

Part 62 – eConveyancing

LAND TITLE PRACTICE MANUAL

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Part 62 – eConveyancing

[62-0000] Introduction

Electronic Conveyancing (or eConveyancing) is the term used to refer to the electronic preparation, lodgement, processing and registration of instruments and other documents (Electronic Conveyancing Documents) in accordance with the Land Title Act 1994 (Qld) and the Electronic Conveyancing National Law (Queensland) (the ECNL). eConveyancing is the primary method of conveyancing in Queensland, and its use is mandated for a number of instruments and documents. Refer to part [62-6000] for further information on the application of the eConveyancing mandate. eConveyancing is facilitated by a national law and national regulatory framework and involves eligible participants (Subscribers), such as Australian legal practitioners and authorised deposit taking institutions, utilising the systems (Electronic Lodgment Networks or ELNs) of approved private operators (Electronic Lodgment Network Operators or ELNOs) to complete conveyancing transactions electronically.

Only eligible Subscribers can utilise Electronic Lodgment Networks to lodge Electronic Conveyancing Documents. Eligibility criteria include specific insurance and character requirements. Non-eligible transacting parties can engage an Australian legal practitioner to lodge Electronic Conveyancing Documents on their behalf.

The eConveyancing mandate, which commenced on 20 February 2023 pursuant to the *Land Title Regulation 2022*, requires that certain instruments, known as 'required instruments', must be lodged through an ELN. Therefore, industry professionals lodging required instruments must do so through an ELNO.

In accordance with the nature and purpose of the Land Title Practice Manual, the information in this part is limited to general information about the law, regulatory framework and general practice requirements. Additional information relating to specific dealings is available in the relevant part of the Land Title Practice Manual under the heading eConveyancing.

Information about the requirements for using eConveyancing, including becoming a Subscriber, is available online at the [Titles Queensland website](#) and on the [Australian Registrars' National Electronic Conveyancing Council \(ARNECC\) website](#).

[62-1000] Regulatory Framework and ARNECC

The foundation for the national regulatory framework for electronic conveyancing in Australia is a 2011 intergovernmental agreement entered into by the State and Territory governments and known as the Electronic Conveyancing National Law Agreement 2011.

Amongst other things, the Electronic Conveyancing National Law Agreement 2011 provided for each Australian State and Territory to adopt or implement the Electronic Conveyancing National Law (ECNL) and the formation, composition and operation of the Australian Registrars' National Electronic Conveyancing Council (ARNECC). ARNECC's functions include developing and maintaining national Model Operating Requirements (MOR) and Model Participation Rules (MPR) to be implemented as Operating Requirements and Participation Rules respectively in each jurisdiction.

The ECNL was first enacted in New South Wales as an appendix to its *Electronic Conveyancing (Adoption of National Law) Act 2012*. The ECNL was adopted in Queensland by the *Electronic Conveyancing National Law (Queensland) Act 2013*. The *Electronic Conveyancing National Law (Queensland) Act 2013* also made a number of amendments to the *Land Title Act 1994* and *Land Act 1994* to facilitate eConveyancing.

The ECNL provides for, amongst other things:

- the lodgement, processing and registration of instruments and other documents (Electronic Conveyancing Documents) in electronic form for the purposes of the Land Title Act, Land Act and other titling legislation;
- the existence of electronic systems for lodgement of Electronic Conveyancing Documents called Electronic Lodgment Networks (ELNs);
- the Registrar to provide and operate an ELN and / or approve Electronic Lodgment Network Operators (ELNOs) to provide and operate ELNs;
- an attribution rule which provides that a digital signature created for an Electronic Conveyancing Document is binding on certain parties and cannot be repudiated except in very limited circumstances;
- for Subscribers to access and use an ELN to complete conveyancing transactions electronically, either on their own behalf (e.g. financial institutions) or on behalf of transacting parties who have authorised them to do so using a properly completed client authorisation (e.g. Australian Legal Practitioners);

- the Registrar to determine Operating Requirements relating to the operation of an ELNO and the provision and operation, by an ELNO of an ELN;
- the Registrar to determine Participation Rules relating to the use of an ELN by Subscribers;
- the conduct of investigations, called compliance examinations to determine whether the Operating Requirements and Participation Rules are being complied with and investigate any suspected or alleged case of misconduct with respect to the operation of or use of an ELN.

