



ACT
Government

VERIFICATION OF AUTHORITY RULES (EXPOSURE DRAFT)

*Land Titles (Electronic Conveyancing)
Legislation Amendment Bill 2020*

ACCESS CANBERRA
LAND TITLES OFFICE

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VERIFICATION OF AUTHORITY

Registrar-General's Rules

1. DEFINITIONS

Term	Definition
Client	Means a person who has appointed a Legal Practitioner pursuant to a Client Authorisation; or a caveator who has appointed a Legal Practitioner but has not executed a Client Authorisation; or a party to a Registry Instrument who has retained a Legal Practitioner to prepare that Registry Instrument on their behalf, so that the party, or their attorney, may execute it.
Client Authorisation	Means a Client Authorisation between a Client and a Legal Practitioner in substantial compliance with the form set out in Appendix A, as amended from time to time.
Conveyancing Transaction	Means a transaction that involves one or more parties and the purpose of which is to — (a) create, transfer, dispose of, mortgage, charge, lease or deal in any other way an estate or interest in land; or (b) get something registered, noted or recorded in the titles register; or (c) have the registration, note or record of something in the titles register changed, withdrawn or removed.
Legal Practitioner	Means an Australian lawyer who holds a local practising certificate or interstate practising certificate under the <i>Legal Profession Act 2006 (ACT)</i> and who is authorised to execute a Registry Instrument pursuant to a Client Authorisation; or to execute a caveat, on behalf of a party to that Registry Instrument; or to prepare a Registry Instrument on behalf of a party to that Registry Instrument, for execution by that party, or that party's attorney.
Person	Includes an individual or a body politic or corporate.
Registry Instrument	A paper instrument under the <i>Land Titles Act 1925</i> .

2. OVERVIEW

Summary

Section 48BF of the *Land Titles Act 1925* requires legal practitioners to verify their clients' authority to be a party to the Registry Instrument authorised by or under a Client Authorisation prior to executing a Registry Instrument on behalf of their Client. The Legal Practitioner must use the Client Authorisation for any Client Authorisation it enters into. Mortgagees will also be required to verify the authority of mortgagors to enter into mortgages.

Additionally, prior to registering or recording a Registry Instrument executed by a self-represented party, the Registrar-General needs to be satisfied that the party is authorised to enter into the Conveyancing Transaction to which the Registry Instrument relates.

These Rules require that "reasonable steps" are taken to verify authority. Verifying a person's authority in accordance with these Rules requires inspection of supporting documents that connect the person to the land which is being conveyed, or which otherwise show their authority to be a party to the Registry Instrument. The supporting documents to be inspected will vary depending on the circumstances.

To comply with these Rules, it will be necessary to take the steps to verify authority that a prudent legal practitioner or mortgagee (as the case may be) would reasonably be expected to take in the circumstances and in the ordinary course of his or her business.

An expression used in these Rules that is not defined above has, unless the contrary intention appears, the same meaning as in the *Land Titles Act 1925*.

Purpose of these Rules

The *Land Titles Act 1925* requires that the authority of a party to an Registry Instrument, to enter into the relevant transaction, is verified.

- Prior to entering into a mortgage, a mortgagee must verify the authority of the mortgagor to enter into the mortgage, in accordance with these Rules;
- Prior to varying a mortgage, a mortgagee must verify the mortgagor's authority to enter into the variation, in accordance with these Rules; and
- Prior to executing an Registry Instrument on behalf of a Client, a legal practitioner must verify the authority of their Client to have the right to enter to be a party to that Registry Instrument, in accordance with these Rules; and

Additionally:

If a party to a Registry Instrument is not represented by a legal practitioner, the Registrar-General must not register the Registry Instrument in the Register unless the party has satisfied the Registrar-General that they are authorised to enter into the transaction to which the Registry Instrument relates. These Rules outline the manner in which the Registrar-General intends to be satisfied that self-represented parties have the authority to enter into the relevant transaction.

3. WHEN DO THESE RULES APPLY?

These Rules apply to paper Registry Instruments and documents under the *Land Titles Act 1925* to be lodged in-person at the Australian Capital Territory Land Titles Office.

