

## Confirmation of Identity of Mortgagor by Mortgagee

[2-2005]

Section 11A of the *Land Title Act* 1994 and s 288A of the *Land Act* 1994 place an onus on **ALL** mortgagees to confirm the identity of mortgagors prior to lodging any mortgage for registration. The provisions under s 11A of the *Land Title Act* 1994 and s 288A of the *Land Act* 1994 apply to **ALL** mortgages lodged for registration in Queensland, whether or not the mortgagee has any other business relationship with the mortgagor.

A mortgagee intending to take a mortgage over freehold land, a water allocation or an interest in a State tenure as security for a debt or liability, must, prior to lodging a mortgage for registration, take ‘reasonable steps’ to ensure that the person who is the mortgagor under the instrument is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged.

Under s 11A(3) of the *Land Title Act* 1994 and s 288A(3) of the *Land Act* 1994, a mortgagee takes ‘reasonable steps’ if they comply with the practices included in this Manual. One way in which a mortgagee will take ‘reasonable steps’ is if they identify the person who is the mortgagor under the instrument (**Person Being Identified**) using the Verification of Identity Standard outlined in Part 60 [60-2000] and ensure the Person Being Identified is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged.

Accordingly for the purposes of complying with s 11A(3) of the *Land Title Act* 1994 and s 288A(3) of the *Land Act* 1994 a mortgagee can either:

- (a) identify the person who is the mortgagor under the instrument (**Person Being Identified**) using the Verification of Identity Standard outlined in Part 60 [60-2000] and ensure the Person Being Identified is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged.
- (b) ensure that the person who is the mortgagor under the instrument is identical with the person who is, or who is about to become, the registered owner of the lot or holder of the interest being mortgaged, in some other way that constitutes the taking of reasonable steps.

### Prudent lending practice – further checks

It is considered that in most cases, compliance with the Verification of Identity Standard would satisfy the ‘reasonable steps’ requirement under s 11A(2) of the *Land Title Act* 1994 or s 288A(2) of the *Land Act* 1994 provided that, from the steps taken, a prudent lender would be satisfied that the person who executes the mortgage is, or is about to become, the registered owner or holder of the interest to be mortgaged.

However, it is important to note that mere mechanical compliance with the Verification of Identity Standard, without attention to detail, is not sufficient. Accordingly, paragraph 9 of the Verification of Identity standard requires a mortgagee to undertake further steps to verify the identity of the Person Being Identified where they ought reasonably know that:

- (a) any identity Document produced by the Person Being Identified is not genuine; or
- (b) any photograph on an identity Document produced by the Person Being Identified is not a reasonable likeness of the Person Being Identified; or
- (c) the Person Being Identified does not appear to be the Person to which the identity Document(s) relate;

or it would otherwise be reasonable to do so.

Specific circumstances where it may otherwise be considered reasonable to undertake further steps, may include the following—

- the person who executes the mortgage has, in any document or record relied on to identify that person, a name that is not exactly the same as the name of the current registered owner or holder of the interest, or transferee on a transfer to be lodged prior to the mortgage; or
- the person who executes the mortgage appears not to be of the same gender as the current registered owner or holder of the relevant interest, as indicated by the name of the registered owner or holder of the interest or by any other information reasonably available to the mortgagee; or
- the person who executes the mortgage appears to be younger than the current registered owner or holder of the interest, as indicated by the date that the person became registered on title or by any other information reasonably available to the mortgagee;
- the mortgage is executed under a power of attorney. Where the mortgage is executed under a power of attorney the mortgagee should take reasonable steps to ensure the power of attorney is genuine.

#### **Record keeping – approved form**

Under s 11A(4) of the *Land Title Act 1994* and s 288A(4) of the *Land Act 1994* a mortgagee must keep the following for 7 years after the instrument is registered:

- (a) in the approved form, a written record of the steps taken under s 11A (2) of the *Land Title Act 1994* and s 288A(2) of the *Land Act 1994*; or
- (b) originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgagee in complying with s 11A (2) of the *Land Title Act 1994* and s 288A(2) of the *Land Act 1994*.

The term ‘approved form’ in s 11A(4)(a) of the *Land Title Act 1994* or s 288A(4)(a) of the *Land Act 1994*, means a record kept that properly identifies the mortgage transaction and clearly details the steps taken by the mortgagee under s 11A of the *Land Title Act 1994* or s 288A of the *Land Act 1994*. The record does not form part of, and must not accompany, an instrument or document lodged for registration.

Section 11A(6) of the *Land Title Act 1994* or s 288A(6) of the *Land Act 1994* authorises the production of the records, which may contain personal information, only when such a request is made by the Registrar. It is anticipated that production of records would be required in, but not limited to, circumstances where the Registrar is investigating a particular allegation or other matter.