VOI-01 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions

Version 2 - 20/02/2018

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1 Overview

This Verification of Identity and Authority Practice (the Practice), issued jointly by the Western Australian Registrar of Titles and Commissioner of Titles, sets out the minimum standard of Verification of Identity for registered proprietors and others who sign a range of real property paper documents that are to be lodged with Landgate.

Full compliance with this Practice has been required since 2 January 2013, after it commenced operation transitionally on 1 July 2012.

The Western Australian Commissioner of Titles and Registrar of Titles have updated and aligned their Practice.

This updated and aligned Practice commenced on 12 February 2018, with a transitional period available for represented parties until 05 June 2018. Following this date, it will also be mandatory for Transferees and Caveators to have their identity verified.

The key updates to this Practice include:

- The application of the Practice for verification of identity to buyers of land and to caveators who
lodge and who withdraw caveats

- The update of the categories of acceptable identification documents to align with those used in national electronic conveyancing

- Elaboration of the processes for conducting verification of identity in foreign countries

- Improving the procedures for self-represented parties.

This Practice does not apply to:

- enduring powers of attorney made under the Guardianship and Administration Act 1990

- documents lodged under the Land Administration Act 1997 (LAA)

- real estate agents carrying out real estate functions.

The Practice is intended to reduce and better manage fraud risk with the aim of strengthening the integrity of the Western Australian Torrens land title system for the benefit of all users of that system. It is also intended to reduce the risk of successful claims for compensation against industry participants, and against the State under the Transfer of Land Act 1893 (TLA).

Verification of Identity is required for nominated electronic and paper based land transactions. This Practice outlines the requirements for paper based transactions for land located in Western Australia.

This Practice is now comprised of the following Guides:

- VOI-01 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions (this document)

- VOI-02 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions - How to Complete a Verification of Identity

- VOI-03 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions – Foreign Countries

- VOI-04 Verification of Identity and Authority - Electronic Transactions

When verification of identity is conducted within Australia, the conveyancer/lawyer/mortgagee can perform the verification of identity themselves or appoint an agent to do the verification of identity on their behalf. However, the responsibility for verification of identity is at all times that of the conveyancer/lawyer/mortgagee.

Self-represented parties must be identified by an Identifier who is authorised by the Registrar of Titles. For further information, please refer to: VOI-02 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions - How to Complete a Verification of Identity

Verification of identity performed outside of Australia should be undertaken by an Australian Consular Officer. An Australian Consular Officer should also witness the execution of the document. For further information, please refer to: VOI-03 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions - Foreign Countries

The requirements for electronic transactions are similar to those that operate in paper and are
2 Application of the Verification of Identity Practice

This Practice applies to the document types and to the parties specified in the Table 1 below. It applies to documents executed inside and outside of Australia.

Table 1: Documents to which this Practice applies:

<table>
<thead>
<tr>
<th>Document Type</th>
<th>Party Required to be Identified in Accordance with this Practice</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer of Land</td>
<td>Seller/Transferor</td>
<td>Registrar of Titles</td>
</tr>
<tr>
<td>Mortgage</td>
<td>Buyer/Transferee</td>
<td>Registrar of Titles</td>
</tr>
<tr>
<td>Request for Duplicate Certificate of Title</td>
<td>Mortgagor</td>
<td>Commissioner of Titles</td>
</tr>
<tr>
<td>Replacement Duplicate Certificate of Title</td>
<td>Registered Proprietor, Applicant</td>
<td>Commissioner of Titles</td>
</tr>
<tr>
<td>Transmission</td>
<td>Executor/Administrator, Applicant</td>
<td>Commissioner of Titles</td>
</tr>
<tr>
<td>Survivorship</td>
<td>Survivor, Applicant</td>
<td>Commissioner of Titles</td>
</tr>
<tr>
<td>Power of Attorney</td>
<td>Donor</td>
<td>Registrar of Titles</td>
</tr>
<tr>
<td>Caveat</td>
<td>Caveator</td>
<td>Registrar of Titles</td>
</tr>
<tr>
<td>Withdrawal of Caveat</td>
<td>Caveator</td>
<td>Registrar of Titles</td>
</tr>
</tbody>
</table>

Note: VOI is required of the caveator, not of a solicitor preparing or signing that caveat on behalf of their client or lodging a caveat for their client.