Registry Instruments lodged electronically under the *Electronic Conveyancing National Law (ACT) Act 2020* (E-Conveyancing Law) are to comply with the participation rules made under the E-Conveyancing Law, section 23.

4. WHY IS VERIFICATION OF AUTHORITY REQUIRED?

Verifying the authority of a party, to be a party to the relevant Registry Instrument, is considered to be part of the due diligence required of conveyancing professionals. The *Land Titles Act 1925* has now been amended to expressly require compliance with this obligation. Failure to comply with the obligation is now an offence.

Verifying a party's authority mitigates the risk of a fraudulent transaction. It gives the other parties to the transaction confidence they are dealing with a person who has the authority to enter into the transaction.

The identity of parties must also be verified in accordance with the Verification of Identity Rules under section 48BE of the *Land Titles Act 1925*. These Rules complement those Rules. Prudent conveyancing practice generally entails these two verification procedures being conducted at the same time.

5. VERIFICATION OF AUTHORITY BY LEGAL PRACTITIONERS AND MORTGAGEES

Legal Practitioners and mortgagees must take reasonable steps to verify the authority of:

- (a) **Clients:** For each Conveyancing Transaction a Legal Practitioner must take reasonable steps to verify that its client is a legal person and has the right to enter into the Conveyancing Transaction.
- (b) **Mortgagors:** A mortgagee, or a Legal Practitioner of a mortgagee, must, for each mortgage and variation of mortgage, take reasonable steps to verify that the mortgagor is a legal person and has the right to enter into the mortgage.

6. REASONABLE STEPS

To comply with these Rules, the legal practitioner, or mortgagee must take "reasonable steps" to verify the authority of the party to be a party to the Registry Instrument.

The verification will, in each case, require inspection of supporting documents that link the person to the land which is being conveyed.

The supporting documents should therefore name the person whose authority is being verified, identify the land and show that the person has a connection with the land.

7. WHAT ARE "REASONABLE STEPS"?

"Reasonable steps" is a commonly used legal concept. In this context, it means taking the steps a prudent legal practitioner or mortgagee (as the case may be) would reasonably be expected to take in the circumstances and in the ordinary course of his or her business.

Whether "reasonable steps" have been taken will be a question of fact depending on the circumstances of the individual case. If necessary, this would be subsequently determined by a Court after considering all of the particular circumstances.

More extensive checks and enquiries should be made where doubt arises (or would arise in the mind of a reasonable and prudent practitioner) in relation to the person's authority to enter into the conveyancing transaction. See paragraphs 9 and 10 below for further information.

8. SELF-REPRESENTED PARTIES

The *Land Titles Act 1925* states that if a party to a Registry Instrument is not represented, the Registrar-General must not register the Registry Instrument in the Register, unless the party has satisfied the Registrar-General that they are authorised to enter into the transaction to which the Registry Instrument relates.

Under section 48BC of the *Land Titles Act 1925*, the self-represented party is to ensure that evidence is provided to verify their right to enter into the Conveyancing Transaction. The documentation requirements will depend on the capacity of the party to the Conveyancing Transaction.

All Registry Instruments need to be completed and signed by all parties to the transaction either through certification by the other party's Legal Practitioner or by having their signature(s) attested by a witness if the other party is also self-represented.

9. EXAMPLES OF VERIFICATION DOCUMENTS

The following are examples of documents that may be used to verify a person's authority to enter into common conveyancing transactions:

Outgoing Party and Mortgagor

For a party that is relinquishing its interest, such as a transferor, or a mortgagor, supporting documentation that may assist in verifying the party's authority could include:

- > a current rates notice for the land;
- > current utility bills for the land;
- > a current land tax assessment notice for the property;
- > loan documentation connecting the party and the land; or
- > the mortgage granted by the mortgagor.

This list is not exhaustive and reliance on any one document to verify authority is unlikely to satisfy the requirement to take "reasonable steps".

A title search should also be undertaken to confirm that the party is named as a registered interest holder for the land.

Legal Practitioners representing a Caveator should take reasonable steps to verify their client's authority to deal with the land. This is done by determining that a caveatable interest exists and that you believe the claims made by the Caveator are true in substance and in fact.

