

Banking and finance update

October 2015



Victoria broadens verification of identity requirements for paper based conveyancing transactions

Readers may recall that in September last year new rules were introduced in Victoria requiring mortgagees/lenders to take positive steps to verify the identity of mortgagors/borrowers and their authority to deal with the land being mortgaged. These changes were introduced by the Transfer of Land Amendment Act 2014 (Vic). We issued an alert on this at the time, which may be accessed [here](#)

At that time the Registrar of Titles in Victoria indicated the new requirements would not apply to general conveyancing transactions (sales/purchases) until after there had been consultation with industry. Consultation took place during the first part of 2015.

On 30 September 2015 the Registrar of Titles in the State of Victoria announced the introduction of verification of identity (VOI) requirements for all paper based conveyancing transactions in Victoria, effective 9 November 2015.

The announcement was made in Customer Information Bulletins Editions 150 and [152](#)

The new requirements are introduced by way of a determination made by the Registrar of Titles pursuant to section 106A of the Transfer of Land Act 1958 (Victoria). The Registrar's requirements are set out in a publication entitled "[Registrar's Requirements for Paper Based Conveyancing Transactions – Version 1 – Published 30 September 2015](#)"

The introduction of VOI requirements for paper based conveyancing transactions in Victoria follows prior introduction of similar requirements in Western Australia (June 2012) and South Australia (May 2014).

While lenders/mortgagees are familiar with and have worked with these new requirements for over a year now, the issue of "authority of a party to deal" is now more prominent than it was in 2014. See below for further comment on this issue.

Registrar of Titles in Victoria has aligned VOI requirements for paper based conveyancing transactions with those required under e-Conveyancing by adopting the ARNECC Model Participation Rules – Version 3 as the standard in Victoria.

The Registrar of Titles requirements also incorporate directions as to when certain transactions will need to be conducted electronically and lenders/mortgagees need to take note in this regard.

The timing for introduction of the new requirements in Victoria is as follows:

9 November 2015

Introduction of:

- verification of identity requirements;
- requirement to establish authority of a party to deal; and
- evidence retention requirements.

1 December 2015

Introduction of requirement to verify identity of non represented parties.

1 August 2016

By this date some discharges of mortgage and mortgages must be lodged electronically, principally those involving approved deposit taking institutions.

3 April 2017

Introduction of use of certifications and client authorisations.

KEY POINTS

Given that the new requirements of the Registrar essentially follow those contained in the Model Participation Rules, we don't propose to analyse exactly what those requirements are – this having been done by us on previous occasions.

However, the following are of interest:

1. WHAT IS MEANT BY THE EXPRESSION "NEW REQUIREMENTS COMMENCE ON 9 NOVEMBER 2015?"

Some confusion has already arisen as to what the Registrar of Titles actually means by the statement that the new VOI requirements will commence on 9 November 2015.

Does that mean that all documents lodged at the Land Titles Office on or after that date must have undergone a verification of identity process, or does it mean something else?

If the commencement date is determined by date of lodgement, that will affect transactions already in progress and arguably have retrospective effect.

Our enquiries with the Registrar of Titles indicate that the Registrar regards the expression "commence" to mean that all documents in a conveyancing transaction (eg. transfer of land, mortgage, power of attorney etc) signed by the party to the transaction on or after 9 November 2015 will be subject to the VOI requirements.

The Registrar of Titles is likely to issue a further customer information bulletin shortly clarifying this issue.

2. AUTHORITY TO DEAL

This is another requirement that commences on 9 November 2015 and has thus far not taken centre stage in discussions and debate about e-Conveyancing, although this requirement has always been present as an issue in the e-Conveyancing process.

The Registrar's guidelines (Guideline 3.2) require that on and as from 9 November 2015:

"3.2.2 For each conveyancing transaction a representative must take reasonable steps to verify that its client is a legal person and has the right to enter into the conveyancing transaction.

3.3.3 A mortgagee, or representative of a mortgagee, must, for each mortgage, variation of mortgage or transfer of mortgage, take reasonable steps to verify that the mortgagor is a legal person and has the right to enter into the mortgage."

Unlike VOI requirements there is no deeming provision available with regard to verifying the authority of a party to the transaction to engage in the transaction.

The requirement to verify authority to enter into the transaction is a twofold requirement being:

- That the person is a “legal person”; and
- Has the right to enter into the conveyancing transaction/ mortgage.

We will consider this further and issue a further update about this.

3. VERIFICATION OF IDENTITY OF NON-REPRESENTED PARTIES

This requirement commences on 1 December 2015 as stated above.

This requirement is unique to paper based transactions in Victoria. Under e-Conveyancing persons acting for themselves will not be able to access the electronic conveyancing system directly.

What the Registrar of Titles is saying about this requirement is that a person acting for themselves in a conveyancing transaction will need to visit an “authorised identity agent” and have that identity agent verify their identity, before any documents signed by them will be accepted.

There is also an additional requirement for unrepresented parties - not only will the authorised identity agent have to verify the identity of the non-represented party, but the identity agent will also have to witness the signature of the non-represented party on the transaction document.

Presumably evidence of VOI will need to be provided to the Registrar of Titles at the time a document is lodged for registration. No doubt the Registrar of Titles will clarify this aspect of the matter. A stamp affixed to the transaction document by the identity agent may suffice.

Please note that this requirement does not apply to mortgagors. Lenders/mortgagees are responsible for verifying the identity of mortgagors.

The new procedures and policies will apply across the board to all conveyancing transactions in Victoria. The Law Institute of Victoria is running a number of major seminars to make sure that practitioners in Victoria are up to speed on the changes – including the upcoming session on “Preparing for new VOI requirements” on 26 October 2015. The writer will be a member of the discussion panel on the day.

Hunt & Hunt continues to take an interest in developments in this space and will issue further updates when significant information is released.

FURTHER LINKS

Customer Information Bulletins Edition 152: http://www.dtpli.vic.gov.au/__data/assets/word_doc/0008/284903/Customer-Information-Bulletin-152.doc

Registrar’s Requirements for Paper Based Conveyancing Transactions – Version 1 – Published 30 September 2015: http://www.dtpli.vic.gov.au/__data/assets/pdf_file/0004/284818/Registrars-Requirements-Version-1.pdf

LIV calendar of CPD sessions: <http://www.liv.asn.au/Professional-Development/whatsOn-Calendar>

Author : Richard Williams, Partner

CONTACT US:

Maria Townsend, Sydney
Penny Cable, Sydney
Jill Milburn, Sydney

Richard Williams, Melbourne
Neville Debney, Melbourne
Mary Nemeth, Melbourne

Shannon Adams, Adelaide
Rick Harley, Adelaide
Stefan Jury, Adelaide
Troy Hawthorn, Brisbane

Paul Morris, Brisbane
Darren Miller, Perth
Marcus Easthope, Perth
Antony Logan, Hobart