

MPR Guidance Note #3

Certifications

Introduction

This guidance note explains:

- what certifications are;
- why certifications are required;
- when certifications are required; and
- how certifications are given.

What are certifications?

Certifications are statements made by a Subscriber that they have undertaken a specific action.

The Certifications are:

| # | Subject | Certification |
|---|----------------------|--|
| 1 | Identity | The Subscriber has taken reasonable steps to verify the identity of the [transferor/transferee/ mortgagee/ mortgagor/ caveator/ applicant]. |
| 2 | Authority | The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document. |
| 3 | Evidence | The Subscriber has retained the evidence supporting this Registry Instrument or Document. |
| 4 | Correctness | The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement. |
| 5 | Mortgagee | The Subscriber or the mortgagee it represents: (a) has taken reasonable steps to verify the identity of the mortgagor; and (b) holds a valid mortgage from the mortgagor, on the same terms as this Registry Instrument. |
| 6 | Certificate of Title | The Subscriber has: (a) retrieved; and (b) either securely destroyed or made invalid the (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or Document. |

Why are certifications required?

Certifications on a Registry Instrument or document give other parties to a transaction greater certainty that the rules defined in the Participation Rules have been complied with.

The certifications also provide representations by the Subscriber to the Registrar that the instrument lodged

Certifications are made by all Subscribers on Registry Instruments or other electronic documents.

A Subscriber must give the certifications in their own right, regardless of whether they are acting for themselves or a client. This includes situations where the Subscriber is a conveyancer or lawyer who signs on behalf of a client.

Certifications for electronic transactions are set out in Schedule 3 of the Participation Rules.

complies with legislation, the Participation Rules and any Prescribed Requirements.

When are certifications required?

Certifications are required any time a Registry Instrument or document is digitally signed.

The certifications required to be provided will vary depending on the Subscriber role and Registry Instrument or document type.

A Subscriber acting on their own behalf will be required to provide the Evidence and Correctness certifications for Registry Instruments.

An incoming Mortgagee representing itself will be required to provide the Evidence, Correctness and Mortgagee certifications for Registry Instruments.

A Subscriber representing a client will be required to provide the Identity, Authority, Evidence and Correctness certifications for Registry Instruments.

A Subscriber representing a mortgagee will be required to provide the Identity, Authority, Evidence, Correctness and Mortgagee certifications for Registry Instruments.

The Certificate of Title certification is only required for transactions involving land situated in Victoria and Western Australia. In Victoria the Certificate of Title certification is required for an administrative notice that converts a paper Certificate of Title to an electronic Certificate of Title. In Western Australia the Certificate of Title certification is required when a paper Certificate of Title exists, and is to be provided by the Subscriber who controls or to whom control of that Certificate of Title is given.

Certifications are also required in some jurisdictions for documents, including Notices of Sale, Notices of Acquisition, Consents and Lodgment Instructions.

How are certifications given?

Certifications will be set out in the Registry Instrument or document when it is presented to the Subscriber to be signed.

When giving a certification a Subscriber must ensure that it can demonstrate compliance with the certification.

The compliance requirements for each certification are described below.

Identity

Compliance with the identity certification can be demonstrated by proving that reasonable steps were taken to identify the person concerned.

If the Verification of Identity Standard was used, evidence demonstrating the application of the Verification of Identity Standard is required, such as copies of the identification documents provided by the person being identified. Refer to Guidance Note #2 Verification of Identity.

Where an alternative method of identification was taken by the Subscriber, evidence which demonstrates

the reasonable steps taken is required to be kept. For example, a mortgagee Subscriber may decide that the transaction records it has for long-standing customers who are well-known to it are sufficient to constitute 'taking reasonable steps'.

Authority

Where the Authority certification is required, compliance can be proven by producing the completed Client Authorisation. Refer to Guidance Note #1 Client Authorisation.

Evidence

Where the Evidence certification is required, any evidence supporting the conveyancing transaction must be retained for at least 7 years from the date of lodgment.

This includes Verification of Identity and Client Authorisation evidence as outlined in the preceding paragraphs, as well as any other supporting evidence for the Registry Instrument (for example any form required by the Duty Authority, statutory declarations, trust deeds, agency arrangements, evidence of death etc.).

It should include any supporting material evidencing that the client or mortgagor is entitled to enter into the conveyancing transaction specified in the Client Authorisation or mortgage.

Evidence supporting the Registry Instrument is that which is required to satisfy the Subscriber of the validity of the conveyancing transaction. This will be what is required for a paper instrument, with the addition of the Client Authorisation and Verification of Identity evidence (if not currently kept).

There may be cases, for example for a discharge of mortgage, where there is little supporting evidence. In this case there may only be the mortgagor's request for a discharge.

Correctness

No specific evidence is required to prove compliance with this certification. However, if it becomes clear that prudent conveyancing practices to ensure correctness of the signed Registry Instrument or document were not followed, it is likely that compliance with this certification will not be demonstrated.

Mortgagee

Where the Mortgagee certification is required, compliance can be proven by producing a valid mortgage granted by the mortgagor on the same terms as the mortgage lodged with the Land Registry, together with evidence of verification of identity of the mortgagor.

Certificate of Title

No specific evidence is required to prove compliance with this certification. However, where a certification was provided that a Certificate of Title or duplicate Certificate of Title was invalidated or destroyed and a valid version of the Certificate of Title or duplicate Certificate of Title appears at a later date, it will be assumed that this certification was incorrectly given.

Frequently Asked Questions

Q1. What happens if I can't give a particular certification?

A1. The certifications provide representations by the Subscriber to the Registrar that the instrument lodged complies with legislation, the Participation Rules and any Prescribed Requirements.

The certifications relate to requirements for that particular conveyancing transaction to proceed therefore where one or more certifications cannot be provided then the transaction should not go ahead.

Q2. The Evidence certification appears very broad. Do I need to seek out supporting evidence that I have not requested as part of the conveyancing transaction?

A2. NO – You are not required to seek out supporting evidence. The evidence required for the Evidence certification should be obtained as part of the process of undertaking the conveyancing transaction.

Evidence supporting the Registry Instrument is that which is required to satisfy the Subscriber of the validity of the conveyancing transaction. This will be what is required for a paper instrument, with the addition of the Client Authorisation and Verification of Identity evidence (if not currently kept).

Q3. Does the Evidence certification include all correspondence, emails and telephone attendance notes?

A3. NO – the Evidence certification does not necessarily include all correspondence, emails and telephone attendance notes. This evidence should be kept if it supports the requirements and the validity of the conveyancing transaction.

For example, if the correspondence, emails or telephone notes support that reasonable steps

were taken to verify the identity of the transacting party, they should be kept.

Q4. What would happen if I inadvertently gave a false certification?

A4. The Subscriber is responsible for ensuring all the things being certified are correct. If the transaction is completed, the consequences of a certification having been given incorrectly would depend on the outcome of the transaction for each party and the application of legislation and other laws relevant to the circumstances.