

COMMON ERRORS FROM SUBSCRIBER COMPLIANCE EXAMINATIONS

CLIENT AUTHORISATION

The common errors relating to a Client Authorisation are:

1. The authority type is either not selected, or incorrectly selected

It is important that the correct authority type in the 'Transaction Details' panel is selected.

'**Specific Authority**' should be selected when the Client authorises the Subscriber to act for the Client in completing a specific Conveyancing Transaction. The Property Address and Land Title Reference(s) fields must also be completed, together with ticking the categories of Conveyancing Transactions.

'**Standing Authority**' should be selected when the Client authorises the Subscriber to act for the period set out in the Client Authorisation, either until a specified expiration date, or if no date is specified, until the Client Authorisation is revoked by the Client. The categories of Conveyancing Transactions must be ticked.

'**Batch Authority**' should be selected when the Client authorises the Subscriber to act in a batch of Conveyancing Transactions, such as in an apartment or greenfield development. Details of the Conveyancing Transactions the Batch Authority is intended to cover should be attached.

2. The Client Authorisation is not signed and dated by the Client or Client Agent and the capacity of the Client Agent is not completed

The Client or the Client Agent must sign and date the Client Authorisation. If the Client Authorisation is signed by a Client Agent, the capacity of the Client Agent, for example an attorney or a director of a company, must be shown.

3. Details of the Representative or Representative Agent are not completed

The details of the Representative must always be completed. If a Representative Agent is appointed, its details must also be completed.

4. The Client Authorisation is not signed and dated by the Representative or Representative Agent

The Representative, or their Representative Agent, also needs to sign and date the Client Authorisation.

If the Client Authorisation is signed by the Representative Agent, the Representative does not also need to sign the Client Authorisation. An Identity Agent should not sign as Representative Agent unless they have also been appointed as the Subscriber's Representative Agent.

If the Client Authorisation is witnessed by an Australian Consular Office officer, the Australian Consular Office officer should also write their name and the date in the panel under the Client signature.

If the Client Authorisation is witnessed by an Identity Agent, the Identity Agent should also write their name and the date in the panel under the Client signature.

5. The Client Authorisation does not include the full legal name of the Client or Client Agent

The Client Authorisation must include the full legal name of the Client or Client Agent. This includes any middle names, or if the Client or Client Agent is a body corporate, the full registered name of the body corporate.

6. The Client Authorisation names individuals as the Client (directors) when the Client is a company

If the Client or Client Agent is a company, the full registered name of the company must be listed on the Client Authorisation, not the names of the directors of the company. The directors can sign the Client Authorisation on behalf of the company, in which case their capacity must be noted on the Client Authorisation.

7. The Client Authorisation is incorporated into an authority to act or retainer

The Client Authorisation is a prescribed form and is required in addition to the usual retainer agreement or authority to act. Production of a retainer agreement or authority to act in place of a Client Authorisation will result in a non-compliant outcome.

8. An older version of the Client Authorisation is used after a new version has become effective

A Subscriber is required to use the version of the Client Authorisation that is in effect at the time that the Client Authorisation is signed. Any properly completed Client Authorisation in the form set out in the Model Participation Rules at the time of execution is valid, unless revoked earlier, until:

Specific Authority: the Conveyancing Transaction(s) to which it relates is concluded;

Standing Authority: the expiry date (if there is one);

Batch Authority: the Conveyancing Transaction(s) to which it relates are concluded.

9. The Client Authorisation omits Client Agent details

The Client Authorisation must include the name of the Client Agent and the capacity in which they signed the document (for example an attorney, administrator or executor).

10. The Client Authorisation names the Client Agent as the Client

A Client Agent is a person authorised to act on behalf of the Client, but they are not the Client. A Subscriber must ensure that the Client Authorisation only names the intended Client as the 'Client' for the purposes of the authorisation. Where a Client Agent signs on behalf of the Client, their details should be captured in the form.

