

STATUS

Current version for 1 August 2019 to date.
Last modified on 1 August 2019 (see *Historical* on page 3 below).

CONVEYANCING RULES WAIVER

New South Wales Section 12E *Real Property Act 1900 (NSW)*

Title

This instrument is Conveyancing Rules Waiver CR 2/2019 – Mainstream Dealings Exceptions.

Enabling Provisions

1. Under section 12E of the *Real Property Act 1900* (RPA), the Registrar General (“Registrar”) has determined and published Version 5 of the Conveyancing Rules which came into effect on and from 1 July 2019.
2. Section 12E(10) of the RPA permits the Registrar to waive compliance with all or any provisions of the Conveyancing Rules if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.

Affected Requirement

Conveyancing Rule (Version 5) 8.7 (CR 8.7)

Explanatory Statement

CR 8.7 provides that a Mainstream Dealing or combination of Mainstream Dealings (defined to mean a transfer, mortgage, discharge of mortgage, caveat, withdrawal of caveat or transmission application) signed on or after 1 July 2019 must be lodged using an Electronic Lodgment Network, except where the Mainstream Dealing is to be lodged with any other dealing affecting the same folio(s) of the Register.

There are, however, certain types of Mainstream Dealings affected by CR 8.7 that in the Registrar’s opinion are not able to be lodged electronically, or in the circumstances, may unfairly affect the parties if required to be lodged electronically.

Waiver

The Registrar grants a waiver of the obligation to comply with CR 8.7 in the following circumstances:

1. *Caveat*

- 1.1 where the caveator is not represented by a legal practitioner or licensed conveyancer;
- 1.2 accompanied by an attachment, such as a sketch plan;
- 1.3 that only affects part of the land in a folio of the Register;
- 1.4 lodged against premises contained in a lease;
- 1.5 affecting a registered interest (e.g. a mortgage, lease or charge);
- 1.6 involving multiple caveators who are not represented by a single Subscriber;

- 1.7 where the written consent of the registered proprietor, for the purposes of section 74O of the RPA, is required.
2. *Withdrawal of Caveat*
 - 2.1 where the caveator is not represented by a legal practitioner or licensed conveyancer;
 - 2.2 that only affects part of the land in a folio of the Register;
 - 2.3 involving multiple caveators who are not represented by a single Subscriber;
 - 2.4 that does not affect all the caveators (when there are multiple caveators).
3. *Discharge of Mortgage*
 - 3.1 where the mortgagee is an individual(s) and not represented by a legal practitioner or licensed conveyancer;
 - 3.2 that only affects part of the land in a folio of the Register;
 - 3.3 that does not affect all the mortgagees (when there are multiple mortgagees);
 - 3.4 that does not affect all the mortgagors (when there are multiple mortgagors);
 - 3.5 where the mortgage to be discharged is a sub-mortgage, mortgage of lease or mortgage of charge.
4. *Mortgage*
 - 4.1 where the mortgagee is an individual(s) and not represented by a legal practitioner or licensed conveyancer;
 - 4.2 over an interest or share in land or part of the land in a folio of the Register;
 - 4.3 that does not affect all the registered proprietors;
 - 4.4 that requires a caveator's consent and/or a Minister's consent;
 - 4.5 affecting more than 20 folios of the Register, which cannot be separated.
5. *Transfer*
 - 5.1 where both the transferee and transferor are not represented by a legal practitioner or licensed conveyancer and the transfer is standalone;
 - 5.2 creating a life estate and estate in remainder;
 - 5.3 lodged using a form other than the 01T Transfer form, such as the Transfer Including Easement form 01TE;
 - 5.4 affecting more than 20 folios of the Register, which cannot be separated;
 - 5.5 where an attachment is required, such as a caveator's consent, order of court, or Minister's consent;
 - 5.6 where execution by a person other than the registered proprietor is required, such as a court officer or a guardian when a person's estate is subject to management under the *NSW Trustee and Guardian Act 2009*;
 - 5.7 where less than all the registered proprietors are affected;
 - 5.8 where land tax is required to be paid from settlement proceeds (until *Conveyancing Rule Waiver 3/2019 – Land Tax* is lapsed or revoked);
 - 5.9 where the transfer involves transactions or obligations outside of the Torrens Register, for example where the transaction (or a chain of transactions) involves:
 - 5.9.1 properties located in other jurisdictions;
 - 5.9.2 the purchase or sale of a company title unit;
 - 5.9.3 handing over old system documents relating to qualified or limited title (or both);
 - 5.9.4 financial settlement that includes the transfer of a Water Access Licence.

6. Transmission Application

- 6.1 where the applicant is not represented by a legal practitioner or licensed conveyancer;
- 6.2 where an interest in land is affected (e.g. a mortgage, lease or charge);
- 6.3 where a life estate and estate in remainder is created by the transmission application;
- 6.4 where an estate in remainder is affected;
- 6.5 where the applicant is also the registered proprietor who holds the whole of an estate or interest in different capacities and it is intended to show that registered proprietor separately for each share held.

7. Transactions not able to be completed electronically

- 7.1 where written evidence from Revenue NSW is presented with the paper dealings at NSW LRS confirming that the transaction cannot be processed electronically;
- 7.2 where written evidence from the ELNO is presented with the paper dealings at NSW LRS confirming that the transaction cannot be processed electronically.

Commencement and Period during which this waiver applies

This waiver commences on 1 July 2019 and operates until the earlier of 30 June 2020 or the publication of a revocation of this waiver by the Registrar.

Dated: 6 June 2019

Signed by



Jeremy Cox
Registrar General

Historical:

Version	Date issued	Date effective	Amendments
1.0	6 June 2019	1 July 2019	N/A
1.1	1 August 2019	1 August 2019	Amended by Conveyancing Rules Waiver CR 4/2019 - Added new cl. 7; Amended cl. 3.1 & 4.1