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Land Use Victoria

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| Guide to verification of identity (VOI)  For conveyancers, lawyers and mortgagees conducting paper conveyancing transactions |

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# Who does this guide apply to?

This guide applies to conveyancers, lawyers and mortgagees who are required to take reasonable steps to verify the identity of their client, mortgagor, person to whom a Certificate of Title is provided; or, any person authorised to sign documents on behalf of a client or mortgagee.

# Why is VOI required?

Formal verification of identity (VOI) requirements were introduced to reduce the risks of identity fraud and fraudulent property transactions. Verification of identity also ensures that the correct person is dealing with land.

# What are the VOI requirements?

The Registrar of Titles (the Registrar) has issued the *Registrar’s requirements for paper conveyancing transactions* (Registrar’s Requirements), which, among other things, formalised VOI in requirement 3.1.2. The requirements apply to any conveyancing document(s) signed on or after 9 November 2015 and relate to all types of paper conveyancing document(s) that can be lodged with the Registrar under the *Transfer of Land Act 1958, Subdivision Act 1988* or any other legislation.

The legislative requirement for mortgagees to identify their mortgagor came into effect in September 2014.

The [Registrar’s requirements for paper conveyancing transactions](http://www.dtpli.vic.gov.au/property-and-land-titles/publications) is available at [www.delwp.vic.gov.au/publications](http://www.delwp.vic.gov.au/publications).

The requirements are essentially the same as those for electronic conveyancing transactions. The Australian Registrars’ National Electronic Conveyancing Council (ARNECC) has published Model Participation Rules *Guidance Note #2 – Verification of Identity*. The guidance note provides additional information about:

* What is verification of identity?
* Why is verification of identity required?
* When is verification of identity required?
* How verification of identity is to be carried out, including how verifications can be conducted overseas.

It also contains frequently asked questions.

The [ARNECC guidance note](http://www.arnecc.gov.au/publications/mpr_guidance_notes) is at [www.arnecc.gov.au](http://www.arnecc.gov.au/)>Publications>MPR Guidance Notes.

## Taking reasonable steps to verify identity

A conveyancer, lawyer or mortgagee is required to take reasonable steps to verify the identity of a client or mortgagor. How that is done is up to them. The conveyancer, lawyer or mortgagee can undertake the verification of identity of a client or may decide to have it done by an agent (including an Identity Agent).

If a client’s or mortgagor’s verification of identity has been conducted by (or on behalf of) another conveyancer, lawyer or mortgagee, the current conveyancer, lawyer or mortgagee will need to determine whether or not they rely on that verification of identity event or conduct their own.

**If a conveyancer, lawyer or mortgagee has previously identified a client or mortgagor**

The client or mortgagor need not be re-verified if the conveyancer, lawyer or mortgagee has taken reasonable steps to do both of the following:

* verify the identity of their client or mortgagor within the previous two years
* ensure that the client or mortgagor they are dealing with is one and the same as the client or mortgagor whose identity was previously verified.

## Identifying a client who is overseas

If a client or mortgagor is overseas, the conveyancer, lawyer or mortgagee needs to decide what steps to take to verify the identity of their client or mortgagor, having regard to the available services and options under the circumstances.

One option may be to use the services of an Australian Embassy, High Commission or Consulate – for more information see the ARNECC MPR Guidance Note #2, coupled with additional steps that give the conveyancer, lawyer or mortgagee reasonable confidence in the identity of the client or mortgagor.

Another option would be for an international financial institution or law practice to use their overseas personnel to conduct verification of identity.

## Witnessing the conveyancing document(s)

The person conducting the verification of identity is not required to witness the execution of the conveyancing document. However, it might be considered prudent practice to undertake the two actions at the same time, whenever possible. It is expected that the conveyancer, lawyer or mortgagee ensures the conveyancing document is actually signed by the person(s) whose identity has been verified.

## What the Registrar requires

The Registrar does not require evidence of verification of identity at lodgement; however, the Registrar may, when examining a dealing, call for production of the evidence.

If the Registrar, when examining a lodged but unregistered dealing, calls for production of evidence of verification of identity and the evidence is not produced, the Registrar will most likely refuse to continue processing the dealing unless or until he can be satisfied that it is one made by the party named – see section 27AB of the *Transfer of Land Act 1958*.

The Registrar has no intention to routinely call for production of evidence of verification of identity. It will only occur if some other element of the dealing concerned the Registrar.

# What is an Identity Agent

An Identity Agent is an agent of the conveyancer, lawyer or mortgagee, who is reputable, competent and maintains the level of insurance set out in Schedule 3 of the Registrar’s Requirements, and is authorised by the conveyancer, lawyer or mortgagee to conduct verification of identity.