11. No evidence is provided of steps taken to verify the authority of a Client Agent (e.g. Director or Secretary) signing on behalf of a company Client to bind the company to the Client Authorisation and the Conveyancing Transaction

Where a Client Agent for a company Client purports to sign on behalf of the company and bind the company to the Client Authorisation and the Conveyancing Transaction, the Subscriber must ensure that they have taken reasonable steps to verify the authority of the agent to do so, and ensure that this evidence is retained.

12. 'Other' is ticked in the Conveyancing Transactions section of the Transaction Details panel but the details of the other transactions have not been included

Where the 'Other' box has been ticked in the Conveyancing Transactions section of the Transaction Details panel, the Subscriber must ensure that sufficient details have been added to clearly identify the Conveyancing Transaction the Client has authorised the Subscriber to undertake on their behalf. The details may be inserted in the space under the 'Other' box, or in an attachment to the Client Authorisation.

13. All relevant Conveyancing Transactions are not ticked on the Client Authorisation

All Conveyancing Transactions and related Conveyancing Transactions must be specified in the Client Authorisation. For example, if a Client is undertaking a transfer, but then also instructs the Subscriber to undertake a related transmission application or change of name, all of these related transactions must be specified in the Client Authorisation. Omission of these details would result in a non-compliant outcome as the Client Authorisation does not authorise the Subscriber to undertake the related transactions.

14. Continuing to rely on a Client Authorisation where the Client is deceased

The Client Authorisation ends upon the death of the Client, except in the case of South Australia (see section 59 of the *Real Property Act 1886* (SA)).

In South Australia, where a Client who has completed a Client Authorisation dies, an instrument which has been executed pursuant to that Client Authorisation after the Client's death remains valid.

In all other Jurisdictions, the death of a Client effectively renders the Client Authorisation invalid. This means that any instruments or Documents (whether signed prior to the death of the Client or not) cannot be used and cannot be Lodged for registration.

For more information read the Model Participation Rules Guidance Note #1 – Client Authorisation available at https://www.arnecc.gov.au/publications/mpr_guidance_notes.

VERIFICATION OF IDENTITY

The common errors relating to verification of identity are:

1. **Not providing sufficient evidence of steps taken to verify identity**

Written details of the steps taken to verify identity together with the supporting evidence of those steps must be provided. The material provided in response to the Compliance Examination must be sufficient to demonstrate the steps that were taken (including the timing of the steps) and must include copies of any identity documents sighted and retained by the Subscriber.

2. **Believing that the AML/CTF 'know your customer' regime is the same as the Verification of Identity Standard**

The *Anti-money Laundering and Counter-terrorism Financing Act 2006* (AML/CTF) 'know-your-customer' regime is not the equivalent of the Verification of Identity Standard as set out in Schedule 8 of the Model Participation Rules. If a Subscriber is relying on the AML/CTF regime, this is only evidence of steps taken and may or may not constitute reasonable steps for the purpose of complying with the Model Participation Rules.

3. **Incomplete application of the Verification of Identity Standard**

When Subscribers indicate that they have undertaken verification of a Client or Client Agent's identity in accordance with the Verification of Identity Standard in the Model Participation Rules, then all aspects of that standard must be followed.

The Verification of Identity Standard is not followed if there is no face-to-face in-person interview with the Person Being Identified, even if copies of the documents listed in the Categories are provided.

4. **Names in verification of identity documents and other supporting evidence do not align with those of transacting parties in the instruments submitted for Lodgment**

Subscribers should ensure that when entering data such as a Client's name, care is taken to ensure that the details align with the verification of identity documentation and other supporting evidence. It is expected that a transacting party's full legal name will be used in an instrument submitted for lodgment.

5. **No evidence of the timing of verification of identity compared to the signing of the Client Authorisation**

Generally, a Client Authorisation should be signed at the same time that the verification of identity is undertaken in order to ensure that it is signed by the Client or the Client Agent. Where this cannot occur, the Subscriber must take reasonable steps to ensure that the Client Authorisation is being signed by the Client or Client Agent who was identified. Evidence of these reasonable steps must be retained and provided as part of a Compliance Examination if relevant.

