

# **INDEFEASIBILITY OF TITLE - MORTGAGEE**

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## **Law regarding Indefeasibility of Title for a Mortgagee – pre *Natural Resources and Other Legislation Amendment Act 2005 (Qld)* (“Act”)**

A central concept of the Torrens system is that the title held under a registered interest is “indefeasible”. The idea is that the register (subject to exceptions detailed in Sections 184-185 *Land Title Act 1994* (“LTA”)) conclusively certifies and proves those interests to which the title to a parcel of land is subject and the persons entitled to those interests. A person should be able to enter into transactions involving a parcel by relying on the accuracy of the register and the validity of the title of persons holding registered interests. In legal theory there is no need to investigate the validity of registered dealings or how they were acquired. There is no need to investigate dealings which were previously registered, but which have been deleted from the register and are not currently operative.

The term “indefeasible title” is specifically used in the LTA. It is defined as the “current particulars in the freehold land register about the lot” (Section 38 LTA) and is created when the particulars of the lot are recorded in the freehold register (Section 37 LTA).

Section 181 of the LTA provides that an instrument does not transfer or create an interest in a lot at law until it is registered. Instruments are registered in the order in which they are lodged (Section 177(1) of the LTA). On registration they have priority according to the time of lodgement, not the time of execution (Section 178(1) of the LTA). A registered proprietor of an interest in a lot holds it subject to registered interests affecting the lot but free from all other interests, except in the case of fraud and other specified circumstances (Sections 184-185 of the LTA). The registered proprietor is not affected by actual or constructive notice of an unregistered interest affecting the lot.

Section 184 of the LTA, relates to protecting a “proprietor”. A mortgagee, once registered, would be protected under Section 184 because a mortgagee's interest falls within the definition of “proprietor” contained in Section 4.

Therefore, if a mortgagee obtained a mortgage over property in which the mortgagor under the mortgage fraudulently posed as the registered proprietor then the mortgagee will be protected and its mortgage will remain on title. The aggrieved registered proprietor could then make a claim under the statutory compensation scheme (detailed below) and be awarded monies to redeem the mortgage.

### **Guarantee by State of compensation for loss**

The Torrens Titles system comes with a State guarantee which sounds in compensation for loss suffered in accordance with the terms of the particular Torrens legislation.

The guarantee given to a registered proprietor of an estate or interest in Torrens land - that he will hold his title subject only to those interests noted on the Register as having priority over his and to the known exceptions from indefeasibility - may sometimes be given at the expense of a previous registered proprietor's “secure” title. In such a case the person who sustains the deprivation or loss will be entitled to compensation for his loss.

Sections 188, 189 and 190 of the LTA outline the compensation available from the State for loss of title. Section 188 lists the circumstances in which a person will be indemnified by the State for the loss of an interest in a lot or for other loss or damage. Those circumstances include cases where fraud of another person has been perpetrated.

It can be broadly said that the State will compensate persons who, through no fault of their own, have been deprived of an interest in a lot or suffers other loss or damage.

Section 189 provides that a person is not entitled to be indemnified by the State for any deprivation, loss or damage in certain circumstances. The main exception is where the person, a person acting as agent for the person, or an indemnified solicitor acting or purporting to act as solicitor for the person, caused or substantially contributed to the deprivation, loss or damage by fraud, neglect or wilful default.

Under these circumstances, a natural person, or corporation, who is wholly or partly responsible for their own deprivation, loss or damage will not be indemnified by the State.

The words “loss or damage” are not defined. Accordingly, a proper determination of the extent to which a person may be able to claim for loss or damage pursuant to the LTA must await judicial determination.

Section 190 outlines the State's right of subrogation. Section 190(1) states that, on payment of any compensation under Section 188, the State is subrogated to the rights of the claimant against the person responsible for the deprivation, loss or damage under that section. The section also provides that the State must pay the difference to the claimant which remains after deduction of the State's costs, where the State, in exercising its rights to subrogation, receives more than the amount which it paid to the claimant (Section 190(2)).

## **Law regarding Indefeasibility of Title for a Mortgagee – post *Natural Resources and Other Legislation Amendment Act 2005 (Qld)* (“Act”)**

### **Objectives of the Act**

The amendments to the LTA were to reduce the State’s exposure to claims for payment of compensation for land title related frauds in circumstances where reasonable due diligence measures were not taken by a mortgagee.

