



Aligning Paper and Electronic Conveyancing Requirements

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Introduction

The Real Estate Institute of Victoria (REIV) is the peak body for the Victorian real estate profession.

Our mission is to lead and represent the real estate industry and to advance the professionalism of its members.

With over 70 per cent of all Victorian real estate agencies as Members the REIV is acknowledged as the pre-eminent expert on all matters relevant to the buying, selling and leasing of property and business.

Aligning Paper and Electronic Conveyancing Requirements

This submission is made by The Real Estate Institute of Victoria Ltd (REIV) in response to questions asked in the Consultation Paper Version 1.0 dated November 2013 produced by Land Victoria that sets out specific proposals related to aligning paper and electronic conveyancing processes, adopting national uniform requirements and changing mortgage provisions.

General Comments

The REIV believes that the uptake of electronic conveyancing will be slow, but steady as practitioners accustom themselves to the new system. Whilst it understands that a transitional system is necessary, it believes that there will always be a requirement for paper conveyancing, especially by unrepresented persons. Whilst it understands the benefits of familiarisation with the system for electronic transfers, it believes that verification of identity and client authorisation is not necessary for paper transactions.

Response to Specific Proposals

Chapter 2: Phasing out Certificates of Title

2.1: Do the proposed safeguards outlined in Sections 4-8 of this Consultation Paper adequately replace the functions of the Certificate of Title?

Yes.

2.2: Are there any other options that should be considered?

No.

2.3: Are there any other safeguards that need to be considered prior to paper Certificates of Title being abolished?

Yes.

Clarification is sought regarding what notification will be provided when an electronic dealing is registered. The nominating party should be able to advise to whom the electronic or paper Certificate of Title should be issued.

Chapter 3: Application of electronic conveyancing requirements to paper conveyancing

3.1: Should the requirements for paper and electronic conveyancing transactions be aligned? If not, why not?

If client authorisation is required for paper transfers, Yes.

Chapter 4: Verification of identity for paper conveyancing transactions

4.1: Is it reasonable to introduce verification of identity requirements for paper conveyancing transactions? If not, why not?

Not until there is significant patronage of the electronic system. The added costs for paper transfers cannot be justified.

4.2: Is the proposed list of Verifiers appropriate? Are there any other categories of persons who should have the authority to verify identity?

Yes.

4.3: Is the proposed list of situations where identity must be verified appropriate?

Yes.

Are there any other situations where verification of identity should be required?

No.

4.4: Is the proposed seven year period for retention of documents appropriate? If not, why not and what would be appropriate?

Yes.

Chapter 5: Client Authorization

5.1: Is the introduction of client authorisation requirements appropriate for paper conveyancing transactions? If not why not?

Yes, as the same document for electronic conveyancing can be used. The definition of “subscriber” does not cater for self-represented persons thereby requiring either a change in this definition or alternatively, that users, including clients, may be given the option of signing individually without a lawyer or conveyancer.

Chapter 6: Certifications

6.1: Is it reasonable to require certifications for paper conveyancing transactions? If not, why not?

Yes.

6.2: Are the proposed persons who can give certifications appropriate? Are there any other categories of persons who should have the authority to give certifications?

Yes, although it should include non-represented persons, otherwise, these persons cannot participate.

Chapter 7: Priority Notices

7.1: Should priority notices be introduced? If not why not?

Yes.

7.2: Should priority notices be optional? If not, why not?

No.

7.3: Should it be possible to lodge priority notices in paper? If so, what processes should be employed to ensure that the lodging party is known and verified as is the case for a subscriber to an electronic lodgement network?

Yes, similar to existing processes for the lodgement of a caveat.

7.4: Should priority notices extend to all dealing types or only to transfers and mortgages?

All dealing types.

7.5: Is the list of exceptions to a priority notice outlined in this Consultation Paper sufficient, or should they be expanded?

Yes.

7.6: Is 60 days the appropriate time period for a priority notice? If not, what should the period be?

Assuming that priority notices can be extended, Yes.

Chapter 8: Non-represented parties

8.1: Are the proposed requirements for non-represented parties reasonable? If not, why not?

Yes, but not for certification of documents.

8.2: Who should be authorised verifiers for the purpose of verifying the identity of non-represented parties?

The list as proposed, plus Australia Post.

8.3: Will the proposed requirements for non-represented parties assist conveyancers and lawyers in dealing with non-represented parties? If not, why not?

No, as there should be no alternation to the conveyancing process.

8.4: Are there any other requirements that should be placed on non-represented parties? If so, what?

No.

Chapter 9: Consents by mortgagees to conveyancing transactions

9.1: Do you believe that the proposed changes simplify existing processes relating to consents? If not, why not?

No. Consents are an additional requirement.

9.2: Do mortgagees and annuitants continue to be adequately protected?

Yes.

9.3: How should the administrative process operate? Why?

It would be pragmatic to consider the production of title as deemed consent.

Chapter 10: Mortgage provisions

10.1: Do you believe that it is reasonable for a mortgage to have no effect if the mortgagee failed to take reasonable steps when undertaking a verification of identity? If not, why not?

Yes.

10.2: Do you believe that it is reasonable to limit the interest owing where a fraud has occurred? If not, why not?

If a mortgage has no effect under 10.1, there would be no mortgage to worry about.

10.3: Which rate is the most suitable rate, the Reserve Bank of Australia's official cash rate or the Bank Accepted Bills rate? And why? Would another rate be more suitable? If so, which rate and why?

The REIV has no opinion on this matter.