For the purposes of this Practice, a document includes but is not limited to, instruments and applications that are executed and lodged with Landgate for registration or noting by the Registrar of Titles or Commissioner of Titles under the TLA.

Where a previous Customer Information Bulletin (CIB) issued in relation to Verification of Identity is inconsistent with this Practice, this Practice prevails.

This Practice anticipates that when real property is being sold Verification of Identity of the seller/transferor will usually occur twice in the sale process by:

- firstly, the Real Estate Agent as soon as practicable after a listing has been received but before entering into a contract of sale, and

- secondly, the Licensed Conveyancer or lawyer before financial settlement and before documents are signed

The Department of Mines, Industry Regulation and Safety is responsible for regulating real estate agents and licensed conveyancers. On 1 November 2011, the Department introduced express requirements for real estate agents 9 under the Real Estate and Business Agents Act 1978) and
settlement agents (under the Settlement Agents Act 1981) to identify their clients under their respective Codes of Practice.

Real estate agents:

are required to identify their clients as soon as practicable after a listing has been received but before entering into a contract of sale. This Practice does not apply to real estate agents carrying out real estate functions.

Licensed Conveyancers

are required to identify their clients "...as soon as practicable after receiving instructions to act for a person in arranging a settlement and before settlement takes place...".

This Practice complements these requirements.

This Practice does not fetter the discretion of either the Registrar of Titles or the Commissioner of Titles. All documents lodged are subject to the usual examination process at Landgate. The Registrar of Titles and the Commissioner of Titles retain the right to request further information and/or make other enquiries as considered appropriate.

2.1 Responsibility for Verification of Identity

A conveyancer/lawyer is responsible for verifying the identity of their client – the person for whom they prepare documents affecting land title which will be lodged at Landgate.

The mortgagee is responsible for verifying the identity of the mortgagor.

A self-represented party is responsible for ensuring his/her own identity has been independently verified by an authorised Identifier. Self-represented parties are unable to have their identity verified overseas.

2.2 Verification of Identity Standard

The standard of Verification of Identity required in this Practice has two base requirements:

Identity Document Production:

The production of current, original identity documents

and

Visual Verification of Identity:

A visual "face to face" assessment of the identity documents and the person to whom they relate, comparing the photograph on the current original identity documents with the person being identified.

Information on how to complete a Verification of Identity in accordance with the standard is contained in VOCI-02 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority, Paper Based Transactions- How To Complete a Verification of Identity.
3 Who should be identified?

Subject to the exception for ongoing relationships (refer 5.1 below), the Verification of Identity Practice must be applied to each natural person:

- executing a document as specified at Table 1 in section 2 above.

- executing a document specified at Table 1 on behalf of a Company/Incorporated body/Statutory body, and

- making a Declaration of Identity in accordance with the Identity Document Production Standard (see paragraph 3.1 of VOI-02 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority, Paper Based Transactions- How To Complete a Verification of Identity.)

4 Who can conduct Verification of Identity?

The Identifier undertakes verification of identity in accordance with this Practice.

4.1 Within Australia

Within Australia, the Identifier may be the conveyancer/lawyer/mortgagee themselves or they may choose to appoint a third party as their agent to undertake the verification of identity on their behalf.

Australia Post may provide a verification of identity service at certain outlets. There may also be other verification of identity service providers that the conveyancer/lawyer/mortgagee may choose to appoint to do verification of identity on their behalf.

It is recommended that Identifiers who are agents are appointed formally in writing with an agreement that sets out the requirements and conditions under which the verification of identity is to be conducted. The Registrar and Commissioner of Titles are not concerned with those arrangements as they rely upon the conveyancer/lawyer/mortgagee's confirmation of identity.

4.2 Self-represented parties

Effective on 12 February 2018, Australia Post has been authorised by the Registrar of Titles to conduct Verification of Identity of self-represented parties in accordance with this Practice.

On successful completion of the Verification of Identity and Authority, Australia Post will issue a Statement – Self Represented Party to the person being identified. Each Statement – Self Represented Party should have a unique identifier and a report of the details of the statements issued is to be provided to the Registrar on a regular basis.

A self-represented party who has been identified by Australia Post should ensure the original Statement – Self Represented Party is attached to the document(s) lodged with Landgate for registration.