### **Reasons for the Act**

The amendments are necessary to clarify and update aspects of the legislation and to improve the operation of the LTA and the *Land Act 1994 (Crown land equivalent legislation)* by providing a safeguard against identity fraud in the mortgaging of land.

### **How the policy objectives will be achieved**

By amending the LTA to provide for obligations on lenders to identify a mortgagor before taking a mortgage over freehold land and to retain records and introduce an exception to indefeasibility of title where a mortgagee has not fulfilled these obligations and its mortgage was fraudulently executed.

### **Insertion of new Section 11A and 11B of the LTA**

Clause 53 of the Act introduces a range of amendments aimed at mitigating the State’s exposure to land title fraud, by inserting new sections 11A and 11B into the LTA. Related amendments are dealt with in clauses 101, 107 and 108.

One matter which has the potential to expose the State payment of compensation is the action of mortgagees or their agents where they fail to take reasonable steps to ascertain the true identity of the mortgagor. When the mortgage is subsequently registered within the meaning of the Act, notwithstanding that there was identity fraud in the obtaining of the mortgage.

The new Section 11A introduces a requirement for mortgagees to take “reasonable steps” to ensure that they deal with the true owner of the land/mortgagor and to compile a written record of the steps taken before the mortgage is lodged for registration and retain same for 7 years. The record must be produced to the registrar if requested. Section 11B places similar obligation on a transferee of a registered mortgage.

The Department of Natural Resources and Mines (“DNR”) released on 1 February, 2006 a Land Title Practice Manual Update (**Annexure “B” details DNR link**) (“LTA Guidelines”). In essence, it provides that it does not intend to provide a definitive list of steps to satisfy the “reasonable steps” required under the Act. However, it does list some examples and provides that “reasonable steps” within the section would generally be similar to the steps required to be taken under the *Financial Transaction Reports Act 1988 (Cth)* (“FTR Act”) and the *Financial Transactions Reports Regulations 1990 (Cth)* (“FTR Regulations”) for the verification of identity of account signatories by cash dealers.

Banks and some other financial institutions are, in fact, obliged to comply with the FTR Act for the opening of accounts. The prime requirements of the FTR Act, FTR Regulation and FTR Guidelines are detailed in the link below (**Annexure “C”**). The FTR Guideline No.3 details two methods to be adopted.

The first method is an identification reference to be provided by each mortgagee. This comprises of a written and signed reference by a person within specified classes of acceptable referees (“Method 1”).

The second method is the preferred method to be adopted by funders. The second method requires a “100 point” score for identification in accordance with the scores allocated to different types of documents produced by the intended signatory (“Method 2/100 Points”).

Presently, a majority of reputable lenders have in place a stringent identification procedure for identifying borrowers/mortgagors which should satisfy the “reasonable steps” required under Section 11A or 11B.

### **Amendment of s 185 (Exceptions to s.184)**

Amendments to sections 185 and 189 of the LTA (introduced by clauses 101 and 107 of the Act) deal with the consequences, with respect to indefeasibility and compensation provisions of the LTA, of the mortgagee’s future failure to comply with sections 11A and 11B of the LTA.

Section 101 of the Act amends Section 185 of the LTA to include as an exception to indefeasibility the interest of a registered mortgagee if the mortgagee has not complied with the Section 11A or 11B LTA and the mortgage has been forged (i.e. executed by a person other than the registered owner).

The policy underlying the amendment is that a registered owner should not be deprived of their unencumbered interest and the government should not compensate for a fraud where a mortgagee has not taken adequate steps to prevent the possibility of fraud.

In support of this amendment a further amendment is made to section 189 LTA (Matters for which there is no entitlement to compensation) - see Section 107 of the Act.

The amendments introduced by Sections 101 and 107 of the Act will not in any way alter the position of mortgagee following registration where there has been fraud, and where the mortgagee is not a party to the fraud and has complied with the obligations in sections 11A and 11B of the LTA (Section 11A is detailed in **Annexure "A"**) to take reasonable steps to ascertain the identity of the mortgagor. The mortgagee in such circumstances will continue to have indefeasibility of its interest.

