

WITNESSING REAL PROPERTY ACT DEALINGS: WITNESS OBLIGATIONS



Land & Property
Information

A division of the Department of Finance & Services

This Fact Sheet is designed to assist anyone who is asked to witness a person's signature on a dealing, application or caveat to be lodged for registration by Land and Property Information (LPI) in the Torrens titles register. Witnesses to these documents must comply with section 117 of the Real Property Act 1900. Important changes to section 117 came into force on 1 November 2011, creating new obligations on witnesses to these documents.

What is a witness?

Section 117 of the Real Property Act 1900 requires all dealings, caveats and applications to be signed in the presence of an "eligible witness", who also signs the document.

An eligible witness must be someone who:

- is over 18 years of age and
- is not a party to the transaction and
- has known the person who is signing the dealing as a party to the transaction for at least a year or
- has taken reasonable steps to confirm the identity of that person.

What steps must I take to confirm the identity of a person that has asked me to witness their signature on a dealing, application or caveat?

If you have known the person for at least a year you do not need to take any further steps to confirm their identity.

If you don't know the person, or have known them for less than a year, you must ask them to show you documents that confirm their identity.

First you should ask to see an official document that includes a photograph of the person, for example their driver licence or passport. The document must be either an original or certified copy and must be current, unless it is an Australian passport that has expired within the last two years.

See **Primary photographic identification documents** in the table on the next page for the full list of acceptable documents in this category. If the person shows you a document in this category that confirms their identity, you have satisfied your obligations as a witness.

If the person does not have a primary photographic identification document that confirms their identity, you must ask to see two other documents:

- one original or certified copy of a **primary non-photographic identification document** such as a birth certificate; and
- one original or certified copy of a **secondary identification document** such as a recent local council rates notice.

See the table on the next page for the full list of acceptable non-photographic and secondary identification documents. If the person shows you one document from each of these categories that confirms their identity, you have satisfied your obligations as a witness.

What happens if you do not comply with your obligations as a witness?

Dealings, applications and caveats are important, legally binding documents. If you do not carry out your obligations you may be subject to a fine of up to \$1100. There is no compulsion on anyone to act as a witness to another person's signature. If you feel uncomfortable in agreeing to witness another person's signature, simply decline their request.

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Primary photographic identification documents	Primary non-photographic identification documents	Secondary identification documents
<p>Current Australian or overseas driver licence</p> <p>Current Australian passport</p> <p>Australian passport expired within last two years</p> <p>Proof of Age Photo Card issued under the <i>Photo Card Act 2005</i></p> <p>Passport issued by a foreign government or the United Nations, accompanied by English translation, prepared by accredited translator, if not written in English</p> <p>National identity card issued by a foreign government or the United Nations, accompanied by English translation, prepared by accredited translator, if not written in English</p>	<p>Birth certificate or birth extract issued by an Australian state or territory</p> <p>Birth certificate issued by a foreign government or the United Nations, accompanied by English translation, prepared by accredited translator, if certificate is not written in English</p> <p>Australian citizenship certificate</p> <p>Foreign citizenship certificate accompanied by English translation, prepared by accredited translator, if certificate is not written in English</p> <p>Pension card issued by Centrelink</p>	<p>A notice from the Australian Taxation Office issued within the last 12 months that shows the name and residential address of the person who has asked you to be a witness</p> <p>A notice from Centrelink issued within the last 12 months that shows the name and residential address of the person who has asked you to be a witness</p> <p>Rates notice or utility bill issued by a local council, water authority, gas or electricity provider within the last three months that shows the name and residential address of the person who has asked you to be a witness</p>

