



Land & Property  
Information

# Conveyancing rules

## Section 12E *Real Property Act 1900*

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## ***Real Property Act 1900***

### **Section 12E**

These Conveyancing Rules are made in NSW pursuant to section 12E of the *Real Property Act 1900* and will come into effect on and from 26 November 2016.



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**Registrar General**  
**28 October 2016**

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# Conveyancing Rules

## 1. Preliminary

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

## 2. Commencement and Revocation

- 2.1.1 These Conveyancing Rules come into force on and from 26 November 2016 and replace Version 1 which operates from 1 May 2016 until replaced by Version 2 on 26 November 2016. Individual Rules take effect from the dates specified in the Rule.
- 2.1.2 Version 1 of the Conveyancing Rules is revoked and replaced by Version 2 from 26 November 2016.

## 3. Definitions and Interpretation

### 3.1 Definitions

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

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

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

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

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

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

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

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

**Document** has the meaning given to it in the ECNL.

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

**ECNL** means the Electronic Conveyancing National Law (NSW).

**eCT** means a Folio of the Register that contains a note stating that no paper certificate of title has issued and recording who has control of the right to deal in the land.

**Electronically Tradeable** means with respect to a Folio of the Register that the folio is not excluded from electronic transactions by rules of the Registrar General.

NOTE: “electronically tradeable” – for details of titles that are suitable for eLodgment see: [http://rgdirections.lpi.nsw.gov.au/e-dealings/elodgment\\_requirements](http://rgdirections.lpi.nsw.gov.au/e-dealings/elodgment_requirements). This list changes frequently as LPI works to allow more titles to be electronically tradeable.

**Priority Notices** may be lodged electronically over all titles, including those that may not be electronically tradeable for the purposes of other dealings.

**ELN** or **Electronic Lodgment Network** has the meaning given to it in the ECNL.

**Folio of the Register** has the meaning given to it in the RPA.

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

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

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

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

**Identity Declarant** means a person providing an Identifier Declaration.

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

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

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

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

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

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

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

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

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

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

**Primary non-photographic identification document** means any of the following:

- (a) a birth certificate or birth extract issued by a State or Territory,
- (b) a citizenship certificate issued by the Commonwealth,
- (c) a citizenship certificate issued by a foreign government and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (d) a birth certificate issued by a foreign government, the United Nations or an agency of the United Nations and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (e) a pension card issued by Centrelink that entitles the person in whose name the card is issued to financial benefits.

**Primary photographic identification document** means any of the following:

- (a) a licence or permit issued under a law of a State or Territory or equivalent authority of a foreign country for the purpose of driving a vehicle that contains a photograph of the person in whose name the licence or permit is issued,
- (b) a passport issued by the Commonwealth,
- (c) a passport or a similar document issued for the purpose of international travel that:
  - (i) contains a photograph and the signature of the person in whose name the document is issued, and
  - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
  - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document,
- (d) a Photo Card issued under the Photo Card Act 2005,
- (e) a card issued under a law of the Commonwealth or another State or Territory for the purpose of proving the person's age which contains a photograph of the person in whose name the card is issued,
- (f) a national identity card issued for the purpose of identification that:
  - (i) contains a photograph and the signature of the person in whose name the document is issued, and
  - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
  - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document.

**RPA** means the *Real Property Act 1900*.

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

**Secondary identification document** means any of the following:

- (a) a notice that was issued to an individual by the Commonwealth, a State or Territory within the preceding 12 months that:
  - (i) contains the name of the individual and his or her address, and
  - (ii) records the provision of financial benefits to the individual under a law of the Commonwealth, State or Territory (as the case may be),
- (b) a notice that was issued to an individual by the Australian Tax Office within the preceding 12 months that:
  - (i) contains the name of the individual and his or her address, and
  - (ii) records a debt payable to or by the individual by or to the Commonwealth under a Commonwealth law relating to taxation,
- (c) a notice that was issued to an individual by a local government body or utilities provider within the preceding 3 months that contains the name of the individual and his or her address.