### **LTA Guidelines**

The LTA Guidelines provides (amongst other things) that:

1. If you are a cash dealer under the LTR Act then provided you comply with such obligations in identifying the mortgagor (Methods 1 or 2 above) then you have satisfied the "reasonable steps" required under the Act.
2. If you are not a cash dealer under the LTR Act then only Method 2 can be adopted to satisfy the "reasonable steps" required under the Act.
3. If a funder has taken the above steps during the loan application phase (by itself or by the introducer of the loan) then there may be no need for a further identity check at the time of the mortgagee executing the mortgage provided same has happened within a "reasonable timeframe." General Comment: What is a "reasonable timeframe" has yet to be determined, so getting the witness to sign a declaration detailing that he/she has sighted the 100 Points of identification at the time of witnessing the mortgage would be strongly advised.
4. If a mortgagee is an existing customer then the 100 Points method need not be applied provided the lender has ensured that the person taking out the mortgage is one and the same person as the existing customer and that such person has been previously identified and dealt with through the normal course of business (e.g. by verification of the signature and contact details of the mortgagor, confirmation of income statements, etc...) General Comment: When in doubt, have the witness sign a declaration detailing that he/she has sighted the 100 Points of identification at the time of witnessing the mortgage.
5. If the mortgagor cannot attend the offices of the lender during the loan process, due to remoteness or disability, then the lender may receive and adopt from a Justice of the Peace or other qualified witness who witnessed the execution of the mortgage instrument, a certificate confirming the mortgagor's identity was verified by a 100 Point check and a record of the driver's licence or other photographic identification and other primary or secondary identification documents used for verification. General Comment: The problem with this example is that it may imply that the lender can only rely on a third party witness if the mortgagor is in a remote location or disabled. Detailed below is some commentary in relation to relying on a third party witness declaration.

The amendment was intended to target the practices of some "lenders of last resort" who engage in high-risk lending at very high interest rates. Some of these lenders openly advertise that they will lend, on the security of a mortgage over real property, to persons with poor credit ratings and/or who cannot provide proof of their ability to repay the loan. Several instances have come to light where such lenders made little or no attempt to ensure that the person they were dealing with and/or the person who signed the mortgage documents was, in fact, the registered owner of the property over which security was taken.

The problem with the suggested LTA Guidelines is that it does not solely target the rogues in the industry but impacts on all lenders. Furthermore, it has not taken into consideration the prudent practice of lenders to get third parties to witness and/or provide legal advice to mortgagors. One of many reasons why a the lender does not want to get involved in the witnessing process is to avoid credence being accredited to a mortgagor's claim that the lender was there at the time the documents were signed

and the lender pressured the mortgagor into signing same (Unconscionability, Undue Influence, Duress, etc...). This will then lead to more independent solicitor's certificates being issued (not an accepted practice in a majority of Law Societies throughout Australia) at increased costs and delay to the mortgagor.

As mentioned before, the LTA Guidelines are not definitive and prudent practices adopted by lenders may be acceptable. However, the Land Titles Office will not likely issue a policy to condone relying on third party witnessing (except in unusual circumstances: disability, remoteness, etc...) in an attempt to prevent fraud being effected by the mortgagor where: (a) the mortgagor forges the witness' signature and supporting declaration; or (b) the mortgagor and the witness have colluded to commit fraud.

## Conclusion - Impact of the Act on Indefeasibility of Mortgages

The Act which came into effect on 1st February, 2006 will substantially affect the indefeasibility of a mortgage where a mortgagee has not taken “reasonable steps” to properly identify the mortgagor on its mortgage. In essence, if the mortgage was registered on title and it is shown that the mortgagor who signed the mortgage perpetuated a fraud (e.g. was not the registered proprietor) then the mortgage could be withdrawn to protect the registered proprietor if the mortgagee did not take “reasonable steps” to properly identify the mortgagor.

It is recommended to adopt the LTA Guidelines and failing same the FTR’s 100 Points procedure. Copies of documents and declarations complying with same must be retained by the lender.

This procedure may already be implemented by a majority of funders/brokers when establishing an account or loan application but the grey area involves the execution of the mortgage documents. Normal practice is that such documents are produced and delivered to the mortgagor who then gets a solicitor, justice of the peace, commissioner of declarations, notary public, etc... to witness the mortgagor’s signature. The Duties of Commissioners for Declarations manual is issued by the Department of Justice (<http://www.justice.qld.gov.au/jps/pdfs/CDecMan.pdf>) and details that Section 162 of the LTA has mandatory proof-of-identity requirements. Section 162 provides:

“A person who witnesses an instrument executed by an individual must –

- (a) first take **reasonable steps** to ensure that the individual is the person entitled to sign the instrument; and
- (b) have the individual execute the document in the presence of the person; and
- (c) not be a party to the instrument.”

