

# MPR Guidance Note #2

## Verification of Identity

### Introduction

This guidance note explains:

- what verification of identity is;
- why verification of identity is required;
- when verification of identity is required; and
- how verification of identity is to be carried out.

### What is verification of identity?

Verification of identity is a process carried out to ensure that a person is who they claim to be.

The Participation Rules for electronic conveyancing require a Subscriber to take reasonable steps to verify the identity of:

- any person signing instruments or documents
- each of its Subscriber Administrators prior to their appointment
- its client
- where the Subscriber is a mortgagee, the mortgagor
- before handing over a duplicate or paper certificate of title, the client, mortgagor or former mortgagor to whom it is given.

### Why is verification of identity required?

The purpose of carrying out verification of identity is to reduce the risk of identity fraud and the registration of fraudulent land transactions. Verification of identity of clients and mortgagors is considered prudent conveyancing practice. With the introduction of electronic conveyancing, a Subscriber who is representing a client will sign Registry Instruments or other electronic documents on the client's behalf. In a similar way, mortgagees can sign a mortgage certifying that they hold a valid mortgage from the mortgagor.

In order for other participants in a conveyancing transaction to have confidence in the Registry Instruments or documents, it is vital that the client or mortgagor is identified.

### When is verification of identity required?

The various circumstances when verification of identity is required to be undertaken are outlined below.

- **Signers**

A Subscriber must verify the identity of each person who is to digitally sign documents on its behalf prior

to a Digital Certificate being allocated to that person.

- **Subscriber Administrators**

The Subscriber must verify the identity of each person who it appoints as its Subscriber Administrator, prior to their appointment as a Subscriber Administrator.

- **Clients**

A Subscriber must identify each client for which it has authority to sign. Where the client:

- is an individual
- is a company, the existence of the company must be confirmed and the identity of the person or persons signing for the company or witnessing the company seal must be verified
- has appointed an individual as an attorney to sign for the client, the identity of the attorney must be verified
- has appointed a company as an attorney to sign for the client, the existence of the company must be confirmed and the identity of the person or persons signing for the company or witnessing the company seal must be verified.

- **Mortgagor**

If a Subscriber is a mortgagee in a transaction (for example a financial institution acting for itself), the Subscriber must verify the identity of the mortgagor.

If a Subscriber is representing a mortgagee (for example a law firm on the panel for a financial institution) it must verify the identity of the mortgagor, unless the mortgagee has already done so.

- **Paper certificates of title**

A Subscriber must verify the identity of any client, mortgagor or former mortgagor to whom it gives a paper certificate of title.

## How is verification of identity to be carried out?

In all of the circumstances outlined above, a Subscriber is required to take reasonable steps to verify the identity of the person.

Where a Subscriber is an organisation any duly authorised person can undertake the verification of identity. While it may be possible for more than one duly authorised person to properly complete the verification of identity process, it is expected that for integrity purposes one person will undertake the whole process.

A Subscriber must give a certification in the Registry Instrument for the conveyancing transaction that reasonable steps have been taken to verify identity.

### What are reasonable steps?

The Subscriber decides what steps to take to verify the person's identity. What constitutes reasonable steps may be influenced by various factors that when taken into account contribute to a Subscriber being able to reasonably have confidence in the person's identity. Examples of these factors might include the length of time a Subscriber has known the person or whether they have represented the person on previous occasions.

A standard for undertaking verification of identity is set out in Schedule 8 of the Participation Rules. This Verification of Identity Standard is not mandatory. However, if this Verification of Identity Standard is properly carried out the Subscriber will be deemed to have taken reasonable steps to verify identity. This is called "safe harbour".

Subscribers are required to retain evidence supporting the verification of identity in order to demonstrate that reasonable steps were taken.

### When can a Subscriber Agent be used?

A Subscriber can use a Subscriber Agent to undertake verification of identity on its behalf.

A Subscriber that engages a Subscriber Agent to conduct a verification of identity must direct the Subscriber Agent how to conduct the verification of identity. This could be by using the Verification of Identity Standard or some other way that constitutes taking reasonable steps.

A Subscriber should obtain from the Subscriber Agent supporting documentation that shows the process followed, so the Subscriber can make the required verification of identity certification.

