



Real Property Amendment (Mortgagor Identification) Regulation 2012

under the

Real Property Act 1900

Her Excellency the Governor, 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 object of this Regulation is to amend the *Real Property Regulation 2008*:

- (a) to make it clear that a mortgagee takes reasonable steps to confirm the identity of a mortgagor if the mortgagee complies with the identification procedures that are required or permitted to be used for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth and the Rules under that Act (the **Commonwealth legislation**) for the mortgage and mortgagor concerned (including procedures in relation to pre-commencement customers under that Act), and
- (b) to provide that a mortgagee takes reasonable steps to confirm the identity of a mortgagor who is a guarantor of, but not a borrower under, a loan secured by the mortgage if the mortgagor's identity is confirmed in accordance with the identification procedures that are required or permitted to be used for the purposes of the Commonwealth legislation in relation to a borrower under a loan.

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

2012 No 321

Clause 1 Real Property Amendment (Mortgagor Identification) Regulation 2012

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under the

Real Property Act 1900

1 Name of Regulation

This Regulation is the *Real Property Amendment (Mortgagor Identification) Regulation 2012*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Real Property Regulation 2008

[1] Clause 11A Prescribed reasonable steps

Omit clause 11A (b). Insert instead:

- (b) has complied with the identification procedures that are required or permitted to be used for the purposes of the Commonwealth Act and the Commonwealth Rules in relation to the kind of mortgage and mortgagor concerned.

[2] Clause 11A (2) and (3)

Insert at the end of clause 11A:

- (2) A mortgagee may not rely on subclause (1) (b) in relation to a mortgagor who is not a customer (within the meaning of the Commonwealth Act) of the mortgagee unless:
 - (a) the reason for the mortgagor not being a customer is that the mortgagor is a guarantor of, but not a borrower under, the loan secured by the mortgage, and
 - (b) the mortgagee complies with such identification procedures as would have been required or permitted to be used for the purposes of the Commonwealth Act and Commonwealth Rules in relation to the mortgage if the mortgagor had also been a borrower under the loan.
- (3) In this clause:
 - Commonwealth Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth.
 - Commonwealth Rules** means the *Anti-Money Laundering and Counter-Terrorism Financing Rules* under the Commonwealth Act.