



New South Wales

Real Property Amendment Regulation 2010

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*.

Minister for Lands

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).

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Clause 1 Real Property Amendment Regulation 2010

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1 Name of Regulation

This Regulation is the *Real Property Amendment Regulation 2010*.

2 Commencement

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

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[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 card issued under a law of a 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,

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- (e) 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 Application of Part

A mortgagee is to be considered to have 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

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the land that is security for the payment of the debt to which the mortgage relates if the mortgagee has taken the steps set out in this Part.

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 contained in the document, and
 - (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).

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) name as registered with ASIC,
 - (b) registered office address,
 - (c) principal place of business address,
 - (d) ACN,
 - (e) registration status,

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- (f) name of each director,
- (g) name of the company secretary.
- (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 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 identity of 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

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- (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).

DRAFTING NOTE 3.1 Section 117 (5) of the *Real Property Act 1900* is to be inserted by the *Real Property and Conveyancing Legislation Amendment Act 2009*.
