

PARTICIPATION RULES WAIVER

SOUTH AUSTRALIA

Section 27 *Electronic Conveyancing National Law (SA)*

Title

This instrument is South Australia's Participation Rules Waiver PR3/2016 – Certification by a Subscriber that the mortgagee holds a mortgage granted by the mortgagor “on the same terms” may be made when the mortgage held is “to the same effect”.

Enabling Provisions

1. Under sections 23 and 25 of the Electronic Conveyancing National Law (SA) (the National Law) the Registrar-General (Registrar) has determined and published in Version 3 of the Participation Rules which came into effect on and from 21 January 2016
2. Section 27 of the National Law permits the Registrar to waive compliance with all or any provisions of the Participation Rules if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.

Affected Rules

Participation Rules 6.13.1(a), 6.13.1(c) and 7.10.

Explanatory Statement

Under Participation Rule 6.13.1, where a mortgagor (in its capacity as mortgagor) is not a Subscriber or represented by a Subscriber, the mortgagee, or the mortgagee's Representative, must:

- (a) ensure that the mortgagor grants a mortgage on the same terms as the mortgage signed by, or on behalf of the mortgagor; and
- (b) ensure that it holds the mortgage granted by the mortgagor; and
- (c) provide Certification 5 of the Certification Rules.

Certification 5 of the Schedule 3 – Certification Rules provides that:

“The Subscriber, or

the Subscriber is reasonably satisfied that the mortgagee it represents:

- (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.”

Section 128(5)(a) of the *Real Property Act 1886 (the Act)* mirrors Participation Rule 6.13.1 ensuring alignment of the requirements for both electronic and paper mortgage lodgements.

Participation Rule 6.13.1 is not however consistent with Regulation 22 of the *Real Property Act Regulations 2009* (introduced with the commencement of the *Real Property (Electronic Conveyancing) Act 2016*) which states:

“For the purposes of section 128(5)(a) of the Act, a mortgage executed before 4 July 2017 that complies with the requirements of Part 12 of the Act as in force immediately before the commencement of Part 2 of the amendment Act will, if it has the same effect as a mortgage

lodged for registration in the Lands Titles Registration Office, be taken by the Registrar General to be on the same terms as the lodged mortgage.”

Regulation 22 effectively allows mortgages prepared on the old approved forms and executed before 4 July 2017, to be lodged either in the new approved paper form, or electronically through Property Exchange Australia Ltd.

The Registrar has determined that a partial waiver should be granted to ensure alignment between the Regulations and the Participation Rules. As the mortgage transitional period may need to be extended beyond 4 July 2017, the date is not specified in this waiver.

Partial Waiver

Subject to the Conditions, the Registrar grants Subscribers to an Electronic Lodgement Network that are a mortgagee or a Representative of a mortgagee (**mortgagee**), a partial waiver modifying the Subscribers obligation to comply with;

Rules 6.13.1(a), 6.13.1(c) and 7.10 (Version 3 of the Participation Rules);

by providing that where a mortgagee, or the mortgagee’s Representative, ensures that the mortgagor has granted a mortgage to the same effect as the mortgage signed by, or on behalf of the mortgagee, the mortgagee, or the mortgagee’s Representative, will be taken to have ensured that the mortgagor has granted a mortgage on the same terms as the mortgage signed by, or on behalf of the mortgagee.

Conditions

The partial waiver is granted on the condition that the mortgagee otherwise complies with Rules 6.13.1 and 7.10.

Commencement

This partial waiver commences on: 25 October 2016

Period during which this waiver applies

This partial waiver operates to the earlier of:

- (a) an amended version of the Participation Rules which reflects the above amendment to the Mortgage and Certification obligations; or
- (b) the publication of a revocation of this waiver by the Registrar.

Dated: 25 October 2016

Signed by:



**Brenton Pike
Registrar-General**