[62-1010] Participation Rules

In accordance with section 22 of the Electronic Conveyancing National Law (Queensland) (ECNL) the Registrar of Titles has determined Participation Rules, relating to the use of an Electronic Lodgment Network in Queensland. The Queensland Participation Rules apply to all Subscribers using eConveyancing in Queensland. The Queensland Participation Rules are available on the [Titles Queensland website](#).

As required by section 24 of the ECNL, the Queensland Participation Rules are consistent with the Model Participation Rules (MPR) published by the Australian Registrars' National Electronic Conveyancing Council (ARNECC) which are available on the [ARNECC Model Participation Rules web page](#). Any Queensland specific Participation Rules are listed in Schedule 1 of the Queensland Participation Rules.

ARNECC publishes MPR Guidance Notes to assist Subscribers in understanding what is expected of them in complying with the Registrars' Participation Rules in each jurisdiction. The Model Participation Rule Guidance Notes are available on the [ARNECC Model Participation Rules Guidance Notes web page](#).

With the introduction of the eConveyancing Mandate on 20 February 2023 it is mandatory for industry professionals lodging required instruments to do so through an Electronic Lodgment Network Operator (ELNO). For more information, refer to [62-6000].

[62-1020] Operating Requirements

In accordance with section 22 of the Electronic Conveyancing National Law (Queensland) (ECNL) the Registrar of Titles has determined Operating Requirements relating to the operation of an Electronic Lodgment Network Operator (ELNO) and the provision and operation by an ELNO of an Electronic Lodgment Network. The Queensland Operating Requirements are available on the Titles Queensland website.

As required by section 24 of the ECNL, the Queensland Operating Requirements are consistent with the Model Operating Requirements (MOR) published by the Australian Registrars' National Electronic Conveyancing Council (ARNECC) which are available on the ARNECC Model Operating Requirements web page. Any Queensland specific Operating Requirements will be listed in Schedule 4 of the Operating Requirements.

ARNECC publishes MOR Guidance Notes to assist ELNOs in understanding what is expected of them in complying with the Registrars' Operating Requirements in each jurisdiction. The Model Operating Requirements Guidance Notes are available on the ARNECC Model Operating Requirements Guidance Notes web page.

[62-2000] eConveyancing (electronic) Forms

An Electronic Conveyancing Document is a document under the ECNL that is lodged electronically through an Electronic Lodgment Network (see s. 14B of the Land Title Act 1994 and s. 7 of the ECNL). Refer to [59 4000] for a list of the current electronic forms approved by the Registrar.

A representation of each electronic form approved by the Registrar is shown in each relevant part of the Land Title Practice Manual.

[62-3000] Witnessing and Execution of Electronic Conveyancing Documents

If the *Land Title Act 1994* or the *Land Act 1994* provides for an instrument or document to be signed or executed and the instrument or document is an Electronic Conveyancing Document, the Electronic Conveyancing Document must be digitally signed as provided for under the Electronic Conveyancing National Law (Queensland) (s. 14C of the Land Title Act and s. 290Q of the Land Act).

If an instrument or document is digitally signed in accordance with the Queensland Participation Rules, the requirements of any other Queensland law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied (s. 9(3)(b) of the Electronic Conveyancing National Law (Queensland)).

[62-4000] Requisitions of Electronic Conveyancing Documents

An instrument or document that is lodged as an Electronic Conveyancing Document, and is subsequently requisitioned, will be printed as a rendered paper version of the Electronic Conveyancing Document with a dealing number attached (the rendered paper form) and forwarded to the lodger of the document.

