Right to Deal

A mortgagee, or its representative, will need to take reasonable steps to verify the identity, legal status and right to deal of a mortgagor. This will apply to mortgages, variations of mortgage and transfers of mortgage. If a fraud occurs, and the mortgagee is unable to prove that it has taken reasonable steps, the mortgage or variation of mortgage will be void and removed from the Register of land. For a transfer of mortgage, both the transfer and the mortgage sought to be transferred will be void.

Interest rate

When a mortgagee does take reasonable steps to verify the mortgagor's identity but a mortgage is otherwise fraudulent, the Act will set the rate of interest recoverable by the secured mortgagee.

Questions

- 10.1: Do you believe that it is reasonable for a mortgage to have no effect if the mortgagee failed to take reasonable steps when undertaking a verification of identity? If not, why not?**
- 10.2: Do you believe that it is reasonable to limit the interest owing where a fraud has occurred? If not, why not?**
- 10.3: Which rate is the most suitable rate, the Reserve Bank of Australia's official cash rate or the Bank Accepted Bills rate? And why? Would another rate be more suitable? If so, which rate and why?**

11 Questions

Chapter 2: Phasing out certificates of title

- 2.1: Do the proposed safeguards outlined in Sections 4-8 of this Consultation Paper adequately replace the functions of the certificate of title?**
- 2.2: Are there any other options that should be considered?**
- 2.3: Are there any other safeguards that need to be considered prior to paper certificates of title being abolished?**

Chapter 3: Application of electronic conveyancing requirements to paper conveyancing

- 3.1: Should the requirements for paper and electronic conveyancing transactions be aligned? If not, why not?**

Chapter 4: Verification of identity for paper conveyancing transactions

- 4.1: Is it reasonable to introduce verification of identity requirements for paper conveyancing transactions? If not, why not?**
- 4.2: Is the proposed list of Verifiers appropriate? Are there any other categories of persons who should have the authority to verify identity?**
- 4.3: Is the proposed list of situations where identity must be verified appropriate? Are there any other situations where verification of identity should be required?**
- 4.4: Is the proposed seven year period for retention of documents appropriate? If not, why not and what would be appropriate?**

Chapter 5: Client authorisation

- 5.1: Is the introduction of client authorisation requirements appropriate for paper conveyancing transactions? If not, why not?**

Chapter 6: Certifications

- 6.1: Is it reasonable to require certifications for paper conveyancing transactions? If not, why not?**

6.2: Are the proposed persons who can give certifications appropriate? Are there any other categories of persons who should have the authority to give certifications?

Chapter 7: Priority Notices

7.1: Should priority notices be introduced? If not, why not?

7.2: Should priority notices be optional? If not, why not?

7.3: Should it be possible to lodge priority notices in paper? If so, what processes should be employed to ensure that the lodging party is known and verified as is the case for a subscriber to an electronic lodgement network?

7.4: Should priority notices extend to all dealing types or only to transfers and mortgages?

7.5: Is the list of exceptions to a priority notice outlined in this Consultation Paper sufficient, or should they be expanded?

7.6: Is 60 days the appropriate time period for a priority notice? If not, what should the period be?

Chapter 8: Non-represented parties

8.1: Are the proposed requirements for non-represented parties reasonable? If not, why not?

8.2: Who should be authorised verifiers for the purpose of verifying the identity of non-represented parties?

8.3: Will the proposed requirements for non-represented parties assist conveyancers and lawyers in dealing with non-represented parties? If not, why not?

8.4: Are there any other requirements that should be placed on non-represented parties? If so, what?

Chapter 9: Consents by mortgagees to conveyancing transactions

9.1: Do you believe that the proposed changes simplify existing processes relating to consents? If not, why not?

9.2: Do mortgagees and annuitants continue to be adequately protected?

9.3: How should the administrative process operate? Why?

Chapter 10: Mortgage provisions

- 10.1: Do you believe that it is reasonable for a mortgage to have no effect if the mortgagee failed to take reasonable steps when undertaking a verification of identity? If not, why not?**
- 10.2: Do you believe that it is reasonable to limit the interest owing where a fraud has occurred? If not, why not?**
- 10.3: Which rate is the most suitable rate, the Reserve Bank of Australia's official cash rate or the Bank Accepted Bills rate? And why? Would another rate be more suitable? If so, which rate and why?**