Caveator (Withdrawal of Caveat)

Legal Practitioners representing the Caveator named in the Caveat should take reasonable steps to ensure the Caveator is the same person you initially represented. If you did not originally represent the Caveator named in the Caveat, production by the Caveator of supporting documentation for the Caveat could assist in establishing the Caveator's right to deal with the land.

Incoming Party

For a party gaining an interest in the land in the conveyancing transaction, such as a transferee or a mortgagee, supporting documentation that may assist in verifying authority to deal with the land could include the following:

- > the contract of sale for the land; or
- > loan documentation connecting the party to the land.

This list is not exhaustive. What constitutes “reasonable steps” will depend on the circumstances.

10. FURTHER CONSIDERATIONS

There are many instances where further consideration will need to be given to determining what steps would be considered “reasonable” in a particular case.

For example:

- Is the transacting party’s name different on the supporting documentation? If so, have they changed their name and can they provide documentation to show this?
- Is the transacting party more than one person (such as joint tenants)? If so, all persons comprising the transacting party should have their authority to enter the transaction verified and their knowledge of the conveyancing transaction confirmed.
- Is there an insolvency event involving one of the transacting parties? If there is an insolvency event, is the conveyancing transaction permitted under the relevant legislation?
- Is the transacting party a statutory corporation? What is the correct name of the statutory corporation? Is the transaction permitted under the relevant legislation? If the transacting person is acting under delegation, has a delegation been lawfully made allowing them to do so?
- Is the transacting party a successor at law to the registered proprietor? On what basis is it a successor at law - statutory vesting, transfer of business, or another basis?
- Is the transacting party an executor? Is the transaction contemplated by the will? Is the transacting party a protected person or acting in the role of guardian of a protected person?
- Is the transaction permitted by any relevant orders and under the relevant legislation?
- Is the transacting person acting under a power of attorney? Does the power of attorney permit the transaction? Is the power of attorney still current or has it been revoked? Has the correct person been identified as attorney? Are attorneys required to act jointly or can they act severally?
- Is the transacting party an incorporated association?¹ If so, is the transaction permitted under the association’s rules and the relevant legislation? Are you dealing with Legal Practitioners of the incorporated entity duly authorised to provide instructions? Does the transaction purport to give effect to a court order? Is the transaction authorised by the order?

¹ See the *Associations Incorporation Act 1991*

Further enquiries should be made where doubt arises (or would arise in the mind of a reasonable and prudent practitioner), in relation to the transacting person's authority to enter into the transaction. For example, where you know or ought to know:

- that the documents being produced for verification of authority are not genuine; or
- that the age of the person whose authority is being verified does not appear to be consistent with the likely age of the transacting party (for example, the purported transferor is too young to have purchased the property at the time it was purchased); or
- of any other circumstance that raises suspicion or should be investigated further.

Circumstances may raise awareness that greater care should be taken in relation to a particular transaction. For example, if the transaction is urgent, or the veracity of instructions is doubtful, or a non-standard mortgage of an unencumbered title is involved, or the transacting party has limited English. Whilst such transactions may be legitimate, it may be necessary to verify the circumstances surrounding the transaction (for example, by checking the reason for urgency or engaging an independent interpreter).

11. SUPPORTING EVIDENCE

Documents used by a legal practitioner or mortgage corporation to verify a person's authority to be a party to a Registry Instrument must be retained for at least seven years from the date the Registry Instrument is lodged with the Land Titles Office.

12. FAQ'S

How do I know that my client is the same person that is the registered proprietor on the register?

You need to take reasonable steps to satisfy yourself. These may include simultaneous verification of identity and verification of authority by obtaining supporting evidence that links your client to the land. The supporting evidence may be one or more of the documents referred to under the examples of verification documents above. You should also make further enquiries where doubt arises or should arise in relation to your instructions and the conveyancing transaction.

What should I do if I doubt my client has the mental capacity to enter into the transaction?

You should make further enquiries if you doubt that your client has the mental capacity to enter into the transaction. Such enquiries could include obtaining a medical certificate to verify that they have the mental capacity to enter into the transaction.

