

2020

AUSTRALIAN CAPITAL TERRITORY

LAND TITLES (VERIFICATION OF AUTHORITY) RULES 2020

DI2020–111

MADE UNDER THE

LAND TITLES ACT 1925

EXPLANATORY STATEMENT

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Registrar-General

Background

In July 2008 the Council of Australian Governments agreed pursuant to the *Seamless National Economy National Partnership Agreement* that there should be a new electronic conveyancing system for the settling of real property transactions in all Australian States and Territories.

The *Intergovernmental Agreement for an Electronic Conveyancing National Law* (IGA) came into operation on 21 November 2011. The Electronic Conveyancing National Law makes possible the implementation of a national electronic conveyancing system in Australia and has the object of promoting efficiency throughout Australia in property conveyancing.

The Electronic Conveyancing National Law is set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (New South Wales).

In the ACT the Electronic Conveyancing National Law is adopted by operation of the *Electronic Conveyancing (National Law) Act 2020*.

Pursuant to section 23 of the Electronic Conveyancing National Law the Registrar may issue Participation Rules for operators of, and subscribers to, an Electronic Lodgement Network.

Those Participation Rules may, and do, include provisions relating to verification of authority and can require the taking reasonable steps to verify the authority of a client or other entity involved in a conveyancing transaction.

Outline

These are companion rules to the Participation Rules and align the verification of authority processes for in-person conveyances with those that apply in the electronic conveyancing context.

Establishing confidence in a person's authority in a conveyancing transaction is a critical element of ensuring the integrity of the land titles system.

The *Land Titles Act 1925* requires that the authority of a party to a Registry Instrument, to enter into the relevant transaction, is verified. Examples of when this is required include:

- Prior to entering into a mortgage, a mortgagee must verify the authority of the mortgagor to enter into the mortgage, in accordance with these Rules;
- Prior to varying a mortgage, a mortgagee must verify the mortgagor's authority to enter into the variation, in accordance with these Rules; and
- Prior to executing an Registry Instrument on behalf of a Client, a legal practitioner must verify the authority of their Client to have the right to enter to be a party to that Registry Instrument, in accordance with these Rules.

The requirement to verify authority serves a legitimate objective, that is, the protection of individual land ownership from fraudulent behaviour.

The requirements reflect 'best practice', are similar to those already followed within the industry, and are not considered onerous.

Detail

Clause 1 provides definition of terms used in these Rules.

Clause 2 provides an overview and summary of the Rules.

Clause 3 provides that these rules apply to paper Registry Instruments and documents under the *Land Titles Act 1925* to be lodged in-person at the Australian Capital Territory Land Titles Office.

Clause 4 explains why verification of authority is required, as a matter of law under the *Land Titles Act 1925* and as an element of due diligence.

The requirements reflect ‘best practice’, are similar to those already followed within the industry, and are not considered onerous.

Clause 5 explains the obligation on Legal Practitioners and Mortgagors to take reasonable steps to verify a person’s authority to enter into a conveyancing transaction.

Clause 6 explains what constitutes ‘reasonable steps’ in verifying a person’s authority to enter into a conveyancing transaction.

Clause 7 explains provisions in the *Land Titles Act 1925* with effect that, if a party to a Registry Instrument is not represented, the Registrar-General must not register the Registry Instrument in the Register, unless the party has satisfied the Registrar-General that they are authorised to enter into the transaction to which the Registry Instrument relates.

Clause 9 provides examples of documents that may be used to verify a person’s authority to enter into common conveyancing transactions.

Clause 10 gives examples of instances where further consideration will need to be given to determining what steps would be considered “reasonable” in a particular case.

Clause 11 explains that supporting documents in the verification of a person’s authority must be retained for at least seven years.

Clause 12 provides answers to some common questions in ‘Q&A’ format.

Appendix A provides the form for a client to authorise a Legal Practitioner to act for them in a conveyancing transaction, including terms of the client authorisation.