Until the LTA Guidelines are solely definitive, it may be strongly persuasive that the mortgagee has taken “reasonable steps” in establishing the identity of the mortgagor by relying on the fact that a witness of Land Title documents must discharge their duties pursuant to Section 162 of the LTA. The current edition of the Manual does not provide additional identification procedures other than Section 162 of the LTA.

This argument could be countered by referring to the Explanatory Notes of the Act and the example in the LTA Guidelines relating to third party witnesses only being used for remote or disabled mortgagors.

The most practical approach to be adopted until the LTA Guidelines become definitive is to issue a form for the witness to execute which has them declare that they have discharged their duties under Section 162 of the LTA and have them detail the particulars of the identification a financial institution would require to satisfy the FTR 100 points procedure (e.g. driver’s licence, passport, etc...) and declare that they have sighted the originals of same and acknowledge that the lender is relying on such declaration to satisfy the LTA and FTR Act identification of mortgagor requirements (example in **Annexure “D”**).

Please contact Paul Agnew from Mortgage Settlements Australia on (07) 3223 5998 or by email at [pagnew@settlements.net.au](mailto:pagnew@settlements.net.au) if you have any queries in relation to the above or would like to know of any developments in relation to this Article.



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**This article is for the general information of Mortgage Settlement Australia’s clients and associates. The information contained in this article should not be relied upon without first consulting us and obtaining specific advice.**

## ANNEXURE “A”

### 11A Original mortgagee to confirm identity of mortgagor

- (1) This sections applies to the mortgaging of a lot or an interest in a lot.
- (2) Before the instrument of mortgage is lodged for registration, the mortgagee under the instrument ( the *original mortgagee*) must take reasonable steps to ensure the person who executed the instrument as mortgagor is identical with the person who is, or who is about to become, the registered proprietor of the lot or the interest in a lot.
- (3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original **mortgagee complies with practices included in the manual of land title practice under section 9A(2)(c) for the verification of identification of mortgagors.**
- (4) The original mortgagee must, for 7 years after the instrument of mortgage is registered, and whether or not there is registered a transfer of the interest constituted by the mortgage-
  - (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
  - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).
- (5) the registrar may, whether before or after the registration of the mortgage, and whether or not there has been registered a transfer of the interest constituted by the mortgage, ask the original mortgagee-
  - (a) to advise the registrar about the steps taken by the original mortgagee under subsection (2); and
  - (b) to produce for the registrar’s inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- (6) The original mortgagee must comply with a request under subsection (5) unless the original mortgagee has a reasonable excuse.

Maximum penalty- 20 penalty units.

- (7) This section applies to an instrument of mortgage only if it is executed after the commencement of this section.



**ANNEXURE “B”**

*Land Title Practice Manual Update*

**Practice guidelines for mortgagee to confirm the identity of mortgagor under *Land Title Act 1994*:**

[http://www.nrm.qld.gov.au/property/publications/pdf/alert44\\_nrola2006.pdf](http://www.nrm.qld.gov.au/property/publications/pdf/alert44_nrola2006.pdf)

ANNEXURE “C”

Refer to AUSTRAC Guideline No. 3 (Formerly CTRA Guideline No. 3) *Financial Transaction Reports Act 1988 - Account Signatory Verification of Identity Procedures:*  
[http://www.austrac.gov.au/text/guidelines/guidelines/guideline\\_3.pdf](http://www.austrac.gov.au/text/guidelines/guidelines/guideline_3.pdf)

**Australian Transaction Reports and Analysis Centre (AUSTRAC)**

PO Box 5516

West Chatswood NSW 1515

**DX 29668** Chatswood

**Telephone :** (02) 9950 0055 **Facsimile :** (02) 9950 0071

**Suspect Transaction Hotline:** 1800 021 037

**internet address :** [www.austrac.gov.au](http://www.austrac.gov.au) **e-mail address :** [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)

