

Real Property Amendment (Electronic Conveyancing) Act 2015 No 23

[2015-23]



New South Wales

Status Information

Currency of version

Historical version for 16 September 2015 to 1 March 2016 (accessed 23 November 2024 at 16:46)

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Authorisation

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File last modified 26 February 2016

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Contents

Long title	3
1 Name of Act	3
2 Commencement	3
Schedule 1 Amendment of Real Property Act 1900 No 25	3
Schedule 2 Consequential amendment of other legislation	18

Real Property Amendment (Electronic Conveyancing) Act 2015 No 23



New South Wales

An Act to amend the *Real Property Act 1900* to make provision for the alignment of paper and electronic conveyancing practices and to facilitate the adoption of electronic conveyancing practices; and to make consequential amendments to certain other legislation.

1 Name of Act

This Act is the *Real Property Amendment (Electronic Conveyancing) Act 2015*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as otherwise provided by this section.
- (2) Schedules 1.6 [3] and [4], 1.7 and 2.1 commence on the date of assent to this Act.
- (3) Schedule 2.2 commences on the day on which Schedule 1.3 commences.

Schedule 1 Amendment of *Real Property Act 1900 No 25*

1.1 Amendments concerning conveyancing rules

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1) (a):

Conveyancing rules—The rules determined by the Registrar-General under section 12E.

Conveyancing transaction—A conveyancing transaction within the meaning of the *Electronic Conveyancing National Law (NSW)* to which this Act applies.

[2] Section 12E

Insert after section 12D:

12E Conveyancing rules

- (1) **Making of conveyancing rules** The Registrar-General may from time to time determine, in writing, rules for or with respect to the preparation and lodgment otherwise than electronically of paper documents to give effect to conveyancing transactions (the **conveyancing rules**), including rules for or with respect to the following:
- (a) the verification of identity and authority, including:
 - (i) the standards to which identity and authority are to be verified, and
 - (ii) the classes of persons in respect of whom identity and authority are to be verified, and
 - (iii) the classes of paper documents in relation to which verification of identity and authority requirements apply, and
 - (iv) the classes of persons who can undertake verification of identity and authority, and
 - (v) any supporting evidence and retention requirements,
 - (b) client authorisations, including:
 - (i) the form of a client authorisation, and
 - (ii) the classes of paper documents to which a client authorisation applies, and
 - (iii) any supporting evidence and retention requirements,
 - (c) matters to be certified, or relating to the certification of matters, for the purposes of paper documents, including:
 - (i) the form of certifications, and
 - (ii) the classes of persons who may certify those matters, and
 - (iii) any supporting evidence and retention requirements,
 - (d) the retention of documents supporting or authenticating paper documents generally, including periods of retention,
 - (e) the classes of conveyancing transactions that must be lodged using an Electronic Lodgment Network instead of by means of paper documents,
 - (f) the obligations of persons lodging paper documents (including warranties and representations),

- (g) the execution and attestation of paper documents that give effect to conveyancing transactions (including providing for certification, authentication or other alternatives to execution or attestation to prove or establish such transactions),
 - (h) any other matter that by this Act or the regulations is required or permitted to be dealt with by the conveyancing rules.
- (2) **Publication of conveyancing rules** The Registrar-General must ensure that the following are publicly available:
 - (a) the current conveyancing rules,
 - (b) all superseded versions of the conveyancing rules.
- (3) The conveyancing rules, and any changes to them, must be made publicly available at least 20 business days before the conveyancing rules or, as the case requires, the changes take effect.
- (4) However, changes to the conveyancing rules may take effect within a shorter period (including immediately on being made publicly available), if the Registrar-General is satisfied that the changes need to take effect urgently because an emergency situation exists.
- (5) For the purposes of subsection (4), an emergency situation exists if the Registrar-General considers that, because of the occurrence of an event or the existence of particular circumstances, the operation, security, integrity or stability of an Electronic Lodgment Network or the Register or the land titles system is being, or is likely to be, jeopardised.
- (6) Documents may be made publicly available in accordance with this section in any manner the Registrar-General considers appropriate, including (without limitation) by means of a website.
- (7) It is sufficient compliance with subsection (2) (b) if a superseded version of the conveyancing rules (other than the most recently superseded version) is publicly available only on request made to the Registrar-General.
- (8) **Compliance with conveyancing rules** A person lodging a paper document giving effect to a conveyancing transaction must comply with the conveyancing rules.
- (9) The Registrar-General:
 - (a) may refuse to accept or register, or may reject, a conveyancing transaction that does not comply with the requirements of the conveyancing rules relating to the transaction, and
 - (b) if the Registrar-General is satisfied that a person has contravened the

