

National Conveyancing

National Mortgage Form

1. Q. In most jurisdictions lenders have had their own forms of mortgage for years. Why is a national form of mortgage needed?

A. In November 2012 the ABA agreed with the Australian Registrars' Working Group, PEXA Ltd (then NECDL) and ABA member banks to form a working group to work collaboratively on agreed short and long term conveyancing process refinements.

The objective was to enhance the efficiency of mortgage processing as a part of Australia's land titles conveyancing processes up to the time of lodgment to be in line with the COAG objective to deliver a nationally consistent electronic conveyancing environment.

Another reason why a national mortgage form became necessary is because in electronic conveyancing lenders will not be able to have their own individual forms of mortgage because the registered counterpart of the mortgage, which will be in a national form and will be executed only by the mortgagee, must be on the same terms as the mortgage entered into by the mortgagor.

An initial objective of the Working Group was to agree on a single nationally consistent uniform mortgage which could be used to obtain a mortgagor's acceptance of a mortgage and for the mortgage subsequently to be presented for lodgment in paper or electronically. It is proposed that there will be one form only of operative words for the mortgage replacing the various forms of operative words currently in use in the jurisdictions.

2. Q. But the working group represented only bank mortgagees and not other lenders' peak bodies and conveyancing practitioners. Why?

A. ABA's members are nationally operating financial institutions and play a significant part in most conveyancing transactions and land titles lodgments. It made sense that if a national mortgage form could be developed this would help to streamline and simplify mortgage processing nationally. This would enhance the benefits and efficiency of the national electronic conveyancing system (PEXA) by reducing the number of variations in forms of mortgage between State and Territory jurisdictions.

PEXA itself is working on a national mortgage functionality which will flow on to other lenders and conveyancing practitioners using PEXA.

With the Working Group having agreed on a national form of mortgage, the next step is to consult and work with other stakeholders to an agreed outcome.

3. Q. Will other mortgagees and practitioners have the opportunity to suggest changes to the mortgage form?

A. Yes. Each of the jurisdictions will be consulting with their established contacts in their own jurisdictions such as with law societies and other relevant peak bodies to ensure that the form is satisfactory for their needs.

Adequate time for those to consider and seek changes to the form will be available.

4. Q. What will happen to paper mortgages?

A. It is expected that paper based conveyancing will be with us for some time. The benefit of a national mortgage form is that lenders will be able to work with the one form in paper or electronic environments.

In electronic conveyancing, only the Registry Instrument form of the mortgage executed by the mortgagee (the counterpart of the mortgage executed by the mortgagor) will be lodged with the Land Titles office with the mortgage executed by the mortgagor being held by the mortgagee.

Progressively, as jurisdictions amend their paper based conveyancing laws the objective is for paper and electronic processes to be aligned with comparable VOI rules and certifications.

The national mortgage form is one of the matters in consultations that have been undertaken by some jurisdictions (Victoria, South Australia and New South Wales) to date to align electronic and paper based conveyancing. The consultations include abolition of CTs and looking ahead to replicate and simulate aspects of electronic conveyancing processes for paper processes.

5. Q. The form has been developed in a very plain form

A. The idea is that the key information fields of the mortgage can be conveniently included in a series of information panels similar to the way that Registries have prescribed forms of mortgage. The Working Group has analysed the requirements of each Land Registry and has ensured that the new form contains all the information needed by them.

6. Q. But will the new form accommodate the needs of other mortgagees which require more detail in their mortgage forms?

A. The task has been to work through all of the jurisdictions' forms (other than in the ACT) and work out what information fields are necessary and those that can be discarded or accommodated in a general way.

The uniform mortgage form can accommodate terms and conditions of a mortgage and its related loan agreement to be incorporated by reference or, if preferred, with additional terms and conditions to be added to the form under "*(b) Additional terms and conditions*".

7. Q. When will the mortgage form commence and replace existing jurisdictions' standard forms of mortgage?

A. This will involve a jurisdiction by jurisdiction timetable. This may be earlier or after the time a jurisdiction joins and participates in PEXA and will depend when their local legislation is amended (as necessary) to approve the mortgage form.

PEXA will coordinate with the jurisdictions as the new form is approved in each jurisdiction. In addition, jurisdictions will move to having their own smart form to accommodate the paper mortgage and conveyancing processes.

It is important to recognise that Land Registries, banks and other mortgagees will need to have a considerable lead time to make the necessary IT changes, process re-engineering and staff training before they can implement the mortgage form, which is likely to take at least 6 months from the time the mortgage form has been settled.

8. Q. What about customers/mortgagors? Will they need to be prepared for the new form?

A. In addition to a mortgagor being informed about the electronic process for the mortgage and the simplified approach, if all jurisdictions agree, it would be better not to have the list of required witnesses to a mortgagor's execution of the mortgage added to the form itself. This is because the simplicity and brevity of the mortgage form could be compromised especially with the electronic Registry Instrument that is lodged for registration with Land Titles not having to be executed by the mortgagor. Instead, preliminary consideration is being given for a "flyer" which could accompany the mortgage for execution to be provided to the mortgagor setting out the list of required witnesses, which will vary between jurisdictions. There is no national decision to do this at this stage. But appropriate guidelines will be produced to assist the mortgagor in completing or signing the form.

Information contained
in this document was correct at
time of publication, but may have
been superseded