4.3 Outside of Australia

Outside of Australia, the Identifier should always be an Australian Consular Officer* who undertakes Verification of Identity in accordance with this Practice.

Australian Consular Officers should also witness documents executed outside Australia (if a witness is required).

* An ‘Australian Consular Officer’ is within the meaning of the Transfer of Land Act 1893 section 145(4).

The process for verifying identity overseas can be found here: VOI-03 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority, Paper Based Transactions – Foreign Countries.

5 When Verification of Identity must occur

Verification of Identity is to be undertaken at any time after receiving instructions and before execution of a document to which this Practice applies.

Identification and execution of the documents may not necessarily occur at the same time. However, it is essential that the verification of identity has occurred before the documents are lodged for registration or noting.

Ideally, verification of identity should occur immediately prior to the execution of the document, so that the Identifier and witness, (if a witness is required), are the same person.

The Registrar of Titles and Commissioner of Titles consider that verification of identity immediately prior to execution of documents provides for the lowest risk of potential fraud.

5.1 Exceptions for ongoing or continuous business relationships

The conveyancer/lawyer or the mortgagee may decide not to verify the identity of their client on every occasion if their client is known to them through a long standing professional relationship in the following two (2) cases only:

5.1.1 Transfer of Land documents

Where a person is represented by the same conveyancer/lawyer on a continuous or ongoing basis with respect to the sale of real property in Western Australia, Verification of Identity is required on the first and second transfer but not on any subsequent transfers within the next two (2) years.

For a continuous and ongoing relationship to exist the person to be identified must be represented by the same conveyancing/law firm.

5.1.2 Mortgage documents

Where a person obtains a mortgage from the same mortgagee, whether private or corporate on a continuous or ongoing basis, against land titles in Western Australia.

Verification of Identity is required on the first and second mortgage but not on any subsequent mortgages within the next two (2) years.
For a continuous and ongoing relationship to exist the person to be identified must take the mortgage with the same mortgagee.

6 Identity documents to be kept secure

The Commissioner of Titles and Registrar of Titles strongly recommend that the certified copies of the identity documents be kept in a secure manner to prevent misuse of the identity information contained in them whilst they are in the possession of the conveyancer/lawyer/mortgagee.

The Commissioner of Titles and Registrar or Titles consider that it may be good practice for copies of these identity documents to be retained for seven (7) years from the date of the Verification of Identity.

7 Mere mechanical compliance not sufficient

Mere mechanical compliance with this Practice, without attention to detail, is not sufficient. For example, there may be cases where a prudent identifier/conveyancer/lawyer/mortgagee would consider it reasonable to conduct further checks, such as where:

- a name or address is not exactly the same as the name of the current registered proprietor

or

- the identifier/conveyancer/lawyer/mortgagee forms the view that the person executing the instrument appears not to be of the same gender as the current registered proprietor

or

- the identifier/conveyancer/lawyer/mortgagee forms the view that the person who executes the instrument appears to be younger or older than the current registered proprietor

or

- the identifier/conveyancer/lawyer/mortgagee forms the view that the details in the passport are not similar to the person presenting the document

or

- the name on the various identity documents are not the same and if relevant are not the same as on the certificate of title

It is essential that the identifier/conveyancer/lawyer/mortgagee has the independence to refuse to verify the identity if the evidence presented to them does not meet what is required under this Practice or there is a concern about the authenticity of the evidence provided or if there is some other doubt about the identity.

If an identifier/conveyancer/lawyer/mortgagee is of the view that a criminal act or improper dealing may be taking place in that a person is attempting a fraudulent real estate transaction, the matter should be immediately reported to:

- WA Police

- The Department of Mines, Industry Regulation and Safety if real estate or settlement agents are
involved

The Registrar of Titles or the Commissioner of Titles, as appropriate, should be advised, preferably in writing, for information purposes. Each report will be considered on a case by case basis to determine what action, if any, will be taken in the particular circumstances. In advising the Registrar or Commissioner details of the certificate of title, by volume and folio numbers, as well as the names of the parties involved should be provided.

8 Further information

- VOI-02 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions- How to Complete a Verification of Identity
- VOI-03 Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity and Authority. Paper Based Transactions – Foreign Countries
- VOI-04 Verification of Identity and Authority - Electronic Transactions