conveyancing rules—may do either or both of the following:

- (i) suspend any right or other entitlement of the person to lodge documents giving effect to conveyancing transactions, for a period not exceeding 21 days, for a particular contravention,
- (ii) impose such conditions on any right or other entitlement of the person to lodge documents giving effect to conveyancing transactions as the Registrar-General considers appropriate so as to prevent further contraventions.

(10) The Registrar-General may waive compliance with all or any provisions of the conveyancing rules if the Registrar-General is satisfied that granting the waiver is reasonable in all the circumstances.

(11) A waiver under subsection (10) may:

- (a) be total or partial, and
- (b) apply generally to all persons or conveyancing transactions, or be limited in its application to particular persons or conveyancing transactions or particular classes of persons or conveyancing transactions, and
- (c) apply generally or be limited in its application by reference to specified exceptions or factors, and
- (d) apply indefinitely or for a specified period, and
- (e) be unconditional or subject to conditions or restrictions.

(12) **Effect on other legislative provisions** Nothing in this section limits any other power conferred on the Registrar-General by another provision of this Part or any other Act.

1.2 Amendments concerning client authorisations

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1) (a):

Authorised representative—A law practice or licensed conveyancer (or firm of licensed conveyancers) authorised under a client authorisation to represent a party to a conveyancing transaction in connection with the execution or lodgment of documents that give effect to that transaction.

Client authorisation—A client authorisation as defined by section 107.

Firm of licensed conveyancers—A firm of licensees within the meaning of the

Conveyancers Licensing Act 2003.

Law practice—A law practice within the meaning of the *Legal Profession Act 2004*.

[2] Sections 107 and 108

Insert after section 106:

107 Client authorisations

- (1) For the purposes of this Act, a **client authorisation** is a document:
 - (a) that is in the form required by the conveyancing rules, and
 - (b) by which a party to a conveyancing transaction authorises a law practice or licensed conveyancer (or firm of licensed conveyancers) to do one or more things on the party's behalf in connection with the transaction.
- (2) Without limiting subsection (1) (b), a client authorisation may authorise the authorised representative to do any of the following:
 - (a) sign documents giving effect to conveyancing transactions on behalf of a person being represented,
 - (b) present documents giving effect to conveyancing transactions for lodgment,
 - (c) authorise or complete any associated financial transaction.
- (3) A properly completed client authorisation:
 - (a) has effect according to its terms, and
 - (b) is not a power of attorney for the purposes of any other law relating to powers of attorney.
- (4) If a document is signed on a person's behalf by an authorised associate of the authorised representative under a properly completed client authorisation, the requirements of this Act, the regulations or any other law relating to the execution, signing, witnessing, attestation or sealing of documents of that kind are taken to have been fully satisfied.

Note—

See also section 108 (Reliance on, and repudiation of, signatures).

- (5) A client authorisation in force for the purposes of the *Electronic Conveyancing National Law (NSW)* is taken to be a client authorisation for the purposes of this section, unless it expressly provides otherwise.
- (6) This section does not limit or affect the application of any law relating to powers

of attorney in relation to:

- (a) the execution of client authorisations under a power of attorney, or
- (b) a client authorisation executed under a power of attorney.