When a Subscriber engages a Subscriber Agent, the responsibility for taking reasonable steps remains with

the Subscriber. The Subscriber therefore needs to be satisfied that the process followed by the Subscriber Agent was the process the Subscriber directed the Subscriber Agent to follow.

A Subscriber Agent which conducts verification of identity must maintain professional indemnity and fidelity insurance with:

- at least \$1.5 million per claim (including legal Costs);
- an excess per claim no greater than \$20,000;
- an annual aggregate amount of not less than \$20,000,000; and
- coverage for verification of identity for the purposes of the Participation Rules.

### What is the Verification of Identity Standard?

The Verification of Identity Standard sets out procedures for how verification of identity is to be performed and the required evidence to be retained in order to qualify for "safe harbour." The Verification of Identity Standard can be used where a Subscriber personally carries out the verification of identity and where a Subscriber Agent carries out the verification of identity on behalf of a Subscriber. If the Standard is complied with the Subscriber is deemed to have taken reasonable steps.

### How is the Verification of Identity Standard used?

This section describes how the Verification of Identity Standard is used, and what is required of those using it in various situations.

#### Face-to-face verification

To comply with the Verification of Identity Standard the Subscriber (or the Subscriber Agent) must conduct a face-to-face in-person interview with the person to be identified.

#### Identification Document Categories

The person being identified must supply original documents from the list of documents in the categories in the Verification of Identity Standard. The first assessment that needs to be made is whether or not the Person Being Identified is an Australian citizen or resident. If they are, then categories 1 to 4 must be used. If they are not, category 5 must be used. The highest category available must be used: a lower level category can only be used if the person being identified does not possess the documents required for the higher level, the documents have expired, or if the document is an Australian passport has been expired for a period of more than 2 years.

The document categories in the Verification of Identity Standard require that a change of name or marriage

certificate is provided if applicable. There may be instances where identification documents issued by different government departments have been registered in differing names but a change of name certificate is not appropriate, as that individual has not and/or does not intend to officially change their name. In such a situation a Subscriber or Subscriber Agent must take reasonable steps to ensure the person being identified is one and the same person as in the varying identification documents provided. This may involve the Subscriber or Subscriber Agent undertaking further checks to verify that person's identity.

The category with the lowest level of identification for Australian residents uses an Identifier Declaration. An Identifier Declaration is a statutory declaration by a person who knows the person being identified. The person making the statutory declaration is called the Identity Declarant. There are specific prescribed requirements on who can be an Identity Declarant and what must be included in the Identifier Declaration. The Identity Declarant must also have their identity verified using the Verification of Identity Standard by the Subscriber or Subscriber Agent. However, the identity of the Identity Declarant cannot be verified with an Identifier Declaration.

#### **Verification of Identity of Bodies Corporate**

For a body corporate, a Subscriber or Subscriber Agent must confirm the existence of the body corporate, take reasonable steps to establish who is authorised to sign for the body corporate or witness the affixing of any seal and verify the identity of the individuals signing or affixing the seal on behalf of the body corporate.

#### **Verification of Identity of Attorneys**

For an attorney who is an individual, the Subscriber or Subscriber Agent must confirm the details of the client and the attorney from the (registered) power of attorney, take reasonable steps to establish that the conveyancing transaction is authorised by that power of attorney and verify the identity of the attorney.

For an attorney who is a body corporate the Subscriber or Subscriber Agent must confirm the details of the client and the attorney from the power of attorney, confirm the existence of the body corporate, take reasonable steps to establish who is authorised to sign for the body corporate or witness the affixing of any seal and verify the identity of the individuals signing or affixing the seal on behalf of the body corporate.

#### **Verification of Identity in a Foreign Country**

Where the person whose identity is to be verified is an Australian citizen or resident, verification of identity in a foreign country is to be carried out by one of:

- the Subscriber;

- a Subscriber Agent;
- an Australian Consular Officer;
- an Australian Diplomatic Officer; or
- a Competent Officer, as defined in the *Defence Force Regulations 1952* (Cth), where the person being identified is a member of the Australian Defence Force.

Where the person whose identity is to be verified is not an Australian citizen or resident, verification of identity in a foreign country is to be carried out by one of:

- the Subscriber;
- a Subscriber Agent.

An Identifier Declaration cannot be used as identification for any overseas verification of identity.