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



## 3.2 Interpretation

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

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

## 4. Verification of Identity and Authority

### *Real Property Act 1900 Section 12E(1)(a)*

#### (1) **Making of conveyancing rules**

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

(a) the verification of identity and authority, including:

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

### 4.1 **Verification of Identity**

4.1.1 This Rule takes effect on 26 November 2016. Nothing in this Rule shall be taken to detract from any professional responsibility or due diligence requirement applying to Representatives with respect to Clients or others.

4.1.2 A Representative must take reasonable steps to verify the identity of each Client or each of their Client Agents.

4.1.3 A Representative or mortgagee must take reasonable steps to verify the identity and authority of any Client or Client Agent to whom certificates of title are provided. This Rule does not apply to a Representative or mortgagee providing a certificate of title to another Representative or mortgagee for the purposes of settlement of a conveyancing transaction (including a refinance transaction).

4.1.4 For the purposes of complying with Conveyancing Rules 4.1.2 and 4.1.3, a Representative or a mortgagee can either:

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

The Verification of Identity Standard can be applied by a Representative or a mortgagee, its Identity Agent, or by them in combination. Subject to Conveyancing Rule 4.1.5, compliance with the Verification of Identity Standard is deemed to constitute taking reasonable steps for the purposes of Conveyancing Rules 4.1.2 and 4.1.3.

- 4.1.5 A Representative or mortgagee must undertake further steps to verify the identity of a Person Being Identified and/or any Identity Declarant where:
- (a) the Representative knows or ought reasonably to know that:
    - (i) any identity Document produced by the Person Being Identified and/or any Identity Declarant is not genuine; or
    - (ii) any photograph on an identity Document produced by the Person Being Identified and/or any Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
    - (iii) the Person Being Identified and/or any Identity Declarant does not appear to be the person to whom the identity Document(s) relate; or
  - (b) it would otherwise be reasonable to do so.
- 4.1.6 A Representative or mortgagee need not re-verify the identity of the Person Being Identified if:
- (a) the Representative complied with Conveyancing Rule 4.1.2 or 4.1.3, or with the corresponding Participation Rule 6.5.1, within the previous 2 years; and
  - (b) the Representative takes reasonable steps to ensure that it is dealing with the Person Being Identified.

NOTE: Minor changes have been made to Rule 4.1 to clarify the operation of the Rule including:

1. Moving requirements for VOI when providing certificates of title to persons from 4.1.2 to a new 4.1.3 and clarifying that the requirement does not apply to handing over a certificate of title at settlement (including settlement of a refinance).
2. Providing in the new 4.1.3 that the Rule applies to mortgagees as well as to a Representative acting for a mortgagee.
3. Amending 4.1.4 (formerly 4.1.3) to clarify that use of the Verification of Identity Standard is deemed to be taking reasonable steps..
4. Renumbering of rules consequent on new 4.1.3.

## **4.2 Use of Verification of Identity Standard**

- 4.2.1 If the Verification of Identity Standard is used:
- (a) a Representative may use an Identity Agent; and
  - (b) where an Identity Agent is used, the Representative must direct the Identity Agent to use the Verification of Identity Standard; and
  - (c) the Identity Verifier must be the:
    - (i) Representative and/or the Representative's Identity Agent; or

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

NOTE: This Rule is unchanged from Version 1.

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

[www.arnecc.gov.au/\\_\\_data/assets/pdf\\_file/0017/208313/MPR\\_Guidance\\_Note\\_2\\_-\\_Verification\\_of\\_Identity\\_Updated.pdf](http://www.arnecc.gov.au/__data/assets/pdf_file/0017/208313/MPR_Guidance_Note_2_-_Verification_of_Identity_Updated.pdf)

### 4.3 Authority (Right to Deal)

- 4.3.1 This Rule takes effect on 26 November 2016. Nothing in this Rule shall be taken to detract from any professional responsibility or due diligence requirement applying to Representatives with respect to Clients or others.
- 4.3.2 For each Conveyancing Transaction a Representative must take reasonable steps to verify that its Client is a legal person and has the right to enter into the Conveyancing Transaction.
- 4.3.3 A mortgagee, or a Representative of a mortgagee, must, for each mortgage, variation of mortgage or transfer of mortgage, take reasonable steps to verify that the mortgagor is a legal person and has the right to enter into the mortgage.

NOTE: This Rule is unchanged from Version 1.