For more information read the Model Participation Rules Guidance Note #2 – Verification of Identity available at https://www.arnecc.gov.au/publications/mpr_guidance_notes.

VERIFICATION OF RIGHT TO DEAL

The common errors relating to verification of the right to deal are:

1. Not providing sufficient evidence

Written details of the steps taken by the Subscriber, together with supporting evidence of those steps, to verify the right to deal must be furnished. The material provided in response to the Compliance Examination must be sufficient to demonstrate the steps that were taken (including the timing of the steps) and must include copies of any right to deal documents sighted by the Subscriber.

2. Supporting evidence provided does not demonstrate link to transacting party

When a title search or copy of a certificate of title is the only supporting evidence produced to demonstrate that a Subscriber has taken reasonable steps to verify that the transacting party is a legal Person and has the right to enter into the Conveyancing Transaction, a Subscriber should explain in writing the reasonable steps they have taken to tie the registered proprietor to the transaction.

For more information read the Model Participation Rules Guidance Note #4 – Right to Deal available at https://www.arnecc.gov.au/publications/mpr_guidance_notes.

SUPPORTING EVIDENCE

The common error related to supporting evidence is:

1. Evidence for the dealing is not produced

Model Participation Rule 6.6 requires a Subscriber to retain the evidence supporting an electronic Registry Instrument or other electronic Document for at least seven years from the date of Lodgment of the electronic Registry Instrument or other electronic Document that is registered or recorded. For example, a copy of a death certificate supporting a survivorship application or an application by a legal personal representative must be kept on file as supporting evidence.

For more information read the Model Participation Rules Guidance Note #5 – Retention of Evidence available at https://www.arnecc.gov.au/publications/mpr_guidance_notes.

CERTIFICATONS

The common error related to certifications is:

1. **Certificates of title are produced following a certification that the duplicate certificate of title is destroyed or made invalid**

In Victoria and Western Australia, Subscribers must certify that they have retrieved and either securely destroyed or made invalid the (duplicate) certificate(s) of title for the folio(s) of the Register listed in the Registry Instrument or Document. When a valid version of the (duplicate) certificate of title is produced at a later date, it will be assumed that the certification was given improperly. A copy of an invalidated or destroyed (duplicate) certificate of title could be produced along with details of the steps taken to securely destroy a destroyed certificate of title.

For more information read the Model Participation Rules Guidance Note #3 – Certifications available at https://www.arnecc.gov.au/publications/mpr_guidance_notes.

SUBSCRIBER COMPLIANCE

Common errors relating to subscriber compliance are:

1. **Not responding to a Compliance Examination notice/not responding in a timely manner or providing an incomplete response**

Section 34 of the *Electronic Conveyancing National Law* and Model Participation Rule 10 require Subscribers to cooperate with Compliance Examinations and comply with the Compliance Examination procedure. A failure to respond to a Compliance Examination notice and cooperate will be a breach of the Model Participation Rules and may lead to suspension or termination of that Subscriber.

2. **Not updating contact details in the ELNO**

Model Participation Rule 6.2 requires Subscribers to keep any information that forms part of their System Details (System Name, Contact Details etc) up to date. This means the Subscriber must promptly update its System Details or, if the Subscriber does not have the level of access to the ELN required to make the necessary updates, promptly notify the ELN Administrator of the changes required.

3. **Not returning a Subscriber Compliance Examination checklist, or returning an incomplete checklist**

Section 34 of the *Electronic Conveyancing National Law* and Participation Rule 10 require Subscribers to cooperate with Compliance Examinations and comply with the Compliance Examination procedure. Where a Subscriber receives a Compliance Examination notice they must ensure that the Compliance Examination checklist is fully completed and returned as requested.

For more information read the Model Participation Rules Guidance Note #6 – Subscriber Examinations available at https://www.arnecc.gov.au/publications/mpr_guidance_notes.