# Non-represented parties must have their identity verified

If any party to a paper conveyancing transaction is a non-represented party, they must have their identity verified by Australia Post. Australia Post will also witness the non-represented party signing any conveyancing document(s). For additional information, refer to:

[Guide to verification of identity for people not using a conveyancer or lawyer](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-guides-and-fees) available at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms)>Verification of identity

[*Guide to conveyancers*](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-guides-and-fees#verification) *and lawyers when dealing with people who are not represented* at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms)>Verification of identity

The requirement for non-represented parties applies to instruments signed on or after 1 December 2015.

# VOI for an attorney under a Power of Attorney

If a conveyancing document is to be signed by an attorney under a Power of Attorney, the conveyancer, lawyer or mortgagee must take reasonable steps to verify the attorney’s identity and authority. The steps taken to verify identity could include all of the following.

## If the attorney is an individual

The steps could include:

* confirming the details of the person appointing the attorney and the attorney from the Power of Attorney
* taking reasonable steps to establish that the conveyancing transaction is authorised by the Power of Attorney
* verifying the identity of the attorney.

## If the attorney is a body corporate

The steps could include:

* confirming the details of the person appointing the attorney as well as the attorney from the Power of Attorney
* taking reasonable steps to establish that the conveyancing transaction is authorised by the Power of Attorney
* confirming the existence of the body corporate
* taking reasonable steps to establish who is/are the person/people authorised to sign on behalf of the body corporate or witness the affixing of any seal
* verifying the identity of the individuals who are authorised to sign or affix the seal on behalf of the body corporate.

It is up to the conveyancer, lawyer or mortgagee to decide whether or not to verify the identity of the person giving the power.

# Transfers and caveats

## Transferors and transferees

In a transfer of land, VOI requirements apply to both the transferor and transferee – whichever party is the client of the conveyancer or lawyer.

## Caveators

In a caveat, it is the caveator whose identity must be verified. The requirement is for a conveyancer or lawyer to take reasonable steps to verify the identity of a client, regardless of whether the caveat is signed by the client or by the conveyancer or lawyer on behalf of the client.

# Water Act agreements

Verification of identity requirements extend to agreements under the *Water Act 1989*, for example community agreements and rights of access agreements. These agreements are signed by all landowners but the application form to lodge the agreements is usually signed by a conveyancer or lawyer.

The conveyancer or lawyer needs to take reasonable steps to verify the identity of the person or people they represent. It is up to the conveyancer or lawyer to determine who is/are the client(s). Once this question is answered, the scope of the requirement should be clear.

# Section 173 agreements under the Planning and Environment Act

Section 173 agreements under the *Planning and Environment Act 1987* are entered into between the council, the landowner and in some cases third parties; but, the application form to lodge the agreements is usually only signed by the councillors, the CEO or a council delegate.

The conveyancer or lawyer must verify the identity of the person or people they represent. In relation to the type of agreement discussed, it is up to the conveyancer or lawyer to determine who is the client. Once this question is answered, the scope of the requirement should be clear.

# Government bodies

Verification of identity requirements also apply to government bodies. There are no exemptions for government bodies in the Registrar’s Requirements.

The requirement is that a conveyancer, lawyer or mortgagee take reasonable steps to verify the identity of their client or mortgagor. That requirement applies to all clients or mortgagors.

# Body corporate or incorporated association

A conveyancer, lawyer or mortgagee must take reasonable steps to verify the identity of their client or mortgagor. If a client or mortgagor is a body corporate or an incorporated association, these steps could include all of the following:

* confirming the existence of the body corporate or incorporated association
* taking reasonable steps to establish the person/people authorised to sign on behalf of the body corporate or incorporated association, or witness the affixing of any seal
* verifying the identity of the individual(s) authorised to sign or affix the seal on behalf of the body corporate or incorporated association.

# Providing Certificates of Title

Registrar's Requirement 3.1.2(c), which mirrors Participation Rule 6.5.1(c), only applies when a Certificate of Title is being given to a client or a mortgagor. It does not apply to parties participating in a settlement, including when a settlement agent is acting for a party in order to collect the Certificate of Title and transfer documentation.

# Suspicious identity documents or incorrect identification

If doubt arises when verifying identity, or should reasonably have arisen in relation to a transaction and/or a client’s or mortgagor’s identity, the conveyancer, lawyer or mortgagee should seek further evidence or make further enquiries.

