

Real Property Amendment (Electronic Conveyancing) Act 2015 No 23

[2015-23]



New South Wales

Status Information

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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**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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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, 1.2

(Repealed)

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

(Repealed)

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, 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.