

REGISTRATIONS

CUSTOMER INFORMATION BULLETIN

BULLETIN NO. 210
03 OCTOBER 2011

THE REGISTRAR OF TITLES' WITNESSING AND IDENTITY VERIFICATION REQUIREMENTS FOR TRANSFER OF LAND DOCUMENTS EXECUTED BY THE TRANSFEROR(S) OUTSIDE OF AUSTRALIA

This Customer Information Bulletin contains additional information and clarifies the procedures for the witnessing of transfer of land documents executed by transferors outside of Australia and the corresponding client identity verification required to be undertaken by the witness. This CIB provides clarification and further details in relation to the instructions provided in CIB No. 206 of 18 August 2011.

The following Registrar's requirements only relate to transfer of land documents where the transferor(s) executes the transfer outside of Australia. The requirements as set out in this CIB are summarised as follows:

- transfers of land executed by transferors outside of Australia are required to be witnessed by an Australian consular officer;
- prior to witnessing the execution of the transfer of land the Consular Officer is to undertake an identity check of the transferor(s) and provide certified copies of all the identity documents sighted; and
- conveyancers are to provide the original certified copies of the identity documents sighted by the Consular Officer who witnessed the transfer of land to the Registrar of Titles at the time of lodging the transfer of land at Landgate.

While it is recommended, an identity check of the buyer/transferee is not required by the Registrar of Titles. An alternate witness within the meaning of Section 145 (1)(b) of the Transfer of Land Act 1893 (TLA) will also be accepted where the buyer/transferee executes the transfer of land as well as for all other document types.

The Registrar of Titles will only be satisfied where the execution of a transfer of land document by the transferor(s) is witnessed by an Australian consular officer (where witnessing requirements apply) when that execution occurs outside of Australia.

An Australian consular officer is defined by section 145(4) of the TLA as a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside the Commonwealth, such as:

- 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, and
- consular agent

Consular services currently provided overseas to Australians include legal / notary services such as witnessing documents related to the sale or purchase of land in Australia. Note that in some countries the Canadian Embassies provide consular services to Australians. Consular Officers at those Embassies may fall within the definition of a Consular Officer detailed above and will satisfy the new identity verification and witnessing requirements detailed in this CIB. A Consular Officer at the Australian Commerce and Industry Office in Taipei, Taiwan will also be accepted. Please refer to the latest information on the Department of Foreign Affairs and Trade's web site <https://www.dfat.gov.au/missions/>.

It is recommended that conveyancers strongly encourage their clients to contact the Consulate they intend to visit prior to travelling to that Consulate to confirm that notary services are provided and will be available at the time of the intended visit.

For each transferor the Consular Officer is required to:

1) Identify the transferor prior to witnessing execution of the transfer of land by sighting all of the following current and original documents:

- a) current and original rate notice issued by the local Government Council for the property being sold. The rate notice must clearly show the address of the property being sold. It is appreciated that the notice may not be issued in the name of the transferor however it must be sighted to connect the person presenting as the transferor with the property being sold; and
- b) current and original passport of the transferor; and
- c) current and original drivers licence for the transferor.

If a passport is not available an original birth certificate can be used, although this is not preferred. If a drivers licence is not available another form of photographic identification issued by a government authority can be used. At least one piece of identification used must contain a photograph of the transferor being identified.

If an original rate notice is not available as the property is not 'rateable' an original, signed letter from the local Government Council stating that a rates notice is not issued for that property will be accepted.

Where a transferor is a company or other incorporated body, the Registrar of Titles requires the identity of the natural person executing the transfer of land document on behalf of the transferor to be verified by an Australian Consular Officer using the documents identified above. Refer to the Registrar of Titles' Land Titles Registration Practice Manual (section 1.10) for the Registrar's requirements for executing documents by companies and other incorporated bodies. The Manual is available online at www.landgate.wa.gov.au.

