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## NSW MORTGAGE IDENTIFICATION – WHAT IS REASONABLE?

**In December 2009 the NSW Land and Property Information office ('LPI') released their Christmas present to Lenders in the form of a consultation paper on the proposed 'reasonable steps' to ensure a person signing a mortgage is who they claim to be.**

Queensland Lenders will already be familiar with this concept as there is already an identification requirement in Queensland. Unfortunately the NSW proposals went well beyond the Queensland requirements and would have imposed unreasonable requirements on Lenders.

MacGillivrays submission on the proposals was one of seven submissions received on the LPI paper. The majority of submissions did not support the proposals. The main issues of contention among the submissions were that the proposals were not consistent:

- with the existing steps Lenders are required to undertake in relation to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ('AML-CTF') and that the proposals if implemented would increase the cost of compliance and delay settlements; and
- with the verification processes proposed for the National Electronic Conveyancing System ('NECS').

In addition MacGillivrays Solicitors submitted that the proposals logically should be consistent with the existing Queensland regime for identification of parties to mortgages.

The LPI have responded to those submissions by re-iterating that the AML-CTF requirements do not focus on the risk factors in the types of fraud that the LPI is encountering, a similar view to Qld. That fraud is often conducted by a relative or person known to the owner of the land and the LPI have observed that the "fraudsters are relying on the lender not pursuing more vigorous checks as to who is actually borrowing the money, and who will actually be on the mortgage as mortgagor".

LPI stated that they will be mindful of the identity requirements in other States (e.g. Qld) and the standard customer verification requirements in NECS; when they are introduced.

In the meantime LPI are proposing identity verification 'reasonable steps' to be:

- **mortgages** – closely based on *"the document based safe harbour provisions of the AML-CTF, that is, verify the customer's name, residential address and date of birth from an original or certified copy of a primary photographic identification document, or two original or certified copies of a secondary document"*; and
- **other dealings in land and caveats** – *"one original or certified copy of a primary identification document or two original or certified copies of secondary documents"*.

The details will be provided in the regulations when they become available. LPI state they will review the regulations when the NECS requirements become known.

We will keep you posted as details of the regulations become available.



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# CREDIT CODE REGISTRATION ARE YOU READY?

## THE NEW NATIONAL CREDIT CODE REGISTRATION/LICENSING PROCESS STARTS ON 1 APRIL 2010.

One wonders whether someone in the Government had a sense of humour making the start date for the registration process April Fools Day – no matter.

There are three main options we offer for registration/licensing. They are:

### FULL SERVICE OPTION

We hold your hand through the whole registration/licensing process and take care of the process for you, including helping you put in place appropriate policies and procedures. For most organisations we offer a fixed price for this service, negotiable at the time of instruction.

### STRATEGIC GUIDANCE OPTION

Under this option we set you on the right track and make sure you address the appropriate issues as part of the registration/licensing process. As part of this service we analyze your whole business and everyone you deal with both internally and externally and give appropriate advice and guidance. Under this option we may either negotiate a fixed fee or an hourly rate.

### DO IT YOURSELF OPTION

You may decide to do the registration/licensing process yourself and seek our advice on specific issues should you “get stuck” or encounter problems. This option is suitable for those clients willing to put the time and effort into the whole registration/licensing process and who are confident of their abilities to manage the process internally.

Our recommendation is that you retain us to, at a minimum, give you strategic guidance, because if you get the process wrong, then come 1 July 2010, you may be prevented either from trading yourself or trading with other entities with which you currently deal with.

### IT IS IMPORTANT TO REMEMBER THE FOLLOWING:

- Well before 18 June 2010 you will need to decide whether you will require your introducers of business to be licensed or appointed as your Credit Representatives or determine that they are in one way or another exempt from the process;
- By 1 July 2010 everyone operating in the credit space will either need to be registered, appointed a credit representative or be entitled to claim an exemption. If they are not, then they cannot operate in the consumer credit space after 1 July 2010.
- Please do not leave it too late. It is better to start early to ensure there is sufficient time to deal with any difficulties that arise in a calm and measured manner, rather than in a last minute panic.

For further information about our services,  
please contact Richard Williams on 03 8622 2711.



BY RICHARD WILLIAMS

PLEASE NOTE: This newsletter is not legal advice and our comments are of a general nature only. This document is not to be relied on as substitution for proper detailed advice. If you would like to be removed from, or added to our mailing or emailing list, contact Lisa Sylvester on (07) 3228 5293 or marketing@macgillivrays.com.au



## ON THE MARGIN

If you make margin loans or advise clients about margin loans then you must apply to ASIC by 30 June 2010 for an AFSL licence or to vary your existing AFSL licence. If you want to provide a margin lending financial service after 30 June 2010 then you will need to apply to ASIC for authorisation by that date. Those who fail to do so will have to cease providing those services.

These new changes come about by virtue of implementation of the *Corporations Legislation Amendment (Financial Modernisation) Act 2009* which commenced on 1 January 2010.

In essence the relevant parts of that legislation require:

- Issuers of and advisors on margin lending facilities are required to be licensed by ASIC under an AFSL;
- Margin lenders will need to meet new responsible lending requirements;
- Consumers will have access to External Dispute Resolution (“EDR”) services; and
- Clarity is given about who is responsible for notifying clients in case of a margin call.

The relevant time lines are currently:

- AFSL licence applications to ASIC between 1 February 2010 and 30 June 2010;
- Corporations Act applies to issuers and advisors of margin lending facilities – 1 January 2011;
- Compliance with training standards in RG146 required by 1 July 2011.

ASIC has also put out a pro forma Product Disclosure Statement for margin lending as a sample document to be used by product issuers.

The PDS can be found at the bottom of the ASIC web site page at: <http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Margin%20lending> as a link to Draft Regulations and example Product Disclosure Statement.

**REMEMBER THE DEADLINE OF 30 JUNE 2010.**



BY GORDON PERKINS