

Effect of COVID-19 on the witnessing of Land Title Act, Land Act and Water Act Titles Registry instruments

New options for witnessing from 6 April 2020 until further notice

The response to COVID-19 has brought a range of challenges to the way in which real property instruments are executed.

The *Land Title Act 1994* sets out certain requirements for the execution of instruments, in particular requiring a witness to an execution to:

- take reasonable steps to verify the identity of the signer
- have the individual execute the instrument in the presence of the witness (s 162(1)(b)).

This advice sets out what will be acceptable to the Registrar for paper executions and witnessing during the current COVID-19 situation.

In providing these options, all people undertaking property transactions, lawyers and witnesses are reminded of the risk of people taking advantage of others—especially given the changes to transaction processes as a result of COVID-19. Witnesses are encouraged to be extra vigilant of this risk by asking additional questions or taking additional steps as necessary.

Options

First preference - eConveyancing

The use of eConveyancing is the preferred way in which to address the majority of concerns about social distancing and witnessing. Information on how to subscribe to eConveyancing can be found on the Titles web site: <https://www.business.qld.gov.au/industries/building-property-development/titles-property-surveying/titles-property/elodgement-conveyancing/econveyancing>.

Without eConveyancing

If eConveyancing cannot be used, and an instrument must be urgently executed, the following will be acceptable to the Registrar under s 161(3) of the Land Title Act, on the basis that:

- (i) reasonable steps have already been taken by the witness to verify the identity of the individual and ensure the individual is the person entitled to sign the instrument, and
- (ii) the witness is an Australian legal practitioner or a qualified witness (per the Land Title Act Schedule 1) in the employ of a law firm or financial institution.

In situations where a person is in COVID-19 related quarantine or isolation, it will be acceptable for the witness to view the individual signing the instrument live via some form of video link (e.g. Skype). The executing individual should hold the instrument up to the video link to enable the witness to confirm it is the relevant instrument and note or screenshot the terms of the instrument. (Where possible, the individual should also send a photo of the signed instrument to the witness.) The witness should confirm verbally with the individual what they have signed, either through the video or through a separate phone call.

Once the individual has signed the instrument, the preferred action would be for the individual to have the instrument collected and delivered or posted to the witness. The witness would compare the instrument with their notes or photo and, if there have been no changes to the instrument, wet sign it as witness, and lodge it or deliver it to the appropriate person for lodging.

If delivery is not possible, once signed (and watched via video link and confirmed verbally by the witness) the instrument could be scanned or photographed, then emailed to the witness who will print it and wet sign it, as witness, and lodge it or deliver it to the appropriate person for lodging.

Note: Photography should only be used in extreme cases, as any lack of quality of the image may cause requisitions and slow down processing, with extra information potentially being required of the lodger.

As is required now, witnesses should keep records of the action taken for seven years.

Exceptional circumstances

If none of these options are able to be put in place, and delaying execution of an instrument is not possible, then a person's legal representative may make submissions to the Registrar, prior to the lodgement of the instrument, requesting that the Registrar exercise discretion under s 10A of the Land Title Act for the legal representative to execute the instrument for the individual.

Overseas witnessing

Where the normal requirements cannot be met, the above provisions can also apply for overseas witnessing. In this case, eConveyancing is the preferred mode of operation. If eConveyancing cannot be used, and an instrument must be urgently executed, the process described in this document will be acceptable to the Registrar under s 161(3) of the Land Title Act, on the basis that:

- (i) reasonable steps have already been taken by the witness to verify the identity of the individual and ensure the individual is the person entitled to sign the instrument, and
- (ii) the witness is an Australian legal practitioner or a qualified witness (per the Land Title Act Schedule 1) in the employ of a law firm or financial institution, and
- (iii) the witness and the individual speak the same language.

Land Act and Water Act

Note: the above also applies to documents executed under s 310 of the *Land Act 1994* and s 173 of the *Water Act 2000*.

EV Dann

Registrar of Titles

Registrar of Water Allocations