

Article Information

Authors: Marcus Andrews, Margot King, Samantha Gou

Service: Property & Development, Property Development

Sector: Real Estate

Changes to the National Mortgage Form (NSW and SA) Clarify Witnessing and Electronic Signatures

The effect of the changes is to clarify witnessing and electronic signatures of individuals on the National Mortgage Form (NSW and SA)

The Australian Registrars National Electronic Conveyancing Council (ARNECC) has recently published a NSW Addendum and a SA Addendum to its National Mortgage Form Design Specification Version 1.5.

The NSW Addendum updates the NSW Information Sheet attached to the National Mortgage Form to note that “*witnessing is not required for the mortgage signed by the mortgagor and held by the mortgagee if the mortgage is being lodged in accordance with section 56(1A) of the Real Property Act 1900*”. Section 56(1A) allows the Registrar-General to register a mortgage if he/she is satisfied that:

- the mortgagee has signed the mortgage; and
- the mortgagee has certified that it holds a mortgage granted by the mortgagor on the same terms as the mortgage lodged for registration.

The NSW Addendum makes it clear that a mortgagor’s signature (for individuals and attorneys signing under a power of attorney) on the mortgage held by the mortgagee does not need to be witnessed.

The SA Addendum removes the witnessing sub-panel for signatures by individuals and attorneys signing under a power of attorney. This reflects that there are no witnessing requirements for mortgages under the *Real Property Act 1886* (SA).

The changes arise from concerns in relation to the *Electronic Transactions Act 2000* (NSW) and the *Electronic Communications Act 2000* (SA). Although these Acts permit electronic signatures by parties, they do not permit electronic signature for verification, authentication, attestation or witnessing of documents. Section 23C *Conveyancing Act* (NSW) also permits electronic signing of certain instruments and section 38A provides for electronic signing and attestation of deeds.

Although the *Real Property Act 1900* (NSW) and *Real Property Act 1886* (SA) do not require an individual’s signature on a mortgage in the approved form (ie the National Mortgage Form) to be witnessed, the witnessing sub-panel in the National Mortgage Form created some practical uncertainty on this point.

The changes to the NSW Addendum and a SA Addendum make it clear that in NSW and SA the National Mortgage Form held by the mortgagee may be signed electronically by individuals and attorneys under a power of attorney.

An individual mortgagee submitting the National Mortgage Form to the NSW land registry in hard copy will still need to have their signature witnessed. An individual mortgagee submitting the National Mortgage Form to the SA land registry in hard copy no longer requires their signature to be witnessed.

This change facilitates a more streamlined approach to granting and registering a mortgage as all aspects may be done electronically when the mortgagee is lodging the mortgage through an electronic conveyancing platform.