



Office of the
Registrar General

Conveyancing Rules

Section 12E *Real Property Act 1900*

Version 6

Effective: 11 October 2021

Title: Conveyancing Rules V6, Section 12E *Real Property Act 1900*

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Real Property Act 1900
Section 12E

Version 6 of the Conveyancing Rules is made under section 12E of the *Real Property Act 1900* and comes into effect on 11 October 2021.



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Registrar General

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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.

NOTE: Under Rule 8.8 in Version 5 of the Conveyancing Rules, the Registrar General declared that from 11 October 2021 all dealings and caveats are Required Dealings – see <https://www.registrargeneral.nsw.gov.au/property-and-conveyancing/eConveyancing/schedule-of-edelings>.

Rule 8.1 in Version 5 of the Conveyancing Rules required that priority notices be lodged using an ELN.

The Registrar General also declared under section 33AAA of the *Real Property Act 1900* that all certificates of title are to be abolished on 11 October 2021. On commencement of the *Real Property Amendment (Certificates of Title) Act 2021* section 33AAA will be repealed and the concept of control of the right to deal (referred to as 'eCTs' in Version 5 of the Conveyancing Rules) will be abolished.

2. Commencement and Revocation

Version 6 of the Conveyancing Rules comes into effect on 11 October 2021 and replaces version 5.

3. Definitions and Interpretation

3.1 Definitions

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

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.

Certification Rules means the rules set out in Schedule 3 to the Participation Rules as amended from time to time.

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 Authorisation has the meaning given to it in section 107 of the RPA. Conveyancing Transaction has the meaning given to it in the ECNL.

Document has the meaning given to it in the ECNL.

ECNL means the Electronic Conveyancing National Law, which is an appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012*.

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

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 Licensing Act 2003*.

Lodgment Rules means the NSW Lodgment Rules made by the Registrar General pursuant to section 12F of the *Real Property Act 1900* as amended from time to time (available at: <https://www.registrargeneral.nsw.gov.au/publications/lodgment-rules>).

Mainstream Dealing is a discharge of mortgage, transfer, mortgage, caveat, withdrawal of caveat or transmission application that is eligible to be lodged electronically under Rule 8.7 in Version 5 of the Conveyancing Rules.

Participation Rules means the NSW Participation Rules for Electronic Conveyancing determined under the ECNL, as amended from time to time (available at: www.registrargeneral.nsw.gov.au or www.arnecc.gov.au).

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

Person Being Identified has the meaning given to it in the Participation Rules.

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.

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

Required Dealing is a Mainstream Dealing or a dealing declared to be a Required Dealing under Rule 8.8 in Version 5 of the Conveyancing Rules.

RPA means the *Real Property Act 1900*.

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 Taxation 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.

Subscriber has the meaning given to it in the ECNL.

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)

(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 of 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 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 came into effect on and applies from 26 November 2016 as amended. 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 Participation Rule 6.5 applies to a Representative under these Conveyancing Rules as it does to a Representative under the Participation Rules.

4.1.3 – 4.1.6 (deleted)

NOTE:

For guidance 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 see ARNECC MPR Guidance Note 2 - Verification of Identity at: [Model Participation Rules Guidance Notes - ARNECC](#)

4.2 (deleted)

4.3 Authority (Right to Deal)

- 4.3.1 This Rule came into effect on and applies from 26 November 2016 as amended. 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 Participation Rules 6.4.1 and 6.4.2 apply to a Representative under these Conveyancing Rules as they do to a Representative under the Participation Rules.
- 4.3.3 Participation Rule 6.4.2 applies to a mortgagee under these Conveyancing Rules as it does to a Subscriber that is a mortgagee under the Participation Rules.

NOTE:

For guidance on determining the right of a transacting party to enter into a Conveyancing Transaction in accordance with this Rule see ARNECC MPR Guidance Note 4 - Right to Deal at: [Model Participation Rules Guidance Notes - ARNECC](#)

4.4 Reasonable steps for confirming identity of mortgagor

- 4.4.1 This Rule applies only in respect of a mortgage executed on or after 19 May 2017.
- 4.4.2 For the purposes of sections 56C(1) and (2) of the RPA, a mortgagee is to be considered as having taken reasonable steps to ensure that the person who validly executed a mortgage, or on whose behalf the mortgage was validly executed as mortgagor, is the same person who is, or is to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates, if the mortgagee or the mortgagee's agent has taken the steps set out in the Verification of Identity Standard.
- 4.4.3 In applying the Verification of Identity Standard for the purposes of this Rule:
- (a) a reference to a Subscriber is to be read as a reference to a mortgagee,
 - (b) a reference to a Subscriber agent is to be read as a reference to the mortgagee's agent (if any),
 - (c) a reference to the Person Being Identified is to be read as a reference to the person who executed a mortgage, or on whose behalf the mortgage was executed, as mortgagor,
 - (d) references to client authorisations are to be disregarded.

