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Guidance note on executing NSW paper land dealings during COVID-19 restrictions

Restrictions imposed in response to COVID-19 have made it difficult to prepare, sign and witness paper land dealings. All land dealings involve a combination of steps, including:

- verification of identity;
- establishing the right to deal; and
- signing, witnessing and attestation.

This guidance note clarifies how these steps can be completed for paper dealings in the current environment.



Verification of Identity

Under the [Conveyancing Rules](#) a representative (being a legal practitioner, law practice or licensed conveyancer) must take reasonable steps to verify the identity of any client who has given instructions to prepare or lodge a land document. To do this, the representative can either:

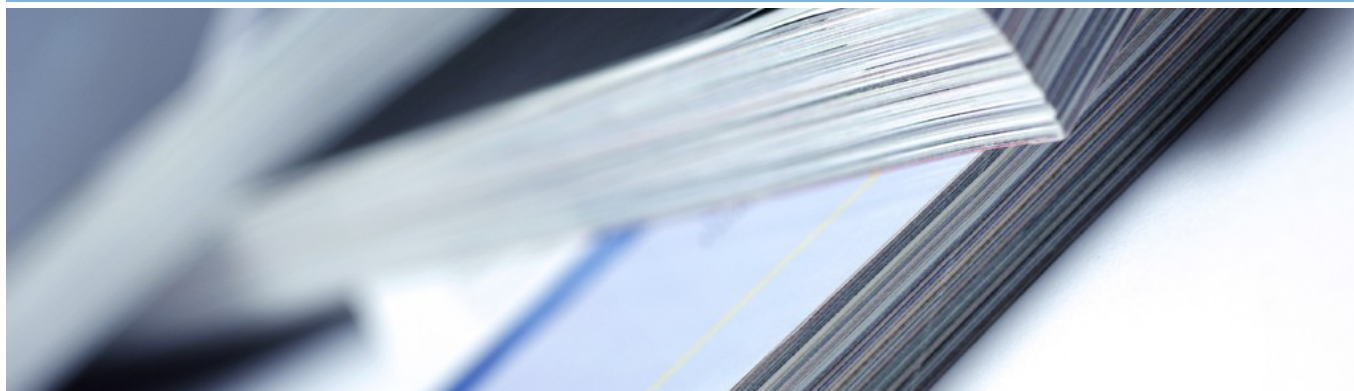
- apply the Verification of Identity Standard; or
- verify the identity of the person in some other way that constitutes the taking of reasonable steps.

The Verification of Identity Standard requires a face-to-face in person interview to be performed, but this is not the only way that a person's identity can be verified.

A representative can verify the identity of their client in a way that constitutes reasonable steps. It is a matter for the representative to determine what constitutes reasonable steps specific to the circumstances. In the current COVID-19 environment, representatives might consider using audio visual technology as part of the verification of identity process.

The Office of the Registrar General has also published [guidance for eConveyancing](#) amid COVID-19.

As always, a representative can choose to use an Identity Agent to carry out the verification process on their behalf.



Right to Deal

The [Conveyancing Rules](#) require a representative (being a legal practitioner, law practice or licenced conveyancer) to take reasonable steps to verify the right of any client who gives instructions to enter into each conveyancing transaction.

Execution

Paper land dealings must be signed and witnessed. Conveyancing Rule 6.1 requires that the witness:

- be an eligible witness, who
- certifies that the dealing was signed by the signer in the presence of the witness.

To be eligible, the witness must:

- be at least 18 years old;
- not be a party to the dealing; and
- have known the signer for more than 12 months or taken reasonable steps to ensure the identity of the signer.

The requirement for witnessing has meant that traditional land dealings could not be signed electronically under the *Electronic Transactions Act 2000*.

An amendment to Version 5 of the Conveyancing Rules, known as the [Conveyancing Rules – \(COVID-19 Pandemic\) Amendment](#), temporarily removes that prohibition. This Amendment, together with Division 1 of Part 2B of the *Electronic Transactions Act 2000* means that land dealings can be:

- signed electronically, and
- witnessed by audio visual link.

Signing electronically

While the requirement for signing has not changed, Schedule 1 to the Conveyancing Rules gives more options for how a signature can be applied. Land instruments can continue to be wet-signed or signed under an authority, like a power of attorney.

During the COVID-19 pandemic, instruments can also be signed by a party affixing their electronic signature. A witness can also affix their signature by electronic means.

To be valid, electronic signatures must comply with the requirements of Division 2 of Part 2 of the *Electronic Transactions Act 2000 (ET Act)*. An electronic signature will be taken to have met the requirements for a signature if it satisfies the requirements for:

1. **Identity** - a method is used to identify the person and to indicate the person's intention in respect of the information communicated, and
2. **Reliability** - the method used must be as reliable as appropriate for the purpose, and
3. **Consent** - the parties must agree to the use of electronic signatures and to the method used (for further detail see s 9 *ET Act*).

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To identify the signer and indicate their intention, a land instrument that has been signed electronically must include, near or above the electronic signature, words to the effect of:

Electronic signature of me, [..insert name..] affixed by me, or at my direction, on [..insert date..]

These words do not need to be included if a digital signing platform has been used that indicates that an electronic signature has been applied and the time and date when this occurred.

Before agreeing to accept an electronic signature, the parties should consider whether the method used is reliable and sufficient to ensure that the correct person is signing the document.



Witnessing via audio visual link

There is doubt as to whether a signature witnessed via audio visual link can satisfy a legal requirement for an instrument to be signed 'in the presence of' a witness. The COVID-19 Witnessing Regulation provides that this type of remote witnessing is acceptable during the COVID-19 pandemic.

A person witnessing the signing of a document by audio visual link (the **witness**) must—

- a. see the person signing the document (the signer) sign the document in real time, and
- b. attest or otherwise confirm the signature was witnessed by signing the document or a copy of the document, and
- c. be reasonably satisfied the document the witness signs is the same document, or a true copy of the document signed by the signatory, and
- d. endorse the document, or the copy of the document, with a statement—
 - i. specifying the method used to witness the signature of the signatory, and
 - ii. that the document was witnessed in accordance with this Regulation.

An audio visual link in this context means technology that allows *continuous* and *contemporaneous* audio and visual communication between the signer and the witness at different places, including videoconferencing.

Section 14G of the *Electronic Transactions Act 2000* sets out more information about how a witness may confirm having witnessed a signature in these circumstances.

More information

For more information, email ORG-eConveyancing@customerservice.nsw.gov.au.