



New South Wales

Real Property Amendment Regulation 2011

under the

Real Property Act 1900

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Real Property Act 1900*.

GREG PEARCE, MLC
Minister for Finance and Services

Explanatory note

The objects of this Regulation are:

- (a) to prescribe the reasonable steps that a mortgagee must take to confirm the identity of the mortgagor before presenting a mortgage for lodgment under the *Real Property Act 1900*, and
- (b) to prescribe the reasonable steps that a witness to the execution of an application, dealing or caveat under that Act is to take to ensure the identity of a person executing the document (if the witness has not known the person for more than 12 months).

This Regulation is made under the *Real Property Act 1900*, including sections 56C, 117 and 144 (the general regulation-making power).

2011 No 282

Clause 1 Real Property Amendment Regulation 2011

Real Property Amendment Regulation 2011

under the

Real Property Act 1900

1 Name of Regulation

This Regulation is the *Real Property Amendment Regulation 2011*.

2 Commencement

This Regulation commences on 1 November 2011 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Real Property Regulation 2008

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

primary non-photographic identification document means any of the following:

- (a) a birth certificate or birth extract issued by a State or Territory,
- (b) a citizenship certificate issued by the Commonwealth,
- (c) a citizenship certificate issued by a foreign government and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (d) a birth certificate issued by a foreign government, the United Nations or an agency of the United Nations and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (e) a pension card issued by Centrelink that entitles the person in whose name the card is issued to financial benefits.

primary photographic identification document means any of the following:

- (a) a licence or permit issued under a law of a State or Territory or equivalent authority of a foreign country for the purpose of driving a vehicle that contains a photograph of the person in whose name the licence or permit is issued,
- (b) a passport issued by the Commonwealth,
- (c) a passport or a similar document issued for the purpose of international travel that:
 - (i) contains a photograph and the signature of the person in whose name the document is issued, and
 - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
 - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document,
- (d) a Photo Card issued under the *Photo Card Act 2005*,

2011 No 282

Real Property Amendment Regulation 2011

Schedule 1 Amendment of Real Property Regulation 2008

- (e) a card issued under a law of the Commonwealth or another State or Territory for the purpose of proving the person's age which contains a photograph of the person in whose name the card is issued,
- (f) a national identity card issued for the purpose of identification that:
 - (i) contains a photograph and the signature of the person in whose name the document is issued, and
 - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
 - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document.

secondary identification document means any of the following:

- (a) a notice that was issued to an individual by the Commonwealth, a State or Territory within the preceding 12 months that:
 - (i) contains the name of the individual and his or her address, and
 - (ii) records the provision of financial benefits to the individual under a law of the Commonwealth, State or Territory (as the case may be),
- (b) a notice that was issued to an individual by the Australian Tax Office within the preceding 12 months that:
 - (i) contains the name of the individual and his or her address, and
 - (ii) records a debt payable to or by the individual by or to the Commonwealth under a Commonwealth law relating to taxation,
- (c) a notice that was issued to an individual by a local government body or utilities provider within the preceding 3 months that contains the name of the individual and his or her address.

[2] Part 3A

Insert after clause 11:

Part 3A Reasonable steps in confirming identities of mortgagors**11A Prescribed reasonable steps**

A mortgagee is to be considered as having taken reasonable steps to ensure that the identity of a person who executed a mortgage, or on whose behalf the mortgage was executed, as mortgagor is the same person who is, or is to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates if the mortgagee:

- (a) has taken the steps set out in this Part, or
- (b) has complied with the *Anti-Money Laundering and Counter-Terrorism Financing Rules* under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth in relation to the mortgage.