I am a practitioner representing an incoming mortgagee, what are my verification of authority obligations?

You must take reasonable steps to verify the authority of your client. This could be done by obtaining loan documentation and any other supporting documentation that shows they are the intended incoming mortgagee for that property. In addition to this, you must take reasonable steps to verify that the mortgagor has the authority to enter into the mortgage. This could be done by obtaining the contract of sale and other related documentation if they are the incoming registered proprietor. If they are the current registered proprietor, documentation connecting them to the land is required. See examples of verification documents above for further information.

APPENDIX A - CLIENT AUTHORISATION FORM

CLIENT AUTHORISATION

Approved under Section 48BA (5)(b) "client authorisation", Land Titles Act 1925

When this form is signed, the Legal Practitioner is authorised to act for the Client in a Conveyancing Transaction(s).

Privacy Collection Statement: The information in this form is collected under statutory authority and collection of this data remains necessary to ensure accurate and legal transfer of title or registration of other interests relating to land and for maintaining publicly searchable registers and indexes under the *Land Titles Act 1925*.

Legal Practitioner Reference: _____

CLIENT DETAILS	CLIENT 1	CLIENT 2	
	NAME	_____	_____
	ACN/ARBN	_____	_____
	ADDRESS	_____	_____

TRANSACTION DETAILS	AUTHORITY TYPE		
	<input type="checkbox"/> SPECIFIC AUTHORITY	<input type="checkbox"/> STANDING AUTHORITY	<input type="checkbox"/> BATCH AUTHORITY
	(set out conveyancing transaction details below)	ends on revocation or expiration date: ___/___/___ (tick relevant conveyancing transaction(s) below)	(attach details of conveyancing transaction(s))
	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2	
PROPERTY ADDRESS	_____	_____	
LAND TITLE REFERENCE(S) (and/or property description)	_____	_____	
CONVEYANCING TRANSACTION(S)	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> TRANSMISSION APPLICATION <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> TRANSMISSION APPLICATION <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER	
ADDITIONAL INSTRUCTIONS	_____	_____	

CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	<p>I CERTIFY that:</p> <p>(a) I am the Client or Client Agent; and</p> <p>(b) I have the legal authority to instruct the Legal Practitioner in relation to the Conveyancing Transaction(s); and</p> <p>(c) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.</p> <p>I AUTHORISE the Legal Practitioner to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation:</p> <p>(a) sign documents on my behalf as required for the Conveyancing Transaction(s); and</p> <p>(b) submit or authorise submission of documents for lodgment with the Land Registry; and</p> <p>(c) authorise any financial settlement involved in the Conveyancing Transaction(s); and</p> <p>(d) do anything else necessary to complete the Conveyancing Transaction(s).</p>	
	_____ DATE / /  SIGN HERE	_____ DATE / /  SIGN HERE
	_____ CLIENT/CLIENT AGENT NAME	_____ CLIENT/CLIENT AGENT NAME
	_____ CAPACITY	_____ CAPACITY

	If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Legal Practitioner Agent)		If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Legal Practitioner Agent)		
	NAME	DATE	NAME	DATE	
LEGAL PRACTITIONER DETAILS AND SIGNING	LEGAL PRACTITIONER		LEGAL PRACTITIONER AGENT (if applicable)		
	NAME	_____	NAME	_____	
	ACN/ARBN	_____	ACN/ARBN	_____	
ADDRESS	_____		ADDRESS	_____	
<p>I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the persons named above as Client or Client Agent.</p> <p>SIGNATURE OF LEGAL PRACTITIONER OR LEGAL PRACTITIONER AGENT IF APPLICABLE:</p>					
		DATE / /			DATE / /
SIGNATORY NAME: CAPACITY:		_____	SIGNATORY NAME: CAPACITY:		_____
		 SIGN HERE			 SIGN HERE

Terms of this Client Authorisation

1 What is Authorised

The Client authorises the Legal Practitioner to act on behalf of the Client in accordance with the terms of this Client Authorisation and any Rules and any Prescribed Requirement to:

- (a) sign documents on the Client’s behalf as required for the Conveyancing Transaction(s); and
- (b) submit or authorise submission of documents for lodgment with the Land Registry; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and
- (d) do anything else necessary to complete the Conveyancing Transaction(s).

