SIG-07 Signing and Witnessing of Documents by a Person Overseas

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1 Overview

Where a land transaction document is required to be executed and witnessed outside of Australia, there are two categories of witnesses that apply:

- for a land transaction document that is not subject to the Verification of Identity (VOI) Practice, the witness must be within the meaning of Section 145(1)(b) of the Transfer of Land Act 1893 (TLA):

Signatures on documents, witnessing requirements

(a) in the case of such a document executed outside Australia, the Registrar is satisfied that each signature is witnessed by a person who is not a party to the instrument or power of attorney and who is —

(i) a notary public; or

(ii) an Australian consular officer; or

(iii) an elected member of Parliament or other representative body at the equivalent of State or federal level; or

(iv) a judge or magistrate; or

(v) qualified and entitled to practise law; or

(vi) qualified and entitled to practise as a doctor of medicine; or

(vii) qualified and entitled to practise as a civil, electrical or mechanical engineer; or

(viii) qualified as a school teacher; or
(ix) a university lecturer; or

(x) the mayor of a town or city; or

(xi) a person with managerial responsibility in a bank

[Guide updated on 01/10/2018 to insert list of witnesses]

(Also see Verification of Identity web page.)

- for a paper instrument or mortgage that is subject to the VOI Practice, the witness must be an Australian Consular Officer (ACO) (fees apply);

The role of the ACO is to satisfy themselves that the photos on the identification documents produced by the person transacting are a reasonable likeness of that person. If this is not possible, the Australian Consular Office service is terminated.

When reasonable likeness is confirmed, the ACO:

- prepares endorsed copies of all original identification documents produced by the person transacting;

- ask the person to sign the paper land transaction document and witnesses the person’s signature on the paper land transaction document;

- completes, signs, dates and endorses the "Australian Embassy/High Commission/Consulate Identity/Witnessing Certification" (Certification Form).

The ACO hands to the person transacting the:

- original identification documents;

- signed paper land transaction document;

- signed, dated and endorsed copies of the original identification documents produced; and

- signed, dated and endorsed Certification Form.

The ACO will not advise the person transacting of the documents required to be sighted and certified; this is the responsibility of that person’s Australian representative, such as the Conveyancer/Lawyer/Mortgagee, who must provide written instructions to the person transacting.

The Registrar of Titles may, in exceptional circumstances, accept an alternative witness within the meaning of Section 145(1)(b) of the TLA for a paper instrument or mortgage which requires witnessing by an Australian Consular Officer.

Witnessing of Documents - Outside Australia - COVID-19 Emergency

We understand that it may be difficult under the current circumstances for people overseas who are transacting on land in Western Australia to travel to Consular Offices. Where this is the case, one of the other persons authorised under section 145(1) (b) of the Transfer of Land Act 1893 may be used to witness documents.

It is important that the highest levels of vigilance continue during this difficult time to ensure the security and integrity of property transactions remains uncompromised and the security and
integrity of our State’s land titles system is maintained.

Refer to: CIB-331 COVID-19 Impacts on requirements for Verification of Identity inside and outside Australia and document witnessing outside of Australia

2 Updated to include "Witnessing of Documents - Outside Australia - COVID-19 Emergency 06/04/2020

In some instances, where an instrument is executed but not witnessed in the manner provided in section 145(1) of the TLA, and the genuineness of the signature and handwriting of the person signing is proved to the satisfaction of the Registrar, the instrument may be accepted for registration by virtue of s.145(3) of the TLA. Please refer to SIG-01 – Signing and Witnessing of Documents

2 Also see

- SIG-01 Signing of Documents
- Verification of Identity web page
- CIB-331 COVID-19 Impacts on requirements for Verification of Identity inside and outside Australia and document witnessing outside of Australia