NOTE:

For guidance on verifying the identity of a mortgagor in accordance with this Rule see ARNECC MPR Guidance Note 2 – Verification of Identity at: [Model Participation Rules Guidance Notes - ARNECC](#)

5. Supporting Evidence

Real Property Act 1900 Section 12E(1)

(1) **Making of conveyancing rules**

The Registrar-General may from time to time determine, in writing, rules for or with respect to the preparation and lodgment of 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 documents generally, including periods of retention.

5.1.1 This Rule came into effect on and applies from 26 November 2016 as amended.

5.1.2 Participation Rule 6.6 applies to a Representative or mortgagee under the Conveyancing Rules as it does to a Subscriber under the Participation Rules.

NOTE:

For guidance on retaining evidence to support conveyancing transactions in accordance with this Rule see ARNECC MPR Guidance Note 5 - Retention of Evidence at: [Model Participation Rules Guidance Notes - ARNECC](#)

6. Certifications

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

Section 12E Conveyancing Rules

(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 of 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 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.

Section 117 Certificate of correctness

- (1) The Registrar-General may reject, or refuse to accept or to take any action in relation to, any primary application, dealing, caveat or priority notice unless it is certified as required by the conveyancing rules.

- 6.1.1 This Rule came into effect on and applies from 26 November 2016 as amended.
- 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 or attached to an electronic dealing and lodged in accordance with the Lodgment Rules, 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
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 Rule 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:

1. Lodgment of dealings after 11 October 2021 is only possible using an ELN. Paper dealings will only be able to lodged using an ELN in the approved manner as set out in the Lodgment Rules.

7. (Deleted)

8. Electronic Lodgment

Real Property Act 1900 Section 12E(1)

(1) Making of conveyancing rules

The Registrar-General may from time to time determine, in writing, rules for or with respect to the preparation and lodgment of 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 electronically.

8.1 – 8.7 (deleted)

8.8 Lodgment of dealings, caveats and priority notices from 11 October 2021

8.8.1 From 11 October 2021, all dealings, caveats and priority notices irrespective of the date they were signed, must be lodged using an ELN.

8.8.2 – 8.8.5 (deleted)

NOTE: Version 5 of the Conveyancing Rules refers to ‘Mainstream Dealings’ and ‘Required Dealings’. These can be found at:

<https://www.registrargeneral.nsw.gov.au/eConveyancing/schedule-of-eddealings>

9. (Deleted)

10. National Mortgage Form

- 10.1.1 This Rule operates notwithstanding Rule 6 and is subject to Rule 8.8.
- 10.1.2 The Registrar-General can accept and register a National Mortgage Form lodged in paper, which has not been signed by the mortgagor and attested provided that the mortgage is signed by the mortgagee, if the mortgagee provides certifications 3, 4 and 5 of the Certification Rules as amended.
- 10.1.3 The Registrar-General can accept and register a National Mortgage Form lodged in paper, which has not been signed by the mortgagor and attested provided that the mortgage is signed by the mortgagee's Representative, if the mortgagee's Representative provides certifications 1, 2, 3, 4 and 5 of the Certification Rules as amended.
- 10.1.4 The Registrar-General can accept and register a National Mortgage Form lodged in paper, signed by the mortgagor and the mortgagee, if the mortgagee provides certifications 3, 4 and 5(a) of the Certification Rules as amended.
- 10.1.5 The Registrar-General can accept and register a National Mortgage Form lodged in paper, signed by the mortgagor and the mortgagee's Representative, if the mortgagee's Representative provides certifications 1, 2, 3, 4 and 5(a) of the Certification Rules as amended.
- 10.1.6 (deleted)
- 10.1.7 The certifications that a mortgagee is required to give by these Rules are given on behalf of the mortgagee only and not on behalf of the mortgagor.
- 10.1.8 The certifications that a mortgagee's Representative is required to give by these Rules are given on behalf of the mortgagee's Representative only and not on behalf of the mortgagor.
- 10.1.9 In applying the Certification Rules for the purposes of this Rule, reference to the Certifier is to be read as a reference to the mortgagee or the mortgagee's Representative, whichever is applicable.
- 10.1.10 All mortgages signed on or after 3 March 2018 must use the National Mortgage Form.

11. Client Authorisations

Real Property Act 1900 Sections 12E(1) and 107(3)

Section 12E Conveyancing Rules

(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 of documents to give effect to conveyancing transactions (the “**conveyancing rules**”), including rules for or with respect to the following:

- (b) client authorisations, including:
 - (i) the form of a client authorisation, and
 - (ii) the classes of documents to which a client authorisation applies, and
 - (iii) any supporting evidence and retention requirements

Section 107 Client authorisations

- (3) A properly completed client authorisation:
 - (a) has effect according to its terms, and
 - (b) is not a power of attorney for the purposes of any other law relating to powers of attorney.

11.1.1 Participation Rule 6.3 applies to a Representative under these Conveyancing Rules as it does to a Representative under the Participation Rules, except for Participation Rule 6.3(b).

11.1.2 Except for the documents specifically excluded in Participation Rule 6.3 (if any), the Representative must enter into a Client Authorisation with its Client before the Representative lodges for registration or recording any dealing or other Document.

NOTE:

- 1. A client authorisation produced in electronic form may be electronically signed-s107(1A) *Real Property Act 1900*.