

MODEL PARTICIPATION RULES GUIDANCE NOTE

CERTIFICATIONS

1 INTRODUCTION

This guidance note aligns with Version 6 of the Model Participation Rules and explains:

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

Capitalised terms have the meanings given to them in the Model Participation Rules, Model Operating Requirements or Electronic Conveyancing National Law.

This guide does not constitute legal advice nor does it replace prudent conveyancing practice. Nothing written in this guide overrides the Electronic Conveyancing National Law, Participation Rules, any other relevant legislation or Registrar's Prescribed Requirements.

2 WHAT ARE CERTIFICATIONS?

Certifications are statements made by a Certifier that they have undertaken a specific action. A Certifier is the Subscriber providing the certifications. The term Subscriber is therefore used throughout this Guidance Note. A Subscriber must provide the required Certifications when signing Registry Instruments or other Documents. Subscribers provide the Certifications required for the role they are undertaking. The Certifications are system driven based on Land Registry business rules.

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, or where the Subscriber is taking instructions to lodge from another Instructing Practitioner (refer to Model Participation Rules Guidance Note #9: Instructing Practitioner Engaging a Subscriber).

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

#	Subject	Certification
1	Identity	The Certifier has taken reasonable steps to verify the identity of the [transferor/transferee/mortgagor/mortgagee/ caveator/applicant/covenantor/covenantee/encumbrancer/encumbrancee/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party] or his, her or its administrator or attorney.
2	Authority	The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3	Evidence	The Certifier has retained the evidence supporting this Registry Instrument or Document.
4	Correctness	The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.
5	Mortgagee	The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents: (a) has taken reasonable steps to verify the identity of the mortgagor; or his, her or its administrator or attorney and (b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
6	Certificate of Title (used in Victoria and Western Australia only)	The Certifier 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.

3 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 Model Participation Rules have been complied with.

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

4 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. Refer to table below detailing the application of the certifications in the most common transactions.

For example:

- A Subscriber acting on their own behalf, other than a mortgagee, will be required to provide only the evidence and correctness certifications.
- An incoming mortgagee representing itself will be required to provide the evidence, correctness and mortgagee certifications.
- A Subscriber representing a transferor will be required to provide the identity, authority, evidence and correctness certifications.
- A Subscriber lodging a Priority Notice or Settlement Notice will be required to provide the evidence and correctness certifications.

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 duplicate certificate of title exists, and is to be provided by the Subscriber who controls or to whom control of that duplicate 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.

The certifications required in the most common transactions are:

Document Type	Party Giving Certifications	Certifications Required
Discharge of Mortgage	Mortgagee - self-represented	3 and 4 (and 6 for WA)
	Subscriber representing mortgagee	1, 2, 3 and 4 (and 6 for WA)
Mortgage	Mortgagee - self-represented	3, 4 and 5 (and 6 for WA)
	Subscriber representing mortgagee	1, 2, 3, 4 and 5 (and 6 for WA)
Transfer	Transferee – self-represented	3 and 4
	Subscriber representing transferee	1, 2, 3 and 4
	Transferor – self-represented	3 and 4 (and 6 for WA)
	Subscriber representing transferor	1, 2, 3 and 4 (and 6 for WA)
Caveat	Caveator – self-represented	3 and 4
	Subscriber representing caveator	1, 3 and 4
Withdrawal of Caveat	Caveator – self-represented	3 and 4
	Subscriber representing caveator	1, 2, 3 and 4
	Applicant – self-represented	3 and 4

Document Type	Party Giving Certifications	Certifications Required
Priority Notice and Extension of Priority Notice	Subscriber representing applicant	3 and 4
Withdrawal of Priority Notice	Applicant – self-represented	3 and 4
	Subscriber representing applicant	3 and 4
Administrative Notice to convert and nominate a Certificate of Title (Victoria Only)	Subscriber	6

5 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.

5.1 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.

Where an alternative method of identification was used by the Subscriber, evidence which demonstrates the reasonable steps taken is required to be kept.

A Subscriber may use an Identity Agent or other agent to undertake verification of identity on its behalf. Evidence of who undertook the verification of identity, and on what basis, will also be required.