(7) This section has effect subject to any limitations or other restrictions specified by the conveyancing rules with respect to client authorisations.

(8) In this section:

authorised associate of an authorised representative, in relation to the signing of a document, means:

- (a) if the authorised representative is a law practice—a legal practitioner associate (within the meaning of the *Legal Profession Act 2004*) of the practice authorised to sign the document for the practice, and
- (b) if the authorised representative is a licensed conveyancer who is a sole conveyancer—the licensed conveyancer or another licensed conveyancer who is an employee of, or consultant to, the licensed conveyancer authorised to sign the document for the licensed conveyancer, and
- (c) if the authorised representative is a firm of licensed conveyancers—a member or employee of, or a consultant to, the firm who is a licensed conveyancer authorised to sign the document for the firm, and
- (d) if the authorised representative is a licensed conveyancer that is a corporation—a director or employee of, or consultant to, the corporation who is a licensed conveyancer authorised to sign the document for the corporation.

108 Reliance on, and repudiation of, signatures

- (1) This section has effect subject to such modifications (if any) as may be prescribed by the regulations.
- (2) Subject to subsection (3), if a relevant person signs a paper document giving effect to a conveyancing transaction:
 - (a) the signature is binding, in relation to that document, on:
 - (i) the relevant person, and
 - (ii) any person for whom the relevant person acts under a client authorisation with respect to that document, and
 - (b) the signature is binding, in relation to that document, for the benefit of:
 - (i) each of the parties to that document, and

- (ii) each authorised representative who acts under a client authorisation with respect to that document, and
 - (iii) any person claiming through or under any person to whom subparagraph (i) applies, and
 - (iv) the Registrar-General, once the document is lodged.
- (3) A relevant person may repudiate the signature with respect to a paper document giving effect to a conveyancing transaction if the relevant person establishes:
 - (a) that the signature was not the relevant person's signature, and
 - (b) that the signature was not the signature of a person who, at the time of signing the paper document:
 - (i) was an employee, agent, contractor or officer of the relevant person, and
 - (ii) had the relevant person's express or implied authority to sign any document, and
 - (c) that neither of the following enabled the signing of the paper document:
 - (i) a failure of the relevant person, or any of the relevant person's employees, agents, contractors or officers, to fully comply with the requirements of the conveyancing rules,
 - (ii) a failure by the relevant person, or any of the relevant person's employees, agents, contractors or officers, to take reasonable care.
- (4) For the purposes of subsection (3) (b) (ii), it does not matter whether the authority was:
 - (a) general, or
 - (b) limited or restricted to documents of a particular class or to a particular document or in any other way.
- (5) In this section:

modification includes addition, exception, omission or substitution.

relevant person means an Australian legal practitioner or licensed conveyancer who signs a paper document giving effect to a conveyancing transaction under the authority (or purportedly under the authority) of a client authorisation.

1.3 Amendment concerning certifications of correctness

Section 117

Omit sections 117 and 117A. Insert instead:

117 Certificate of correctness

- (1) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any primary application, dealing, caveat or priority notice unless it is certified:
 - (a) if it is lodged in electronic form by means of an Electronic Lodgment Network—in accordance with the participation rules made under the *Electronic Conveyancing National Law (NSW)*, or
 - (b) if it is lodged in paper form—in accordance with the conveyancing rules.
- (2) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any dealing accompanied by a notice (in accordance with section 39 (1B)) unless:
 - (a) in the case of any dealing accompanied by a notice that is lodged by means of an Electronic Lodgment Network—the dealing is accompanied by a certificate in electronic form to the effect that the notice has been lodged electronically in a form and in the manner approved by the Registrar-General and the notice is correct for the purposes of this Act, and
 - (b) in the case of a notice lodged electronically (other than through an Electronic Lodgment Network)—the dealing is accompanied by a certification to the effect that the notice has been lodged electronically in a form and in the manner approved by the Registrar-General and that the notice is correct for the purposes of this Act, and
 - (c) in any other case—the notice bears a certificate in the form required by the conveyancing rules to the effect that the notice is correct for the purposes of this Act.