**PRIMARY IDENTIFICATION STEPS REQUIRED UNDER:**

**(A) FINANCIAL TRANSACTION REPORTS ACT 1988 ("FTR ACT"); AND**

**(B) FINANCIAL TRANSACTION REPORTS REGULATIONS 1990 ("REGULATIONS")**

**THE VERIFICATION PROCEDURE**

Section 20A (1)(b)(i) of the *Financial Transaction Reports Act* ("FTR Act") refers to a verification procedure. Regulation 3 details such procedure. In particular, Regulation 3 provides that Regulation 4 (detailed below) is the general means of verification under the FTR Act. It is commonly known in the banking industry as the "100 Points of Identification" requirement. Below is Guideline AUSTRAC Guideline No. 3 (Formerly CTRA Guideline No. 3) which is the primary guideline issued under the FTR Act in relation to Account Signatory Verification of Identity Procedures.

**REGULATION 4**

**Verification generally**

(1) The checks that may be made in relation to any signatory or party to a bullion transaction are as follows:

- (a) the identifying cash dealer verifies the name and address of the signatory or party to a bullion transaction from one or more of the following sources (each verification being worth 35 points):
  - (i) the employer of the signatory or party to a bullion transaction, or a person who was an employer of the signatory or party to a bullion transaction within the last 2 years, from records held by the employer or previous employer; or
  - (ii) a rating authority, from its records relating to land ownership or occupation; or
  - (iii) a document held by the cash dealer conferring an interest by way of security over property of the signatory or party to a bullion transaction; or
  - (iv) a financial body, other than the cash dealer, from its records relating to a mortgage or other instrument of security granted by the signatory or party to a bullion transaction to that body; or
  - (v) subject to the *Privacy Act 1988* — the Credit Reference Association of Australia from its records; or
  - (vi) records held under a law relating to land titles; and
- (b) the identifying cash dealer verifies the name and address of the signatory or party to a bullion transaction from one or more of the following sources (each verification being worth 25 points):
  - (i) the electoral roll compiled by the Australian Electoral Office and available for public scrutiny; or
  - (ii) a nominee of the signatory or party to a bullion transaction who is an acceptable referee or who would, if he or she had known the signatory or party to a bullion transaction for at least 12 months, be an acceptable referee; or
  - (iii) if the signatory or party to a bullion transaction lives or carries on business in rented accommodation — the owner or landlord of the premises or a real estate agent acting as managing agent of the premises; or
  - (iv) a public utility, from its records; or
  - (v) if the signatory or party to a bullion transaction is a known customer of another financial body — that body, from its records; or
  - (vi) a record held under a law other than a law relating to land titles; and
- (c) the identifying cash dealer verifies the name and date of birth of the signatory or party to a bullion transaction from one or both of the following sources (each verification being worth 25 points):
  - (i) if the signatory or party to a bullion transaction has attended a primary, secondary or tertiary education institution within the last 10 years — that institution, from its records; or
  - (ii) if the signatory or party to a bullion transaction is a member of a professional or trade association — that association, from its records; and
- (d) the identifying cash dealer verifies the name, address and telephone number of the signatory or party to a bullion transaction:
  - (i) by reference to the latest telephone directory published by Telstra or by advice provided by Telstra; and
  - (ii) by telephone contact with the signatory or party to a bullion transaction on that telephone number; (verification by this means is worth 25 points); and

