

MPR Guidance Notes #4 (Right to Deal) & #5 (Retention of Evidence) Consultation Feedback Table

ARNECC Dec2015

#	Note	Section	Issue	Action Taken	Commentary
1	#4	All	It is essential that specific guidelines for establishing 'right to deal' should be established together with immunity from liability for legal practitioners and conveyancers who have followed those guidelines.	None	Establishing the right to deal of a party in a transaction is part of current prudent conveyancing practice. It is not possible to establish a framework for how this should occur as it is dependent on the particular circumstances of the transaction. The Guidance Note has been drafted to provide advice which should be considered as part of a Subscriber's obligation to take reasonable steps to verify right to deal.
2	#4	All	A statement should be included that outlines this is not a new concept when dealing with clients.	The Guidance Note has been amended.	The amendment clarifies that determining right to deal is a long-standing part of prudent conveyancing practice.
3	#4	5	Paragraph 5 states any 'duly authorised person'. It should be clarified that the duly appointed person need not be a principal or legal practitioner.	The Guidance Note has been amended.	The amendment makes it clear that the person is to be duly authorised by the Subscriber. It is for the Subscriber to determine who should be undertaking this verification and what qualifications or background is required.
4	#4	5.2	The use of 'or' in the list could be perceived to contradict the statement in paragraph 5.1 as it implies one document is sufficient on its own.	The Guidance Note has been amended.	The amendment ensures the list is not seen as a list of potentially appropriate documents.
5	#4	5.3	In relation to the dot point 'if you are a Subscriber acting for the lender, official loan documentation from the lender' clarification is sought as to whether loan documentation is sufficient when a lender is acting for themselves noting this documentation is not produced by an independent third party. It is suggested a copy of the contract of sale is also required.	The Guidance Note has been amended.	The section relates to the right to deal of the mortgagee when a Subscriber represents the mortgagee and has a Client Authorisation to act on their behalf. The amendment ensures the list is seen as a list of potentially appropriate documents consistent with the amendment to section 5.2. A frequently asked question has been included in section 6 to clarify the intended scenario.
6	#4	5.7	In relation to 'you must verify the right to deal of all the persons constituting the client. You should contact all persons comprising your client to confirm their instructions', it is suggested that reference should be to 'the client.'	The Guidance Note has been amended.	The amendment uses 'your client' throughout for consistency with the terminology used in the other Guidance Notes. In relation to this particular further step, reference to 'all' refers to a scenario where you are representing a client made up of several parties, for example a couple who hold as joint tenants. An example has been

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			You may want to consider using a couple of examples here, like dealing with incorporated entities and obtaining instructions from those properly authorised to issue them rather than 'all.'		included for clarification. The proposed example regarding incorporated entities has also been included in relation to further steps generally.
7	#4	5.7	'...Are the attorneys required to act jointly or severally" might be a better way of expressing this consideration.	The Guidance Note has been amended.	The amendment adopts the suggested enhancement.
8	#4	5.7	Suggest inclusion of the following additional examples: - Does the transacting party have an irrevocable authority? - Has the transacting party changed their name?	The Guidance Note has been amended.	The amendment adopts the suggested examples, with some re-wording, in the appropriate sections.
9	#4	6	A1 should contain further details regarding the scenario where two individuals from the same family have the same name and were both of legal age. Guidance should be given on the appropriate evidence that should be sought and retained in this situation.	None	What evidence is appropriate at any time depends on the circumstances. This answer provides some guidance on measures that can be taken. The example is intended to highlight a situation which should trigger further enquiries.
10	#5	2	The requirement for evidence to be retained for at least 7 years from the date of lodgement of the registry instrument or document is inconsistent with the periods of 15 years specified in the <i>Limitations of Actions Act 1936</i> (SA). This has not been a problem in the past because the relevant documents remained permanently available for searching on the public register.	None	This requirement relates to supporting evidence for the transaction and for national consistency 'at least 7 years' is used in Participation Rule 6.6. If the Subscriber is required to maintain evidence for different periods under other jurisdictional legislation they can comply with both requirements by holding the evidence for the longer of the two periods.
11	#5	2	For the paragraph commencing 'A Subscriber is required to retain evidence in	The Guidance Note has been	The amendment adopts the suggested change.

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			relation to...’, this should be made consistent with clause 6.6 of the MPR by replacing ‘in relation to’ with ‘supporting.’ ‘In relation to’ could be read as going further than MPR 6.6.	amended.	
12	#5	2	For consistency with MPR 6.6 the bullet point ‘Duty’ should be deleted with a new obligation inserted ‘to retain any evidence required by the Duty Authority.’	The Guidance Note has been amended.	The amendment adopts the suggested change.
13	#5	2	‘Prescribed Requirements’ is not defined in the MPR but ‘Prescribed Requirement’ is.	None	Under Participation Rule 2.2.3 the singular includes the plural.
14	#5	4.4	It would be helpful if there was more detail provided about the difference between a Prescribed Requirement and legislative requirements and, if applicable, to explain the examples of documents referred to which may be current requirements of Registrars.	The Guidance Note has been amended.	The amendment expands on the meaning of prescribed requirements and provides some examples.
15	#5	5	It may be useful to distinguish between evidence that is electronic and evidence that is stored electronically.	The Guidance Note has been amended.	The amendment recognises that evidence may be in electronic or paper form and that both forms may be stored electronically or on paper.
16	#5	5	For consistency with MPR 6.6 it is suggest ‘those documents’ is replaced with ‘the evidence.’	The Guidance Note has been amended.	The amendment adopts the suggestion.
17	#5	6	It is suggested A1 is amended to read ‘Evidence should be kept which is sufficient to support...’	The Guidance Note has been amended.	The amendment adopts the suggestion.