Note—

The notice referred to in section 39 (1B) is a notice of the sale or transfer of land.

- (3) A certificate referred to in subsection (2) must be signed (or, in the case of an electronic certificate, digitally signed) by:
 - (a) the person lodging the dealing, or
 - (b) a party to the dealing, or

(c) a solicitor or agent acting for the person lodging, or a party to, the dealing.

(4) A person must not falsely or negligently certify to the correctness of any application, dealing, caveat or notice referred to in this section.

Maximum penalty: 10 penalty units.

(5) The conviction of a person under subsection (4) does not prevent a person who may have sustained any damage or loss in consequence of an error or mistake in any such certified application, dealing or caveat from recovering damages against the person certifying.

1.4 Amendment concerning execution and attestation

Section 3 Definitions

Insert after section 3 (1) (f):

(g) A reference to a dealing, caveat, priority notice, instrument or other document that is in paper form being duly executed or witnessed includes a reference to it being certified or otherwise authenticated in accordance with the conveyancing rules.

Note—

See also sections 107 (4) and 108 with respect to the effect of the signing of documents under the authority or purported authority of client authorisations.

1.5 Amendments concerning priority notices

[1] Section 3 Definitions

Omit “or caveat” from the definition of **Dealing** in section 3 (1) (a).

Insert instead “, caveat or priority notice”.

[2] Section 3 (1) (a)

Insert in alphabetical order:

Priority notice—A priority notice under Part 7B.

[3] Section 36 Lodgment and registration of documents

Omit “or caveat” wherever occurring in section 36 (1A)–(2).

Insert instead “, caveat or priority notice”.

[4] Section 36 (3)

Insert “, priority notice” after “caveat” wherever occurring.

[5] Section 39 Treatment of dealings that do not comply with requirements

Omit “or caveat” wherever occurring in section 39 (1A).

Insert instead “, caveat or priority notice”.

[6] Section 57 Procedure on default

Insert after section 57 (2) (b1) (ii):

- (iii) each person (if any) who has lodged a priority notice and claims as an unregistered mortgagee or chargee to be entitled to an estate or interest in the land mortgaged or charged, and

[7] Section 61 Application for foreclosure order

Insert at the end of section 61 (1A) (c):

, and

- (d) each person (if any) who has lodged a priority notice and claims as an unregistered mortgagee or chargee to be entitled to an estate or interest in the land mortgaged or charged.

[8] Part 7B

Insert after Part 7A:

Part 7B Priority notices

74S Interpretation

(1) In this Part:

registrable form, in relation to a dealing, means that the dealing is in registrable form for the purposes of section 36.

(2) In this Part, a reference to a legal or equitable estate in land includes a reference to a subsisting interest in land within the meaning of section 28A.

74T Lodgment of priority notices

(1) A person who intends to lodge a dealing to give effect to an entitlement to a legal or equitable estate or interest in land claimed by the person may lodge a priority notice with the Registrar-General with respect to the proposed dealing and any associated dealings (for example, a mortgage created over land that has been sold).

- (2) A priority notice must be in the approved form and lodged in the manner approved by the Registrar-General.
- (3) A person who has lodged a priority notice with respect to a proposed dealing cannot lodge another priority notice with respect to the same dealing unless all previous notices with respect to that dealing are withdrawn or have otherwise ceased to have effect.

Note—

Previous priority notices may be withdrawn for the purposes of this subsection at the same time that the new priority notice is lodged.

- (4) If a priority notice is in the approved form, the Registrar-General may accept lodgment of the priority notice as sufficient evidence that the person who lodged the priority notice, or who had the priority notice lodged on the person's behalf, is entitled to lodge the priority notice.
- (5) Without limiting subsection (4), the Registrar-General may require a person who lodges a priority notice to provide, within a reasonable period specified by the Registrar-General, such evidence as the Registrar-General may require relating to the person's entitlement to lodge the notice or the intended timing for the lodgment of a dealing to which the notice relates.