- (e) the identifying cash dealer verifies the name of the signatory or party to a bullion transaction from a primary identification document relating to the signatory or party to a bullion transaction produced to the identifying cash dealer (verification by this means is worth 70 points); and
  - (f) the identifying cash dealer verifies the name of the signatory or party to a bullion transaction from a secondary identification document relating to the signatory or party to a bullion transaction produced to the identifying cash dealer and the document:
    - (i) contains a photograph or the signature of the signatory or party to a bullion transaction; and
    - (ii) is:
      - (A) an identification card issued to a public employee; or
      - (B) a licence or permit issued under a law; or
      - (C) an identification card issued to a person by the Commonwealth, a State or Territory as evidence of the person's entitlement to a financial benefit; or
      - (D) an identification card issued to a student at a tertiary education institution;
 (verification by this means is worth 40 points); and
  - (g) the identifying cash dealer verifies the name of the signatory or party to a bullion transaction from any other secondary identification document relating to the signatory or party to a bullion transaction produced to the identifying cash dealer (verification by this means is worth 25 points); and
  - (h) the identifying cash dealer, being a financial body, verifies that the signatory or party to a bullion transaction is a known customer (verification by this means is worth 40 points); and
  - (i) if the identifying cash dealer is a financial body — it verifies that the signatory or party to the bullion transaction has been a signatory of an account with the body for at least 36 months immediately before the verification (verification by this means is worth 100 points); and
  - (j) the identifying cash dealer verifies the name of the signatory or party to a bullion transaction from a reference produced to the identifying cash dealer being:
    - (i) a written reference from a financial body relating to the signatory or party to a bullion transaction:
      - (A) certifying that the signatory or party to a bullion transaction is a known customer; and
      - (B) bearing the signatures of the signatory or party to a bullion transaction and an employee or agent of the financial body; or
    - (ii) a written reference from an acceptable referee:
      - (A) certifying that the referee has known the signatory or party to a bullion transaction by that name for at least 12 months; and
      - (B) bearing the signatures of the signatory or party to a bullion transaction and the acceptable referee; or
    - (iii) a written reference from a verified signatory:
      - (A) certifying that the verified signatory has known the signatory for at least 12 months; and
      - (B) bearing the signatures of the signatory and the verified signatory;
 (verification by this means is worth 40 points).
- (2) The cash dealer must retain or copy each of the documents produced for the purposes of paragraph (1) (e), (f), (g) or (j) or record for each of those documents the particulars mentioned in regulation 10.

**FINANCIAL TRANSACTION REPORTS REGULATIONS 1990**  
**- REG 5**

**Verification: public authorities and incorporated bodies**

- (1) A public authority or incorporated body may notify an identifying cash dealer of the nomination of a person to be the verifying officer or a verifying officer of the authority or body in respect of an account, or of some or all accounts, of the authority or body with the identifying cash dealer.
- (2) The nomination must be signed by the principal executive officer or by the person responsible for administration of the account.
- (3) If an identifying cash dealer is notified that a person has been nominated as a verifying officer and the nominated person is not a verified signatory, the identifying cash dealer must, as soon as practicable, seek to identify the person (whether or not the person is, or is to be, a signatory to a relevant account) by means of:
  - (aa) a verification procedure referred to in subparagraph 20A (1) (b) (ii) of the Act; or

- (a) an identification reference for the person in accordance with section 21 of the Act (detailed below); or
- (b) the checks mentioned in regulation 4.

(4) If a public authority or incorporated body revokes a nomination or a verifying officer ceases to be employed by a public authority or incorporated body, it must notify the identifying cash dealer of that fact as soon as practicable.

(5) A signatory of an account of a public authority or incorporated body is also taken to be identified if a certificate of identity by the verifying officer, or a verifying officer, for that account is lodged with an identifying cash dealer and the certificate:

- (a) says that the officer is satisfied that the signatory is authorised by the authority or body to be a signatory to that account; and
- (b) bears the signatures of the officer and the signatory.

(5A) A certificate of identity by a verifying officer may relate to more than one signatory of the account for which it is lodged.

(6) Verification of the identity of a signatory under sub regulation (5) is worth 100 points.

## **SECTION 21**

### **Identification references**

(1) An identification reference for a signatory to an account is a written reference by an acceptable referee, signed by the referee and setting out the name to be used by the signatory in relation to the account and stating that:

- (a) the referee has known the signatory for the period specified in the reference;
- (b) during the whole of that period, or for so much of that period as is specified in the reference, the signatory has been commonly known by that name; and
- (c) the referee has examined:
  - (i) a specified primary identification document for the signatory in that name;
  - (ii) a specified secondary identification document for the signatory in that name and a specified primary identification document for the signatory in a former name of the person; or
  - (iii) only a specified secondary identification document for the signatory in that name.

(2) An identification reference for a person by an acceptable referee shall also set out:

- (a) the name, address and occupation of the referee and the basis on which the referee claims to be an acceptable referee;
- (b) if the reference states that the referee examined a primary identification document for the person in a name different from the name to be used by the person in relation to the account—the explanation that the person gave the referee for the difference in names;
- (c) if the reference states that the referee examined only a secondary identification document for the person—the explanation that the person gave the referee for the failure to produce a primary identification document; and
- (d) the required details of the identification document or documents examined by the referee.

(3) An identification reference for a person by an acceptable referee shall be signed by the person in the presence of the referee and shall contain a statement by the referee to the effect that the reference was so signed.

