



AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

## NOTICE TO SUBSCRIBERS

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| <b>Number</b>   | 2016-NS2  |
| <b>Subject</b>  | Mortgages on the Same Terms   |
| <b>Purpose</b>  | To clarify the meaning of “mortgage on the same terms” in relation to the certification made by Subscribers signing electronic mortgages. |
| <p>In accordance with Participation Rule 6.13, where a mortgagee or its Representative signs an electronic mortgage, the Subscriber is required to provide a certification that it “holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument”.</p> <p>Recently some electronic mortgages were created using Property Exchange Australia Ltd (PEXA) that sought to include terms by reference either to:</p> <ul style="list-style-type: none"><li>• terms in the paper mortgage signed by the mortgagor; or</li><li>• terms in schedules which do not exist in electronic mortgages.</li></ul> <p>In both these examples it is clear that the electronic mortgage cannot be on the same terms as the mortgage granted by the mortgagor. When giving the above certification, mortgagees or their Representatives must ensure that the electronic mortgage signed by the mortgagee is in fact on the same terms as that granted by the mortgagor. If the mortgage granted by the mortgagor included additional terms and conditions, then those same terms and conditions must be included in full in the electronic mortgage. These terms could form part of the additional covenants in the electronic mortgage or be included in a Memorandum of Common Provisions/Standard Terms Document (as variously described).</p> <p>If the electronic mortgage and that granted by the mortgagor are not on the same terms, the validity of the mortgage may be questioned. In addition, the Subscriber will have provided a false certification.</p> <p>Subscribers are reminded of the importance of complying with the Electronic Conveyancing National Law and the Participation Rules when submitting documents for lodgment using an electronic lodgment network. Failure to do so could result in a Subscriber being suspended or terminated from use of the electronic lodgment network.</p> |   |
| <b>Date of Issue</b>  | 14 March 2016   |
| <b>Enquiries</b>  | The Land Registry in your State or Territory  |

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