The Client acknowledges that the Client is bound by any documents required in connection with a Conveyancing Transaction that the Legal Practitioner signs on the Client’s behalf in accordance with this Client Authorisation.

1 Mortgagees

Where:

- (a) the Legal Practitioner represents the Client in the Client’s capacity as mortgagee; and
- (b) the Client represents to the Legal Practitioner that the Client has taken reasonable steps to verify the identity of the mortgagor,

the Client indemnifies the Legal Practitioner for any loss resulting from the Client’s failure to take reasonable steps to verify the identity of the mortgagor.

2 Revocation

This Client Authorisation may be revoked by either the Client or the Legal Practitioner giving notice in writing to the other that they wish to end this Client Authorisation.

3 Privacy and Client information

The Client acknowledges that information relating to the Client that is required to complete a Conveyancing Transaction, including the Client's Personal Information, may be collected by and disclosed to the Duty Authority, the Land Registry, the Registrar-General and third parties (who may be located overseas) involved in the completion of the Conveyancing Transaction or the processing of it, and consents to the collection and disclosure of that information to any of those recipients, including to those who are overseas.

The Legal Practitioner or Legal Practitioner Agent acknowledges that the personal information collected from its Client(s) is for the purpose of registration of interests in land and the Legal Practitioner or Legal Practitioner Agent must not disclose this information to third parties outside this purpose.

For further information about the collection and disclosure of your Personal Information, refer to the Access Canberra privacy policy at www.accesscanberra.act.gov.au.

4 Applicable law

This Client Authorisation is governed by the *Land Titles Act 1925* and is only applicable for Conveyancing Transactions in the Australian Capital Territory for paper Registry Instruments. Instruments lodged electronically under the *Electronic Conveyancing National Law (ACT) Act 2020* (E-Conveyancing Law) are to comply with the participation rules made under the E-Conveyancing Law, section 23.

5 Meaning of words used in this Client Authorisation

In this Client Authorisation, capitalised terms have the meaning set out below:

Batch Authority means an authority for the Legal Practitioner to act for the Client in a batch of Conveyancing Transactions details of which are attached to this Client Authorisation.

Capacity means the role of the signatory (for example an attorney or a director of a company).

Client means the person or persons named in this Client Authorisation.

Client Agent means a person authorised to act as the Client's agent but does not include the Legal Practitioner acting solely in this role.

Duty Authority means the ACT Revenue Office.

Identity Agent means a person who is an agent of either a Legal Practitioner, or a mortgagee represented by a Legal Practitioner, and who:

- (a) the Legal Practitioner or mortgagee reasonably believes is reputable, competent and appropriately insured; and
- (b) is authorised by the Legal Practitioner or mortgagee to conduct verification of identity on behalf of the Legal Practitioner or mortgagee in accordance with the Verification of Identity Standard.

Land Registry means the agency responsible for maintaining the titles register.

Personal Information has the meaning given to it in the *Information Privacy Act 2014*.

Prescribed Requirement means any published requirement of the Registrar-General that Legal Practitioners are required to comply with.

Legal Practitioner is an Australian lawyer who holds a local practising certificate or interstate practising certificate under the *Legal Profession Act 2006 (ACT)* and who is authorised to execute a Registry Instrument pursuant to a Client Authorisation; or to execute a caveat, on behalf of a party to that Registry Instrument; or to prepare a Registry Instrument on behalf of a party to that Registry Instrument, for execution by that party, or that party's attorney.

Legal Practitioner Agent means a person authorised by a Legal Practitioner to act as the Legal Practitioner's agent including to sign the Client Authorisation. For the avoidance of doubt this can include an Identity Agent if so authorised.

Specific Authority means an authority for the Legal Practitioner to act for the Client in completing the Conveyancing Transactions described in this Client Authorisation.

Standing Authority means an authority for the Legal Practitioner to act for the Client as described in this Client Authorisation for the period of time set out in this Client Authorisation.



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Land Titles Office

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