A conveyancer acting on behalf of a company or other incorporated body must undertake a company or other search to satisfy themselves that the person who executes the transfer of land as transferor is authorised to act on behalf of the company/incorporated body.

2) After sighting the identity documents, take a copy of each document sighted and certify that the copy is a true and correct copy of the original document presented.

On the certified copy of the documents the Consular Officer must clearly state their name, position and consular office where the certification took place as well as the date and time of the certification.

3) After being satisfied that the person is who they claim to be (based on the identity documents provided), witness the transferor execute the transfer of land document. All of the required witness details must be clearly printed on the transfer of land form. The Registrar of Titles will issue requisitions to the lodging party where witness details are incomplete or not clearly printed.

4) Provide the witnessed transfer of land document together with the certified copy of the identification documents to the transferor(s).

In exceptional circumstances, the Registrar of Titles may be satisfied with an alternate witness within the meaning of Section 145 (1)(b) of the TLA. The requirement of a transferor to travel some distance to a Consular Office will not, on its own, be considered as an exceptional circumstance. Any request seeking the Registrar of Titles' approval to use an alternate witness must be made in writing prior to the execution of the transfer of land document. All such requests must identify the land by volume and folio number as well as state the name of the registered proprietor and settlement date. E-mail requests can be made to advice@landgate.wa.gov.au.

It is the responsibility of the transferor(s) to provide the original executed transfer of land form and the original certified copy of the identity documents to their conveyancer.

In circumstances where the execution of a transfer of land document is not required to be witnessed but will be executed by the transferor outside of Australia, an identification check must be performed by an Australian Consular Officer in

accordance with items 1 and 2 above. The transferor must provide the original certified copy of the identity documents to their conveyancer.

Evidence of the transferor(s) identity is to be provided to the Registrar of Titles for all transfers of land executed by the transferor outside of Australia at the time of lodgement of the transfer of land.

Conveyancers are also required to satisfy themselves that the person from whom they are taking instructions to sell the property has the legal authority to give those instructions. It is expected that the conveyancer will make whatever enquiries are necessary to satisfy themselves of the persons legal right to sell the property eg obtaining a copy of a Power of Attorney document.

Transfers of land executed by the transferor(s) outside of Australia and lodged with Landgate for registration by the Registrar of Titles must be accompanied by:

a) an original statutory declaration made by the conveyancer(s) acting for the transferor(s).

and

b) the original certified copy of the transferor's identity documentation sighted by the Australian Consular Officer.

The statutory declaration made by the conveyancer(s) at item 'a' above must contain statements detailing, but not limited to, the following:

- they have satisfied themselves that the registered proprietor on the certificate of title for the property being sold is the one from whom they are taking instructions; and
- they have satisfied themselves that the name on the identity documents certified by the Australian Consular Officer are consistent with the name of the registered proprietor on the certificate of title or their authorised legal representative (eg Power of Attorney) and has the legal authority to sell the property that has been sold.
- Any additional steps taken to satisfy themselves of the persons identity and authority to transact.

The Registrar of Titles may not register the transfer of land if the Registrar's requirements set out in this Customer Information Bulletin are not complied with.

When undertaking identity verification be vigilant in checking that photos match and the transferor(s) details on the documents match your records. It is possible that forged documents might be used in an attempt to fraudulently sell a Western Australian property. When in doubt ask for further identification or undertake other additional checks as appropriate for the circumstance.

Identity documents must be kept in a secure and safe place.

The Registrar of Titles strongly recommends that the certified copy of the transferor(s) identification documents be kept in a secure manner to prevent misuse of the information whilst it is in the possession of the Conveyancer.

For further information or to report a suspected property fraud contact Landgate's Advice Line on (08) 9273 7044 or advice@landgate.wa.gov.au

A handwritten signature in black ink, appearing to read 'J. Villani', with a stylized flourish at the end.

Jean Villani
Delegated Registrar of Titles
A/Manager Registrations
03 October 2011