Note—

The Registrar-General may remove a recording of a priority notice under section 74X (2) if evidence that is required under this subsection is not provided.

- (6) The Registrar-General is not required to give any person notice of the lodgment or recording in the Register of a priority notice.

74U Registrar-General to enter particulars of priority notice lodged under this Part

For the purpose only of acknowledging the receipt of a priority notice lodged under this Part, the Registrar-General must, if satisfied that the notice complies with the requirements made in respect of it by and under this Act, record in the Register such particulars of the notice as the Registrar-General considers appropriate (including its current expiry date).

74V Period during which priority notice has effect

- (1) The period during which a priority notice has effect is:
 - (a) 60 days from the date of its lodgment, or
 - (b) if that period is extended under this section—90 days from the date of its lodgment.
- (2) However, a priority notice ceases to have effect before the expiry of its period of

duration if:

- (a) the notice is withdrawn before that expiry, or
 - (b) the dealing or dealings to which the notice relates are lodged before that expiry and the dealing or dealings are registered, withdrawn or rejected by the Registrar-General, or
 - (c) the notice lapses because of the operation of section 74Y (3) before that expiry, or
 - (d) the Registrar-General has removed the recording of the priority notice under section 74X (2) (b), (c) or (d) before that expiry.
- (3) A person who has lodged a priority notice may apply to the Registrar-General, in the approved form and manner, for an extension of the period of a priority notice by a single additional period of 30 days.
- (4) The Registrar-General is to grant an extension if the application is duly made before the expiry of the initial 60-day period.
- (5) If more than one priority notice is lodged with respect to the same land, the period during which each notice has effect is to be determined by reference to the lodgment date for the notice concerned.

74W Effect of priority notice

- (1) While a priority notice has effect with respect to a proposed dealing to give effect to an entitlement to an estate or interest in land, the Registrar-General must not, without the consent of the person who lodged the notice, register:
- (a) any dealing on the folio of the Register for the land, or
 - (b) any plan (including a plan to which section 88B of the [Conveyancing Act 1919](#) applies) relating to the land.
- (2) Despite subsection (1), the lodgment of a priority notice does not prevent the Registrar-General from registering any of the following in the Register:
- (a) a dealing in registrable form that was lodged before the notice,
 - (b) the dealing or dealings to which the notice relates,
 - (c) a caveat or the withdrawal or lapsing of a caveat,
 - (d) a vesting or dealing effected in accordance with an order of a court or a provision of a law of this State or the Commonwealth,
 - (e) an application made under section 93 by an executor, administrator or

trustee in respect of the estate or interest of a deceased registered proprietor,

- (f) an application under section 12 of the *Trustee Act 1925* or an order of a court or dealing which, in the opinion of the Registrar-General, effects or evidences a replacement of existing trustees or the appointment of new or additional trustees,
- (g) an application under section 101,
- (h) in relation to a mortgage, charge or covenant charge recorded or lodged in registrable form before the lodgment of the notice—a dealing effected by the mortgagee, chargee or covenant chargee in the exercise of a power of sale or other power or a right conferred by the mortgage, charge or covenant charge or by or under law,
- (i) in relation to a lease recorded or lodged in registrable form before the lodgment of the notice—a dealing effected by the lessee pursuant to a right conferred by the lease or by or under law.

Note—

In addition to the matters referred to in this subsection, the Registrar-General is not prevented from taking action with respect to any other matters that are not dealings or plans referred to in subsection (1).

- (3) If it appears to the Registrar-General that a dealing lodged during the period in which a priority notice has effect is a dealing to which the notice relates, the Registrar-General may:
 - (a) record the dealing in the Register if satisfied that the dealing is a dealing to which the notice relates, or
 - (b) request the parties to the dealing to provide such further information as the Registrar-General may require to assist in determining whether the dealing is a dealing to which the notice relates.

