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

Version 2 – 06/04/2020

The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action to protect your legal rights. Please read our Terms of Use on the Land Titles Registration policy and procedure guides web page. Landgate accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

1 Overview

The Verification of Identity 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.

This Practice outlines the requirements for conducting a verification identity for a paper based transaction. 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

- 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 Verification of Identity and Authority - Foreign Countries – Paper Based Transactions (this document)

Please refer to VOI-04 Verification of Identity and Authority - Electronic Transactions for details on
the verification of identity requirements for electronic transactions.

1.1 Verification of Identity – Outside Australia – COVID-19 Emergency

Where face-to-face VOI cannot be completed as a direct result of COVID-19, conveyancers, legal practitioners and mortgagees are to take reasonable steps to verify the identity of the parties for both paper-based and electronic transactions. Conveyancers, legal practitioners and mortgagees are responsible for determining what is reasonable under the circumstances. As usual, evidence of these steps is required to be documented and retained in accordance with normal practice.

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

1 Updated to included 1.1 Verification of Identity - OUtside Australia - COvID Emergency 06/04/2020

The processes and procedures for verification of identity in a foreign country contained in this guide are applicable to both paper based and electronic transactions.

A verification of identity conducted in a foreign country must be conducted by utilising the services of an Australian Embassy, High Commission or Consulate.

Positions that are within the definition of an Australian Consular Officer in section 145(4) of the T LA are:

- Ambassador
- Minister
- High Commissioner
- Head of Mission
- Commissioner
- Chargé d’Affaires
- Consul or Secretary at an embassy, High Commissioner’s office, Legation or other post
- Consular General
- Consul
- Vice Consul
- Trade Commissioner
- Consular Agent.

A self-represented party cannot have his/her identity verification conducted overseas.
2 Australian Embassy/High Commission/Consulate Overseas Verification of Identity and Witnessing Process

This information is taken directly from the DFAT Smarttraveller.gov.au website. Please refer to the Notarial services and document legalisation overseas web page.

Whilst the process uses the terminology of Australian national electronic conveyancing, the same process applies to paper transactions by substituting paper instrument for Client Authorisation and by substituting conveyancer/lawyer/mortgagee for Subscriber.

- A client or mortgagor located overseas contacts a Subscriber or mortgagee concerning a conveyancing transaction relating to Australian land.

- The Subscriber or mortgagee takes initial instructions from the client or mortgagor and conducts preliminary enquiries – full name and contact details for the client or mortgagor, land description, transaction details (sale, purchase, mortgage etc.).

- The Subscriber or mortgagee reviews with the client or mortgagor what identification documents they have available to them and determines the highest document category in the Verification of Identity Standard they can satisfy.

- The Subscriber or mortgagee advises the client or mortgagor that they will need to have their identity verified and signature witnessed by an employee at an Australian Embassy, High Commission or Consulate (Australian Consular Office). The Subscriber or mortgagee advises the client or mortgagor to find out where the nearest Australian Consular Office is located, to make preliminary contact with the Australian Consular Office to make an appointment (where necessary) and to notify the Subscriber or mortgagee of the Australian Consular Office location.

- The Subscriber or mortgagee takes reasonable steps to determine the client or mortgagor’s right to deal as a particular party to the conveyancing transaction.

- The Subscriber or mortgagee prepares a Client Authorisation or mortgage and the approved Australian Embassy/High Commission/Consulate Identity/Witnessing Certification (Certification) and sends them to the client or mortgagor with written instructions advising of the process and what original and current identification documents are to be produced at the nominated Australian Consular Office (passport, driver’s license etc.). The format of the Certification is at the end of this Appendix and the Certification Form is available from the ARNECC website.

- The client or mortgagor attends the nominated Australian Consular Office with the prepared Client Authorisation or mortgage and Certification, original identification documents and the Subscriber or mortgagee’s written instructions.

- The Australian Consular Office satisfies itself that the photos on the identification documents produced by the client or mortgagor are a reasonable likeness of the client or mortgagor. If this is not possible, the Australian Consular Office service is terminated.

