SIG-06 Signing of Electronic Documents

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1 Client Authorisation

To transact electronically on behalf of a client, it will be necessary to obtain written authority from your client i.e. Client Authority.

The Client Authorisation (CA) form and a description of the terms can be found in the Western Australian Participation Rules. The CA is in addition to the usual appointment to act or retainer agreement.

The CA provides for instructions for a specific transaction, standing instructions for a time period or a batch of transactions. The CA was developed in conjunction with the Law Council of Australia (LCA) and the Australian Institute of Conveyancers (AIC).

The CA authorises digital signing of documents by the Subscriber for the Client, lodgement of documents with Landgate and financial settlement. The CA must be signed by the Client before the Subscriber digitally signs documents for the Client.

Where a person enters into the CA on behalf of the Client; for example, an authorised representative of a corporate client, the Subscriber must take reasonable steps to verify the authority of that person to sign the CA.

2 Verification of Identity (VOI) of Client

At the time of entering into the CA, the Subscriber must take reasonable steps to verify the identity of their client. For electronic transactions, all clients will need to be identified.

A Subscriber can determine what constitutes "reasonable steps" in the circumstances. However, if
A Subscriber complies with the Verification of Identity Standard, in the Western Australian Participation Rules, the Subscriber is deemed to have taken reasonable steps. A person providing an identifier declaration, used when the client is unable to provide documentary evidence of identity, also needs to be identified.

VOI is also required for each of the following circumstances:

- the Subscriber’s signers, before giving them a digital certificate

- where a Subscriber represents a mortgagee, the mortgagor (unless the mortgagee has already verified the identity of the mortgagor)

- a person to whom a duplicate certificate of title is handed, unless that person is another Subscriber.

3 Client Entitled to Deal

A Subscriber must also take reasonable steps to verify that its Client is entitled to enter into the conveyancing transaction referred to in the CA.

4 Using Digital Certificates

Documents prepared electronically are signed by the Subscriber on behalf of the Client using a digital signature.

A Subscriber is liable for the use of digital certificates issued in the name of the Subscriber or at the request of the Subscriber to any person, like an employee.

A document that is digitally signed binds the Subscriber and its Client and can be relied on by the Registrar of Titles and by other parties to a conveyancing transaction.

Compliance by Subscribers with the obligations in the Western Australian Participation Rules relating to system security and integrity is fundamental to the integrity of NEC. The consequences under the Participation Rules for non-compliance by a Subscriber include restriction, suspension or termination from use of the Electronic Lodgment Network (ELN).

A Subscriber must:

- take reasonable steps to comply with the ELN’s Security Policy, including security of digital certificates

- ensure that only persons authorised by the Subscriber can access and use the ELN

- ensure only those authorised to Sign for the Subscriber do so

- take reasonable steps to ensure its Signers are persons of good character

- revoke authority of those no longer authorised to sign or access the ELN

- ensure that information provided to any authority is correct

- ensure that Users are trained
- take immediate action if a security item like a digital certificate has been compromised or used improperly, un-sign any affected document and notify the Electronic Lodgement Network Operator (ELNO).

5 Certifications

At the time of attaching a digital signature on behalf of a client, the Subscriber makes certain certifications. These certifications appear on the registry instrument and are set out in the Western Australian Participation Rules.

The certifications relate to:

- the taking of reasonable steps to verify a party's identity

- the holding of a Client Authorisation

- the retention of supporting evidence for the electronic document (including the CA; verification of identity documentation; documentation supporting authority to enter into the transaction. Documents or a copy to be retained for 7 years)

- the correctness of the instrument and compliance with Registrar's requirements

- verification of the identity of a mortgagor and the retention of a counterpart mortgage signed by the mortgagor.

5.1 False Certifications

Section 214 of the Transfer of Land Act 1893 (TLA) makes certain fraudulent acts an offence, including the giving of false information.

- As at 08 January 2016, section 214 (3)(b) states that making or giving a false certification is an offence.

- The penalty for an offence is imprisonment for 10 years and a fine of $100,000 (s.214(1)).

- The summary conviction penalty for an offence is imprisonment for 3 years and a fine of $40,000 (s.214(1)).

- Section 214(2) states that an offence under subsection (1) is a crime.

6 Supporting Evidence

A Subscriber will be required to obtain any supporting evidence necessary for the transaction and to retain copies of the evidence for the required period of seven years. This will include the VOI documents, copies of marriage certificates, etc.

Unlike current paper lodgement practice, some types of supporting evidence will not be required to be lodged with Landgate for electronic transactions. Instead, the Registrar will rely on the certification given by the Subscriber in the electronic instrument that the supporting evidence for the transaction is held.
In the future, the Registrar may adopt certifications for some supporting evidence for paper documents as well.

The Registrar and the Commissioner will have the ability to set requirements for supporting evidence (for example, what must be obtained and retained by a Subscriber; what must be lodged; how supporting evidence can be submitted).

Where supporting evidence is not required to be lodged, the Registrar and the Commissioner will have the power to call in that supporting evidence if it is considered necessary. If the supporting evidence is not provided within the specified time, the document can be rejected from registration.

The Registrar and Commissioner will also be able to require a statutory declaration be provided to verify any matter.

7 Also see

- SIG-01 Signing of Documents