74X Withdrawal and removal of priority notice

- (1) Each of the following persons may withdraw a priority notice, in the approved form and in the manner approved by the Registrar-General, at any time before a priority notice ceases to have effect:
 - (a) the person who has lodged a priority notice or whose proposed dealing is protected by the notice,
 - (b) an Australian legal practitioner or licensed conveyancer who is representing that person.

- (2) The Registrar-General may remove a recording in the Register of a priority notice if the Registrar-General is satisfied that:
- (a) the notice has ceased to have effect, or
 - (b) the notice does not relate to the land to which the notice purports to relate, or
 - (c) the dealing or dealings to which the notice relates are unlikely to be lodged or recorded in the Register before the notice ceases to have effect, or
 - (d) the person who lodged the notice has not provided evidence required by the Registrar-General under section 74T (5) within the period specified by the Registrar-General.

74Y Application to Supreme Court for withdrawal of priority notice

- (1) Any person who is or claims to be entitled to an estate or interest in the land described in a priority notice may apply to the Supreme Court for an order that the notice be withdrawn by the person who lodged it.
- (2) If satisfied that it is appropriate to do so in the circumstances, the Supreme Court may:
- (a) order the person who lodged the priority notice to withdraw it, and
 - (b) make such other or further orders as it thinks fit.
- (3) If the Supreme Court makes an order for the withdrawal of a priority notice and the notice is not withdrawn within the period specified by the order, the notice lapses when a copy of the order is lodged with the Registrar-General after that time expires.

74Z Compensation payable in certain cases

- (1) Any person who, without reasonable cause:
- (a) lodges a priority notice, or
 - (b) refuses or fails to withdraw a priority notice after being requested to do so,
- is liable to pay compensation to any person who sustains pecuniary loss that is attributable to the lodgment, refusal or failure.
- (2) Such compensation is recoverable in proceedings taken in a court of competent jurisdiction by the person who claims to have sustained the pecuniary loss.

[9] Section 96D Official search of computer folio

Insert "or priority notice" after "caveat" wherever occurring in section 96D (2) (b).

[10] Section 96E Searches to disclose recordings on mortgages etc

Insert “or priority notice” after “caveat” wherever occurring.

[11] Section 105A Effect of recording writ

Insert at the end of section 105A (1) (r):

, or

(s) a dealing to which a priority notice that has effect relates.

[12] Section 114 Registrar-General may require plan to be lodged

Omit “a caveat”, “the caveat” and “or caveat” from section 114 (b).

Insert instead “a caveat or priority notice”, “the caveat or priority notice” and “, caveat or priority notice”, respectively.

[13] Section 134 Torrens Assurance Fund

Omit “dealing, caveat or withdrawal of caveat” wherever occurring in section 134 (2) and (4).

Insert instead “dealing, caveat or priority notice (or withdrawal of a caveat or priority notice)”.

1.6 Amendments concerning certificates of title and consents

[1] Section 33 Issue of certificates of title

Omit “Notwithstanding subsection (1) but subject to subsection (6), the Registrar-General shall” from section 33 (5).

Insert instead “Without limiting subsection (1), the Registrar-General may”.

[2] Section 33 (6)

Omit the subsection.

[3], [4] (Repealed)

1.7

(Repealed)

1.8 Amendments concerning service of notices on caveators

[1] Section 74B Lodgment of caveats against primary applications

Omit section 74B (2) (b) (vi). Insert instead:

(vi) an address in Australia at which notices may be served on the caveator,

[2] Section 74F Lodgment of caveats against dealings, possessory applications, plans and applications for cancellation of easements or extinguishment of restrictive covenants

Omit section 74F (5) (b) (viii). Insert instead:

(viii) an address in Australia at which notices may be served on the caveator,

Schedule 2 Consequential amendment of other legislation

2.1

(Repealed)

2.2 Real Property Regulation 2014

Clause 22 Ensuring identification by eligible witnesses

Omit the clause.