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Conveyancing Rules Version 3

The next phase of eConveyancing is approaching. To give effect to the next phase, the Office of the Registrar General has published Version 3 of the Conveyancing Rules.

What are the Key Dates?

22 July 2017

- Australian legal practitioners, law practices and licensed conveyancers will be permitted to sign the National Mortgage Form.

1 August 2017

- Standalone mortgages involving Authorised Deposit-Taking Institutions (**ADIs**) must be lodged electronically.
- Refinance transactions involving ADIs must be lodged electronically.
- Paper certificates of title will no longer be issued to ADIs upon lodgment of paper documents.

1 January 2018

- All mortgages will be required to be lodged using the National Mortgage Form whether lodged in paper or electronically.

22 July 2017 – Signing the National Mortgage Form

On 27 May 2017, the National Mortgage Form (**NMF**) was introduced in paper. Since then, Australian legal practitioners, law practices and licensed conveyancers who act for mortgagees (**Representatives**) have not been permitted to sign the NMF in NSW.

The amended version of Rule 10 of the Conveyancing Rules now permits Representatives to sign the NMF from 22 July 2017, provided they give certain certifications. Amended Rule 10 also clarifies who may sign the NMF, and in each case, which of the certifications set out in Schedule 3 to the Participation Rules must be given.

The certifications in Schedule 3 to the Participation Rules cover:

- Client Authorisations between the mortgagee and the mortgagee's Representative - certification 2;
- retention of evidence - certification 3;
- the taking of reasonable steps to ensure the mortgage is correct and compliant with relevant legislation and any prescribed requirements - certification 4;
- verification of the mortgagor's identity - certifications 1 and 5(a); and
- a mortgagee obtaining a mortgage granted by the mortgagor on the same terms as the registry instrument or document lodged with the Land Registry - certification 5(b).

Certification 6 of the Participation Rules does not apply in NSW.

As provided under new Rule 10, the persons that can sign the NMF and provide certifications are:

- a mortgagee only, if they provide certifications 3, 4 and 5;
- a mortgagee's Representative only, if they provide certifications 1, 2, 3, 4, and 5;
- a mortgagor and a mortgagee, if the mortgagee provides certifications 3, 4, and 5(a); and
- a mortgagor and a mortgagee's Representative, if the mortgagee's Representative provides certifications 1, 2, 3, 4 and 5(a).

Client Authorisations

For a Representative to sign the NMF on behalf of a mortgagee, the Representative must first enter into a Client Authorisation with the mortgagee. Pursuant to section 107 of the *Real Property Act 1900* (NSW), a properly completed Client Authorisation has effect according to its terms.

New Rule 11 provides that the Client Authorisation form to be used between a mortgagee and its Representative is the form in substantial compliance with the form set out in Schedule 4 to the Participation Rules.

In respect of paper conveyancing transactions, a Client Authorisation may only be used for a Representative to sign the NMF.

The Client Authorisation form is set out on pages 30 and 31 of the [Participation Rules](#). Alternatively an [interactive version of the form](#) is available on the ARNECC website.

1 August 2017 – Mortgages and Refinances

In addition to the current requirement for ADIs to lodge standalone discharges of mortgage and mortgages under the National Credit Code (**NCC**), ADIs will have to lodge the following further documents electronically, beginning 1 August 2017:

- mortgages whether or not the NCC applies to the mortgage, if signed on or after 1 August 2017; and
- refinances, namely, any combination of discharge of mortgage and mortgage where both mortgagees involved in the transaction are ADIs, signed on or after 1 August 2017.

Access the [full list of ADIs on the APRA website](#).

The requirement to lodge mortgages and refinances electronically is subject to exceptions that are explained in more detail below.

Mortgages that cannot be Lodged Electronically

For a mortgage to be lodged electronically, it must satisfy certain requirements. If a mortgage does not satisfy these requirements, the mortgage must proceed in paper regardless of whether it involves an ADI and is signed on or after 1 August 2017.

First, the mortgage must be over an interest comprised in its own Folio of the Register. This means that any mortgage of an interest recorded in the Second Schedule must proceed in paper, for example, a mortgage of a mortgage.

Secondly, the mortgage must not contain terms and conditions over 4000 characters that are not included in a memorandum filed under section 80A of the *Real Property Act 1900*.

Thirdly, the mortgage must relate to a Folio of the Register that is electronically tradeable.

An example of a Folio of the Register that is not electronically tradeable is a life estate.

Access the [full list of folios that are electronically tradeable](#) on the Registrar General's Guidelines.

1 August 2017 – Certificates of Title

Beginning 1 August 2017, ADIs will not be issued a paper certificate of title when a paper document is lodged. Instead, the ADI will be recorded on the relevant folio of the Register, as having control of the right to deal for that title.

However, if the title is not [electronically tradeable](#), a paper certificate of title will be issued.

1 January 2018 – The National Mortgage Form Deadline

Mortgages may continue to be lodged in a form approved by the Registrar General until 31 December 2017. All mortgages signed on or after 1 January 2018 must be lodged using the NMF.

More information

For more information see Version 3 of the [Conveyancing Rules](#) or contact the Office of the Registrar General on org-econveyancing@finance.nsw.gov.au.