11B Confirming identities of mortgagors who are natural persons

- (1) If the mortgagor is a natural person, the mortgagee must collect the following information from the person:
 - (a) the person's full name,
 - (b) the person's date of birth,
 - (c) the person's residential address.
- (2) The mortgagee must verify the information from:
 - (a) an original or certified copy of a primary photographic identification document, or
 - (b) an original or certified copy of a primary non-photographic identification document and an original or certified copy of a secondary identification document.
- (3) In verifying the information from the relevant document, the mortgagee must be reasonably satisfied that:
 - (a) the document is legible and does not appear to have been altered in any way, and
 - (b) there is no apparent discrepancy between the information collected from the mortgagor and the information

2011 No 282

Real Property Amendment Regulation 2011

Schedule 1 Amendment of Real Property Regulation 2008

contained in the document (other than a discrepancy that can be reasonably explained and supported), and

Note. A reasonable explanation for a discrepancy between the information collected and information contained in a document could be that the mortgagor has recently been married or otherwise had a change of name.

- (c) in the case of a primary photographic identification document—that the photograph contained in the document is a true likeness of the mortgagor.
- (4) A document referred to in this clause does not include a document that has expired (other than in the case of an Australian passport that has been expired for less than 2 years).
- (5) For the purposes of this clause, a copy of a document may be certified as a true copy of the original only by a person authorised to take and receive statutory declarations under section 21 of the *Oaths Act 1900*.
- (6) Nothing in this clause requires a mortgagee to collect and verify information from the mortgagor in a face to face meeting.

11C Confirming identities of mortgagors that are bodies corporate

- (1) If the mortgagor is a body corporate, the mortgagee must collect the following information in respect of the body corporate:
 - (a) the name as registered with ASIC (or, in relation to an incorporated association or co-operative, the name as registered with the relevant registration body),
 - (b) the registered office address in Australia,
 - (c) the principal place of business address in Australia (if any),
 - (d) the ACN or ARBN (or, in relation to an incorporated association or co-operative, the relevant registration number),
 - (e) the registration status,
 - (f) the name of each director (or, in relation to an incorporated association, the name of the chairperson, secretary and treasurer),
 - (g) the name of the company or co-operative secretary (or, in relation to an incorporated association, the name and address of the public officer).
- (2) The mortgagee must verify the information from a document that shows the results of a search made within the previous 30 days of the ASIC database (or, in relation to an incorporated association

or co-operative, the database of the relevant registration body) in respect of the body corporate.

- (3) In verifying the information from the document, the mortgagee must be reasonably satisfied that:
- (a) the document is legible and does not appear to have been altered in any way, and
 - (b) there is no apparent discrepancy between the information collected from the mortgagor and the information contained in the document.

11D Mortgages executed under power of attorney

If the mortgage was executed on behalf of the mortgagor under a power of attorney, the mortgagee must:

- (a) if the mortgagor is a natural person—take the actions under clause 11B, and
- (b) if the mortgagor is a body corporate—take the actions under clause 11C, and
- (c) if the attorney is a natural person—take the actions under clause 11B as if references to the mortgagor in that clause were references to the attorney, and
- (d) if the attorney is a body corporate—take the actions under clause 11C as if references to the mortgagor in that clause were references to the attorney, and
- (e) verify, from the power of attorney, that the execution of the mortgage was authorised by the power of attorney.

[3] Clause 16A

Insert after clause 16:

16A Ensuring identification by eligible witnesses

- (1) For the purposes of section 117 (5) of the Act, a witness is to be considered as having taken reasonable steps to ensure the identity of a person executing an application, dealing or caveat if the witness has taken the steps set out in this clause.
- (2) The witness must sight:
 - (a) an original of a primary photographic identification document in respect of the other person, or

2011 No 282

Real Property Amendment Regulation 2011

Schedule 1 Amendment of Real Property Regulation 2008

- (b) an original of a primary non-photographic identification document in respect of the other person and an original of a secondary identification document in respect of the other person.
- (3) A document referred to in this clause does not include a document that has expired (other than in the case of an Australian passport that has been expired for less than 2 years).

[4] Clause 19

Insert after clause 18B:

19 Transitional

- (1) Section 56C of the Act, as inserted by the *Real Property and Conveyancing Legislation Amendment Act 2009*, does not apply in respect of any mortgage executed before the insertion of that section (whether accepted for lodgment or not).
- (2) An amendment made to section 117 of the Act by the *Real Property and Conveyancing Legislation Amendment Act 2009* does not apply in respect of any application, dealing or caveat executed before the commencement of the amendment.