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

[www.arnecc.gov.au/\\_\\_data/assets/pdf\\_file/0010/207775/MPR\\_Guidance\\_Note\\_4\\_-\\_Right\\_to\\_Deal.pdf](http://www.arnecc.gov.au/__data/assets/pdf_file/0010/207775/MPR_Guidance_Note_4_-_Right_to_Deal.pdf)

## 5. Supporting Evidence

### *Real Property Act 1900 Section 12E(1)(d)*

#### **12E Making of conveyancing rules**

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

5.1 This Rule takes effect on 26 November 2016.

5.2 A Representative or where there is no Representative, a Party must retain the evidence supporting the dealing for at least seven years from the date of lodgment of the dealing that is registered or recorded including any evidence supporting verification of a Party's identity.

NOTE: This Rule is unchanged from Version 1.

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

[www.arnecc.gov.au/\\_\\_data/assets/pdf\\_file/0011/207776/MPR\\_Guidance\\_Note\\_5\\_-\\_Retention\\_of\\_Evidence.pdf](http://www.arnecc.gov.au/__data/assets/pdf_file/0011/207776/MPR_Guidance_Note_5_-_Retention_of_Evidence.pdf)

## 6. Certifications

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

#### **12E Making of conveyancing rules**

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

#### **117 Certificate of correctness**

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

### **6.1 Certifications on Paper dealings**

6.1.1 This Rule takes effect on 26 November 2016.

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

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

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

- (a) is at least 18 years of age, and
- (b) is not a party to the application, dealing or caveat, and

- (c) has known the person to whose execution of the application, dealing or caveat the witness is attesting for more than 12 months or has taken reasonable steps to ensure the identity of that person.
- 6.1.4 Without limiting the generality of sub-rule 6.1.3 (c), a witness is to be considered as having taken reasonable steps to ensure the identity of the person whose execution of the application, dealing or caveat the witness is attesting if the person has taken the steps set out in this Rule. The witness must sight:
- (a) an original of a Primary photographic identification document in respect of the other person, or
  - (b) an original of a Primary non-photographic identification document in respect of the other person and an original of a Secondary identification document in respect of the other person.
- 6.1.5 A document referred to in 6.1.4 does not include a document that has expired (other than in the case of an Australian passport that has been expired for less than 2 years).

NOTE: This Rule is unchanged from Version 1.

1. This Rule replicates and continues unchanged the certification requirements that prior to 1 May 2016 were set out in Section 117 of the RPA and Clause 22 of the *Real Property Regulation 2014*.
2. Definitions for Primary photographic identification document, Primary non-photographic identification document and Secondary identification document have now been included in these Conveyancing Rules unchanged from the definitions in the *Real Property Regulation 2014*.

## 7. Lodging Parties

### ***Real Property Act 1900 Section 12E(1)(f)***

#### **12E Making of conveyancing rules**

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

7.1 This Rule takes effect on 1 March 2017.

7.2 A discharging mortgagee or its Representative must lodge a discharge of mortgage signed on or after 1 March 2017 except where the discharge of mortgage is to be lodged with any other dealing affecting the same folio(s) of the Register.



## 8. Electronic Lodgment

### *Real Property Act 1900 Section 12E(1)(e)*

#### 12E Making of conveyancing rules

- (1) The Registrar-General may from time to time determine, in writing, rules for or with respect to the preparation and lodgment otherwise than electronically of paper documents to give effect to conveyancing transactions (the conveyancing rules), including rules for or with respect to the following:
  - (e) the classes of conveyancing transactions that must be lodged using an Electronic Lodgment Network instead of by means of paper documents.

### 8.1 Priority Notices

8.1.1 This Rule takes effect on 26 November 2016.

8.1.2 A Priority Notice, Extension of Priority Notice and Withdrawal of a Priority Notice must be lodged using an ELN.

NOTE: By Proclamation published on 26 February 2016, Part 7B of the *Real Property Act 1900* providing for Priority Notices commences on 1 October 2016. However, as Rule 8.1.2 requires that Priority Notices may only be lodged electronically, Priority Notices will not be able to be lodged until the functionality is available through an ELN on or about 28 November 2016.