- When reasonable likeness is confirmed, the Australian Consular Office:

  - prepares endorsed copies of all original identification documents produced by the client or mortgagor;

  - asks the client or mortgagor to sign the Client Authorisation or mortgage and the Australian Consular Office witnesses the client or mortgagor’s signature on the Client Authorisation or mortgage.
- completes, signs, dates and endorses the Certification for the client or mortgagor

- The Australian Consular Office hands to the client or mortgagor the:

- original identification documents; signed Client Authorisation or mortgage;

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

- signed, dated and endorsed Certification

- The client or mortgagor delivers the signed Client Authorisation or mortgage, endorsed copies of the original identification documents produced and the Certification to the Subscriber or mortgagee. (The means of delivery are to be arranged between the client or mortgagor and the Subscriber or mortgagee.)

- If the Subscriber or mortgagee has any reason to doubt the authenticity of any of the documents received from the client or mortgagor, copies of the Australian Consular Office endorsements and Certification can be referred to the Department of Foreign Affairs and Trade (DFAT) by email for confirmation that the signatures and stamps appearing on the documents are that of a DFAT officer. For example, if the documents don't bear a stamp of the Australian Consular Office, the name of the Australian Consular Office officer is not clear or there are other circumstances surrounding the transaction that cause doubt, such as signatures of clients not matching.

The following process applies for these referrals:

- The Subscriber or mortgagee emails the Australian Consular Office officer who made the endorsements and certification using the standard email format <firstname>@dfat.gov.au (or in the same format with @austrade.gov.au for those consulates run by Austrade) supplying details of the service provided to the client or mortgagor and requesting confirmation that the Australian Consular Office provided the service. The request is to include copies of the endorsed document copies and the Certification supplied by the client or mortgagor. The reason for the referral is to be included in the request to allow DFAT to determine whether any aspect of the Australian Consular Office's service gave rise to the referral.

- The Australian Consular Office will, if work demands allow, reply to the request providing confirmation of the service provided. Alternatively, the Subscriber or mortgagee will receive an automatic read receipt email confirming that the Australian Consular Office officer exists as an employee of DFAT.

- If the Subscriber or mortgagee receives no response or cannot for any reason determine the name of the Australian Consular Office officer who made the endorsements or certification (for example, when the Australian Consular Office stamp obscures part of the Australian Consular Office officer’s name), the Subscriber or mortgagee should email DFAT's Consular Policy Unit at consular.policy@dfat.gov.au requesting confirmation of the service provided by an Australian Consular Office and, when no response has been received from a request made directly to the Australian Consular Office, attaching a copy of that request.

In responding to confirmation requests DFAT is confirming that the Australian Consular Office officer’s signature and the Australian Consular Office stamp on a document are from an authorised officer.

3 Australian Embassy/High Commission/Consulate Identity/Witnessing Certification
"I, ____________________________________________ [full name of authorised employee
/consular or diplomatic officer]
of _____________________________________________ [Australian Embassy/High
Commission/Consulate]

being an authorised employee/consular or diplomatic officer within the meaning of the Section 3 of
the Consular Fees Act 1955 hereby certify that:

(a) the identification/witnessing relates to
____________________________________________________________ [full name of
the person being identified] (‘the person being identified’); and

(b) the verification of identity/witnessing was carried out on ________________ [date]; and

(c) the original current identification documents as listed below were produced to me and copies
of these documents signed, dated and endorsed by me as true copies were provided to the
person being identified; and

(d) the verification of identity/witnessing was conducted in accordance with the Department of
Foreign Affairs and Trade policy for verification of identity, witnessing signatures on documents
and making of endorsed copies and in response to the written instructions provided by the person
being identified’s Australian Legal Practitioner, Law Practice, Licensed Conveyancer or
mortgagee; and

(e) the person being identified was physically present for the verification of identity and the
witnessing of the document(s) listed at paragraph (g); and

(f) I am not a party to the transaction; and

(g) I witnessed the person being identified execute the following document/documents
____________________________________________________________
(e.g. Client Authorisation, transfer of land, mortgage of land etc.); and

(h) this signed, dated and endorsed certification; the signed, dated and endorsed copy identity
documents (listed below); and the witnessed document(s) listed in paragraph (g); were returned to
the person being identified.

.................................................................

Signature of authorised employee/consular or diplomatic officer [Post Stamp]

List of identification documents produced (see (c) above):

Description of identity documents produced and endorsed
.................................................................
.................................................................
.................................................................

.................................................................

4 Further Information

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

- 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-04 Verification of Identity and Authority - Electronic Transactions

- WA Participation Rules

- ARNECC - Verification of Identity Guidance Notes

- DFAT Notarial services and document legalisation overseas web page

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