Refer to Model Participation Rules Guidance Note #2: Verification of Identity.

5.2 Authority

Where the authority certification is required, compliance can be proven by producing the completed Client Authorisation.

Refer to Model Participation Rules Guidance Note #1: Client Authorisation.

5.3 Evidence

Where the evidence certification is required, any evidence supporting the Conveyancing Transaction must be retained for at least seven 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, the invalidated duplicate certificate of title for the property (if one exists) etc.).

It should include any supporting material evidencing that the Client or mortgagor has the right to enter 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 where there is little supporting evidence, for example for a discharge of mortgage lodged by the mortgagee. In this case there may only be the mortgagor's request for a discharge.

Refer to Model Participation Rules Guidance Note #4: Right to Deal and Model Participation Rules Guidance Note #5: Retention of Evidence.

5.4 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.

5.5 Mortgagee

A mortgagee or transferee mortgagee or a Representative of the mortgagee or transferee mortgagee will be required to provide this certification where relevant. 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. 'On the same terms' means that the mortgage signed by the mortgagor contains all the same terms that are contained in the mortgage lodged for registration. It would be satisfactory if there were slight variations to formatting or execution blocks that do not affect the terms.

5.6 Certificate of title

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

6 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 the law, the Participation Rules and any Prescribed Requirements.

The certifications relate to requirements for that particular Conveyancing Transaction to proceed. Where one or more certifications cannot be provided then the transaction should not go ahead, unless and until the Subscriber is satisfied that they can make the certifications in good faith.

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. The evidence required for the evidence certification is evidence which should be obtained as part of the process of undertaking the Conveyancing Transaction in accordance with prudent practice. You are not required to seek additional supporting evidence.

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: Evidence should be kept which 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.

Q5: When is the certificate of title certification required?

A5: 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 duplicate certificate of title exists, and is to be provided by the Subscriber who controls or to whom control of that duplicate certificate of title is given.

In Victoria, this certification must not be given if the certificate of title has been lost or destroyed or was not held (prior to secure destruction) by the person giving the certification.

The certification is not inconsistent with the Prescribed Requirements for control of right to deal holders in New South Wales.

Q6: What is meant by 'compliance with relevant law' in the certification of correctness?

A6: The certification relates to the correctness of the matters that a prudent conveyancing practitioner should be undertaking today. As every conveyancing matter is different, practitioners must exercise their professional judgement depending on the circumstances of each individual case.

The subject of the certification is whether the Registry Instrument complies, not whether the relevant transacting party has complied with any particular piece of legislation that may apply to that party's operations or responsibilities. This does not mean having a responsibility to investigate all matters of the law generally but should include any law relating to a particular Conveyancing Transaction. If there is awareness of non-compliance with a relevant aspect of the law and the certification is made and the instrument lodged, the certification is likely to be incorrect.

Q7: Can another conveyancer or lawyer act for my client in an electronic Conveyancing Transaction?

A7: A conveyancer or lawyer (Instructing Practitioner) may instruct a conveyancer or lawyer Subscriber (Subscriber) to act on its Client's behalf to undertake work in an

Electronic Lodgment Network, including creating and Digitally Signing electronic Registry Instruments and other electronic Documents. In these circumstances, the Subscriber must obtain a Client Authorisation directly from the Client (not the Instructing Practitioner). The Subscriber will also need to take reasonable steps to verify the identity of the Client and the Client's right to deal, as well as comply with all other Model Participation Rules. The Subscriber will then provide the appropriate certifications.

Refer to Model Participation Rules Guidance Note #9: Instructing Practitioner Engaging a Subscriber.

Q8: Would a mortgage lodged for registration that states 'this mortgage incorporates all terms referenced in the mortgage executed by the mortgagor' comply with the requirement that the mortgage lodged for registration be 'on the same terms' as the one granted by the mortgagor?

A8: Ultimately it will be up to a court to decide what 'on the same terms' means. However, the scenario described is not the intention of the certification. It is ARNECC's view that this would not satisfy the requirement for the mortgage lodged for registration to be on the same terms as the one granted by the mortgagor. The mortgage lodged for registration should contain all the terms and conditions of the mortgage in full. In a Compliance Examination, this scenario would result in a non-compliant outcome.