### 8.2 Stand Alone Lodgment of Discharges of Mortgage and National Credit Code Mortgages by ADIs

8.2.1 This Rule takes effect on 1 March 2017.

8.2.2 Where the mortgagee is an ADI:

- (a) a discharge of mortgage signed on or after 1 March 2017 must be lodged using an ELN, except where the discharge of mortgage is to be lodged with any other dealing affecting the same folio(s) of the Register; and
- (b) a mortgage to which the National Credit Code applies signed on or after 1 March 2017 must be lodged using an ELN, except where the mortgage is to be lodged with any other dealing affecting the same folio(s) of the Register.

8.2.3 Conveyancing Rule 8.2.2 does not apply if the Folio of the Register for the land affected by the discharge of mortgage or mortgage is not Electronically Tradeable or if an ELN is not available and has not been available for one clear Business Day.

### **8.3 Discharges of Mortgage where an eCT is issued**

- 8.3.1 This Rule takes effect on 1 March 2017.
- 8.3.2 Where there is an eCT issued for a Folio of the Register, any discharge of mortgage (by a first mortgagee) must be lodged using an ELN, except where the discharge of mortgage is to be lodged with any other dealing affecting the same folio(s) of the Register.
- 8.3.3 Notwithstanding Rule 8.3.2, the Registrar General may, at the Registrar General's discretion, accept and register a discharge of mortgage signed prior to the issue of the eCT if it is accompanied by the paper CT that was current prior to the issue of the eCT.
- 8.3.4 Conveyancing Rule 8.3.2 does not apply if the Folio of the Register for the land affected by the discharge of mortgage is not Electronically Tradeable, or if an ELN is not available and has not been available for one clear Business Day.

**NOTE:**

1. This rule requires discharges of mortgage affecting eCTs to be lodged electronically.
2. The exception allows the Registrar General to accept a discharge of mortgage that was signed prior to the issue of the eCT and is subsequently lodged with the former paper certificate of title. This will only apply where a discharge of mortgage has been held by a registered proprietor and not lodged for registration, and the title has subsequently been converted to an eCT showing the mortgagee on title as holding Control of the Right to Deal.

### **8.4 Refinance transactions by ADIs**

- 8.4.1 This Rule takes effect on 1 August 2017 and operates in addition to Rule 8.2.
- 8.4.2 Where both mortgagee(s) in a refinance transaction are ADIs, any combination of mortgages and discharges of mortgage signed on or after 1 August 2017 must be lodged using an ELN, except where the mortgages and discharges of mortgage are to be lodged with any other dealing, affecting the same folio(s) of the Register.
- 8.4.3 Conveyancing Rule 8.4.2 does not apply if the Folio of the Register for the land affected by the mortgage and discharge of mortgage is not Electronically Tradeable, or if an ELN is not available and has not been available for one clear Business Day.

## 9. Electronic Certificates of Title

### ***Real Property Act 1900 Section 33AA(1)***

#### **33AA Non-issue of certificate of title**

(1) The Registrar-General may, from time to time, determine circumstances when, or classes of persons to whom, certificates of title will not be issued without a request under Section 33(5).

9.1.1 This Rule takes effect on 1 March 2017.

9.1.2 Where the mortgagee is an ADI and a first mortgage signed on or after 1 March 2017 is lodged electronically, no paper certificate of title will be issued. Instead a notation will be made on the relevant Folio of the Register pursuant to Section 33AA(2) of the *Real Property Act 1900*.

NOTE: Electronic Certificate of Title (eCT) means that the mortgagee bank does not hold a paper certificate of title for the current edition of a folio. Instead the mortgagee is recorded as having Control of the Right to Deal (CoRD) on the Register. For further information on eCT see [http://www.lpi.nsw.gov.au/plan\\_and\\_title\\_registration/national\\_e-conveyancing\\_nsw/electronic\\_certificate\\_of\\_title\\_ect](http://www.lpi.nsw.gov.au/plan_and_title_registration/national_e-conveyancing_nsw/electronic_certificate_of_title_ect)

For information on what parties to a conveyancing transaction should do to prepare for a paper settlement when there is an eCT instead of a paper CT see fact sheet [Attending a paper settlement when the Certificate of Title is in electronic format](#) (PDF 160.6 KB).