

NSW Property Update – Mandatory use of the National Mortgage Form

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Summary

The National Mortgage Form (NMF) is a significant national initiative aimed at standardising the form of mortgage documentation in Australia.

From 3 March 2018 all mortgages in NSW must now be prepared in the NMF which replaces the Mortgage Form 05M previously accepted by the Land Titles Office.

Facts/Background

The gradual publication of successive rules under the Conveyancing Rules issued pursuant to section 12E of the *Real Property Act 1900* (NSW) is part of wider efforts aimed at incrementally phasing in the electronic conveyancing regime for real property dealings in Australia.

The NMF was introduced as part of this regime with a transition period.

Implementation of the NMF in NSW for paper mortgages commenced in May 2017 and for electronic mortgages lodged via the Property Exchange Australia (PEXA) platform, in July 2017.

The transition period for the introduction of the NMF in NSW has now expired and all mortgages in NSW entered into from 3 March 2018 must now be submitted in the NMF format.

The Form

The NMF is prepared either manually or as an interactive document (both versions accessible [here](#)).

The interactive document is finalised by completing the information fields provided and following the prompt to print which is contained in the form. A PDF will be generated based on the information input which can be printed or saved electronically.

The NMF may also incorporate additional schedules (including the general memorandum term and conditions registered with the Land Titles Office) and may refer to an attached schedule with additional terms as required.

Mandatory Certifications

Clause 10 of the Conveyancing Rules specifies various certifications that will need to be made by the lodging party depending on the methods used to sign and lodge the NMF (discussed below).

These certifications are set out in Schedule 3 of the NSW Participation Rules which are as follows (see below for when the certifications are relevant):

Certification	Type of Certification
1	The Certifier has taken reasonable steps to verify the identity of the [transferor/transferee/mortgagee/mortgagor/caveator/applicant]
2	The Certifier holds a completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document
3	The Certifier has retained the evidence supporting this Registry Instrument or Document
4	The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement
5	The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents: <ul style="list-style-type: none"> (a) has taken reasonable steps to verify the identity of the mortgagor, and (b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document
6	The Certifier has: <ul style="list-style-type: none"> (a) retrieved, and (b) either securely destroyed or made invalid the (duplicate) Certificate(s) of Title for the folio(s) of the Register listed in this Registry Instrument or Document

Lodgement of the NMF

Currently in NSW, the NMF may be prepared and lodged in the following ways:

Methods	Lodging Party Procedure
Full Paper Form acceptance and lodgement	1. The NMF is prepared and physically printed 2. The Form is physically signed by the mortgagor and the mortgagee or mortgagee's representative 3. If the Form is physically signed by the mortgagee, Certifications 3, 4, 5(a) must be provided 4. If the Form is signed by the mortgagee's representative, Certifications 1 to 5(a) must be provided 5. The Paper Form is lodged manually at the Land Titles Office
Separate Paper Form lodgement	1. The NMF is prepared and physically printed 2. The Form may be physically signed by the mortgagee or mortgagee's representative 3. If the Form is signed by the mortgagee, Certifications 3, 4 and 5 must be provided 4. If the Form is signed by the mortgagee's representative, Certifications 1-5 must be provided 5. The Paper Form is lodged manually at the Land Titles Office

Electronic acceptance, Paper Form lodgement	<ol style="list-style-type: none"> 1. The NMF is prepared in electronic format 2. The Form is digitally signed by the mortgagor and then retained by the mortgagee 3. The mortgagee prepares a separate Paper Form which is physically signed by the mortgagee or mortgagee's representative 4. If the Paper Form is signed by the mortgagee, Certifications 3-5 must be provided 5. If the Paper Form is signed by the mortgagee's representative, Certifications 1-5 must be provided 6. The Paper Form is lodged manually at the Land Titles Office
Paper acceptance, electronic lodgement	<ol style="list-style-type: none"> 1. The NMF is prepared and physically printed 2. The Form is physically signed by the mortgagor and then retained by the mortgagee 3. Certifications 1-5 are obtained 4. The NMF is lodged electronically through the electronic certification and signing procedures contained within the PEXA platform
Electronic acceptance, electronic lodgement	<ol style="list-style-type: none"> 1. The NMF is prepared in electronic format 2. The Form is digitally signed by the mortgagor and then retained by the mortgagee 3. Certifications 1-5 are obtained 4. The NMF is lodged electronically through the electronic certification and signing procedures contained within PEXA platform

Paper vs Electronic

Electronic lodgement is mandatory for all transactions involving standalone Mortgages, Discharges of Mortgages, or a combination of Discharge/Mortgage dealings where all parties are identified as Authorised Deposit-Taking Institutions (ADI) under the *Banking Act 1959* (a list of ADIs are set out [here](#)). From 1 July 2018, it is proposed this requirement will extend to non-ADI parties.

It is also anticipated that paper NMF lodgement will eventually be phased out which will compel full integration of the PEXA platform for mortgage lodgements.

Conclusion

As the use of the NMF is now mandatory, mortgagees will need to get up to speed and align their processes to meet the requirements for the preparation and lodgement of the NMF.

Early adoption of electronic lodgement of the NMF will help mortgagee's familiarise themselves with the electronic processes ahead of mandatory implementation, which is inevitable.

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