Where the verification of identity is conducted in a foreign country, the Subscriber must receive from the person who conducted the verification of identity copies of the documents relied on as evidence. The copies must be signed, dated and endorsed as true copies of the originals. A certification in the form set out in the Verification of Identity Standard must also be provided. These documents must show that the Verification of Identity Standard was followed.

#### **Evidence Required from a Subscriber Agent**

Where the verification of identity is conducted by a Subscriber Agent, the Subscriber must receive from the Subscriber Agent the required certification and copies of the documents relied on. These must show the Verification of Identity Standard was followed.

#### **Previous verification of identity**

In situations where a verification of identity has occurred within the previous 2 years the person's identity does not need to be verified again, provided the Subscriber has a face-to-face in-person interview with the person and satisfies themselves that the person is the same as the person originally identified by the Subscriber or its Subscriber Agent.

#### **Client Authorisation**

The Verification of Identity Standard requires that if a Client Authorisation is required, the Subscriber or Subscriber Agent verifying identity must ensure that the Client Authorisation is signed by the person being identified in the Subscriber's or Subscriber Agent's presence. The Subscriber or Subscriber Agent carrying out the identity verification must also sign the Client Authorisation.

## Frequently Asked Questions

Q1. My overseas client is not an Australian citizen or resident? How do I verify my client's identity?

A1. The Verification of Identity Standard allows for a Subscriber or Subscriber Agent to undertake this verification of identity.

If the Verification of Identity Standard is not applied, the conveyancer or lawyer must determine what actions they consider would, in the circumstances, constitute the taking of reasonable steps to verify the client's identity.

Q2. My overseas client is an Australian citizen or resident? How do I verify my client's identity?

A2. The Verification of Identity Standard allows the client's identity in this case to be verified by the Subscriber, a Subscriber Agent or by an Australian consular officer or Australian diplomatic officer. If the client is a member of the Australian Defence Force, a competent officer as defined in the *Defence Force Regulations 1952* (Cth) can verify identity.

If the Verification of Identity Standard is not applied, the conveyancer or lawyer must determine what actions they consider would, in the circumstances, constitute the taking of reasonable steps to verify the client's identity.

Q3. My client has one name on his/her passport and an anglicised or abbreviated version of that name on his/her drivers' licence? What should I do?

A3. It is possible that documents issued by different government departments may have differing versions of a name.

You or your Subscriber Agent must take reasonable steps to ensure the person required to be identified is one and the same person. Examples which may be appropriate in some circumstances are sighting other types of documents or letters issued by an employer, government agency or educational institution and showing the person's name and other details, seeking confirmation from relevant organisations of the information given by the person and whether they are aware that the person is also known by another name, and asking the person questions about the reasons for the differing names, recording their answers and recording whether and on what basis you considered those answers to be satisfactory.

Q4. Can I store supporting evidence of the verification of identity electronically?

A4. Yes- Verification of identity evidence can be stored electronically but must be securely stored, readable and retrievable.

The Verification of Identity Standard requires copies of the documents supporting the verification of identity to be kept for 7 years from lodgement.

Q5. Will verification of identity cause delays in the conveyancing process?

A5. Verification of identity should not cause delays in the conveyancing process as it is considered part of prudent conveyancing practice. It is expected that some form of verification of identity is already being undertaken in the paper conveyancing process.

Q6. I have known some of my clients for over 30 years. Why should I verify their identity just because I have not seen them in the last two years?

A6. If the Verification of Identity Standard is not applied, the Subscriber must determine what actions it considers would, in the circumstances, constitute the taking of reasonable steps to verify the client's identity. A situation where you have known the client for over 30 years may be one where you decide to undertake alternative steps you believe would be considered reasonable.

If you choose to rely on the "safe harbour" of the Verification of Identity Standard, the verification of identity must be conducted every two years.

Q7. I am a Subscriber who is a financial institution. Can I use the AML/CTF Know Your Customer schema to verify the identity of my mortgagor?

A7. A Subscriber must determine for itself what steps it considers constitutes the taking of reasonable steps to verify the identity of a client, or, in this case, a mortgagor. It may be reasonable, in the circumstances, to use the AML/CTF schema. The risk of determining what is reasonable in the circumstances lies with the Subscriber. If a Subscriber wants to obtain "safe harbour", the Subscriber or its Subscriber Agent must use the Verification of Identity Standard to verify the identity of its client or, in this case, its mortgagor.