(3A) An acceptable referee, or any other person, must not:

- (a) intentionally make a statement in an identification reference, reckless as to the fact that the statement is false or misleading in a material particular; or
- (b) intentionally omit from an identification reference any matter or thing, reckless as to the fact that without the matter or thing the reference is misleading in a material particular.

Penalty: Imprisonment for 4 years.

(4) For the purposes of this Act, a failure by a person to produce a primary identification document shall not be taken to be sufficiently explained merely by the assertion that a primary identification document is not presently available to the person if the person could obtain a primary identification document within a reasonable time if the person took reasonable steps to obtain it.

(5) Nothing in subsection (4) shall be taken to require a person to apply for the issue of a citizenship certificate or a passport.

ANNEXURE "D"

CERTIFICATE OF WITNESS

I,.....
Of.....
Being a: Commissioner for Declarations/Justice of the Peace/Solicitor

CERTIFY: that

- 1. The person named in the Schedule as the signatory(s) who has executed the document(s) listed in the Schedule is the same person as named in the document(s); and
2. I have verified their identity in accordance with the attached form (Verification Details- individual [insert funder's name] 100 Point Check as required by FTRA [insert funder's name] form [insert form number]); and attach certified copy(s) of the original documents sighted by me to satisfy the 100 Point Check; and
3. The person named in the Schedule as the signatory signed the Mortgage document(s) in my presence; and

ACKNOWLEDGE: that [insert funder's name] is relying on this declaration to:

- 1. provide loan facilities which are supported by the Documents detailed in the Schedule below; and
2. comply with the witnessing and identification requirements issued under the Land Title Act 1994, Financial Transaction Reports Act 1988 (Cth) (as amended) and related regulations.

SCHEDULE

Document(s): Mortgage

Mortgagors: .....
(Insert Mortgagor/s Name Here)

Date the ..... day of ..... 200.....

Signed by:.....

Full name of witness:.....

Address of Witness:.....

Occupation of Witness:.....

Contact Number for Witness:.....

(Signed and details are completed by Witness)

**Verification of Individuals**

<p><b>Apply one of the following</b></p> <ul style="list-style-type: none"> <li>⊖ Passport (current or expired by less than 2 years) Not cancelled</li> <li>⊖ Citizenship Certificate (Australian only)</li> <li>⊖ Birth Certificate (Australian – original or extract)</li> <li>⊖ Birth Card issued by State Registry of Births, Deaths and Marriages</li> </ul>	<p><b>70 Points</b></p>
<p><b>Apply one of the following</b></p> <ul style="list-style-type: none"> <li>⊖ Written reference from another financial institute.</li> <li>⊖ Written reference from another customer, who has been with [insert name of funder] for at least 12 months and has been verified as a signatory by [insert name of funder]</li> <li>⊖ Written reference from an acceptable referee (refer A/C opening procedures FTRA Manual)</li> </ul>	<p><b>40 Points</b></p>
<p><b>Apply one of the following</b></p> <ul style="list-style-type: none"> <li>⊖ Renewed, Interim, Provisional, Truck or Learners, Other acceptable Government issued licences include Boat, Gun or Pilot</li> <li>⊖ Public service employee identification card</li> <li>⊖ Pension or Government health card (Reference number required)</li> <li>⊖ Identification card issued by a tertiary education institute</li> </ul>	<p><b>40 Points</b></p>
<p><b>Apply one of the following</b></p> <ul style="list-style-type: none"> <li>⊖ Letter from a current employer (current or must have been employed by the Employer within the last 2 years).</li> </ul>	<p><b>35 Points</b></p>
<p><b>Apply one of the following</b></p> <ul style="list-style-type: none"> <li>⊖ Written reference from an acceptable referee confirming name and address only can be issued by anyone and contact must be made by verifying reference by obtaining the telephone number from the telephone directory and contact the referee. The reference letter must contain the full name and address of the referee.</li> </ul>	<p><b>25 Points</b></p>
<p><b>Apply one of the following</b></p> <ul style="list-style-type: none"> <li>⊖ Overseas or International Drivers Licence</li> <li>⊖ Medicare card</li> <li>⊖ Proof of Age card</li> </ul>	<p><b>25 Points</b></p>
<p>100 points or more are required for verification purposes</p>	<p><b>Total Points</b></p>