Further steps need to be taken to satisfy the Registrar’s Requirements when:

* an identity document does not appear to be genuine
* a photograph on an identity document is not a reasonable likeness
* the person being identified does not appear to be the person to which the identity document relates
* it is otherwise reasonable to take further steps.

Some circumstances when it may also be necessary to take further steps could include:

* if the client or mortgagor has very limited identity documents without explanation
* when the conveyancer, lawyer or mortgagee becomes aware the identity documents have been cancelled
* if the identity documents and the conveyancing document appear inconsistent, such as differing signatures
* when an agent is used and there appears to be inconsistencies in the supporting documentation they provide in relation to verification of identity.

Examples of further steps that could be taken include (but are not limited to):

* obtaining more identity documents
* making enquiries with the client, mortgagor or third parties
* using electronic verification services.

Some circumstances may not be directly linked to verification of identity but may raise awareness that extra care should be taken in relation to a particular transaction and the person being identified. For example, the transaction is urgent; the conveyancer, lawyer or mortgagee doubts the veracity of the instructions; the transaction involves a non-standard mortgage of an unencumbered title; or, the client has limited English. While such transactions may be legitimate, it may be necessary to verify the circumstances surrounding the transaction. For example, checking the reason for urgency or engaging an independent interpreter.

If questions are raised about the validity of the conveyancing document signed by that client or mortgagor, in most cases it will be for a court to decide.

# VOI standard

The VOI Standard is Schedule 1 in the Registrar’s Requirements. It contains a standard that may be applied to a verification of identity process. If a conveyancer, lawyer or mortgagee complies with the standard, they will be deemed to have taken ‘reasonable steps’ to verify the identity of the client or mortgagor – see Registrar’s requirement 3.1.7.

# What is meant by ‘authority’ of a client or mortgagor?

Authority relates to a client’s or mortgagor’s right to enter into a conveyancing transaction. This is commonly referred to as the client’s or mortgagor’s 'right to deal'. Verification of the right to deal is closely linked to verification of identity. This is dealt with in requirement 3.2 of the Registrar's Requirements and further information is contained in the ARNECC *Guidance Note #4 – Right to Deal*.

# Retaining supporting evidence

Evidence must be retained by the conveyancer, lawyer or mortgagee for seven years from the date of lodgement of the instrument.

If the Verification of Identity Standard was used, this evidence must demonstrate that the procedure for the standard was followed. If alternative reasonable steps were used to verify identity the evidence must show what these steps were.

The evidence can be retained in a range of ways. It could be stored electronically and/or by an agent on behalf of a conveyancer, lawyer or mortgagee. However, the medium and means in which documents supporting the conveyancing transaction are to be retained is to be determined by a conveyancer, lawyer or mortgagee in light of the possible need to produce those documents as evidence to a court. Regardless of the way in which it is stored, evidence should be accessible, legible and secure.

Further information is contained in the ARNECC MPR *Guidance Note #5 – Retention of Evidence* (see ‘Further information’ below).

# Privacy obligations

As with other aspects of a conveyancing transaction, retention of personal information gives rise to privacy obligations. Storage of a client’s or mortgagor’s personal information is not a new obligation. Conveyancers, lawyers and mortgagees are already required to retain their client’s or mortgagor’s records and files for seven years.

# Further information

[*Registrar’s Requirements for paper conveyancing transactions*](http://www.dtpli.vic.gov.au/property-and-land-titles/publications) under Section 106A of the *Transfer of Land Act 1958* at [www.delwp.vic.gov.au/publications](http://www.delwp.vic.gov.au/publications)

[*Guide to conveyancers*](http://www.delwp.vic.gov.au/property-and-land-titles/forms,-guides-and-fees#verification) *and lawyers when dealing with people who are not represented* at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms)>Verification of identity

[*Guide*](http://Guide) *to verification of identity for people not using a conveyancer or lawyer* at [www.delwp.vic.gov.au/property-forms](http://www.delwp.vic.gov.au/property-forms)>Verification of identity

The [ARNECC guidance notes](http://www.arnecc.gov.au/publications/mpr_guidance_notes) are an excellent resource, available at [www.arnecc.gov.au](http://www.arnecc.gov.au/)>Publications>MPR Guidance Notes:

* *Guidance Note #1 – Client Authorisation*
* *Guidance Note #2 – Verification of Identity*
* *Guidance Note #3 – Certifications*
* *Guidance Note #4 – Right to Deal*
* *Guidance Note #5 – Retention of Evidence*.

# Contact us

For [location and contact details](http://www.dtpli.vic.gov.au/property-and-land-titles/contact-us), refer to [www.delwp.vic.gov.au/property](http://www.delwp.vic.gov.au/property)>Contact Land Use Victoria.

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