To respond to the requisition notice the rendered paper form must be returned to Titles Queensland's Brisbane office and may not be relodged electronically.

If the deficiencies identified in the requisition notice result in changes needing to be made to the rendered paper form then generally the electronic conveyancing document will need to be withdrawn and a new electronic conveyancing document or paper dealing will need to be lodged. Any changes which alter the nature and effect of the Electronic Conveyancing Document or are otherwise of a substantial nature (adding or deleting parties or lots etc.) will require the Electronic Conveyancing Document to be withdrawn. Refer to [60-0150] for information on the process for withdrawing a lodged instrument or document prior to registration.

If, however, the deficiencies identified in the requisition are very minor (e.g. the transposition of two digits in the dealing number of a standard terms document referenced in the Electronic Conveyancing Document), once the deficiencies are addressed, the amended rendered paper form may be returned for further examination. Please note however that no assurances can be provided as to whether the Electronic Conveyancing Document will be capable of registration. Any changes made to the rendered paper form must comply with the requirements detailed in [59 2040].

Refer to [60 0000] to [60 0040] for more information on requisitions.

[62-4010] Withdrawn or rejected Electronic Conveyancing Documents cannot be relodged

An Electronic Conveyancing Document that has been withdrawn or rejected cannot be relodged (s. 157(5) of the *Land Title Act 1994* and s. 306(5) of the *Land Act 1994*).

A new Electronic Conveyancing Document or paper dealing will need to be lodged.

[62-5000] Available Instruments

Not all instruments and documents are capable of being lodged using eConveyancing and not all instruments and documents are available for lodgement through all Electronic Lodgment Network Operators (ELNOs).

The instruments that are able to be lodged through an ELNO are known as available instruments. A list of available instruments is accessible on the [Titles Queensland website](#).

Subscribers should also check with the ELNO they subscribe to as to which instruments are available to be lodged through their ELNO in conjunction with the list of available instruments provided on the Titles Queensland website, as there can be instances where the functionality differs between ELNOs.

Some available instruments executed on or after 20 February 2023 are required to be lodged through eConveyancing unless a valid exemption applies. Refer to [62-6000] for further information.

[62-6000] eConveyancing Mandate

The eConveyancing mandate, introduced by the *Land Title Regulation 2022*, applies to all industry professionals who are eligible to become Subscribers of an Electronic Lodgment Network Operator (ELNO); as well as to corporations and entities other than natural persons, that are lodging an instrument which is captured by the mandate.

The mandate, which commenced on 20 February 2023, requires that some instruments which are able to be lodged using eConveyancing in Queensland (available instruments), must be lodged using eConveyancing, unless a valid exemption applies.

The instruments which are captured under the mandate are known as 'required instruments' and are the instruments that are required to be lodged through an ELNO. Required instruments are those defined in s. 4 of the *Land Title Regulation 2022* and are detailed in [62-6010].

It is important to be aware that not all available instruments are required instruments under the mandate, that is to say that there are some instruments which can (and may) be lodged through eConveyancing, but are not captured by the mandate and therefore are not mandatory to be lodged through eConveyancing. In addition, the mandate applies only to instruments dealing with freehold land. For a list of 'required instruments' captured by the mandate, and the list of exemptions to the mandate, refer to [62-6010 to 62-6020] and to the [Titles Queensland website](#).

[62-6010] Required Instruments

In accordance with s. 5 of the *Land Title Regulation 2022* a 'required instrument' must be lodged or deposited using an Electronic Lodgment Network if it is an instrument or document that may be lodged electronically under the Electronic Conveyancing National Law (Queensland), section 7.

The following instruments and documents are required instruments in accordance with s. 4 of the *Land Title Regulation 2022*:

- a. an instrument of transfer for a lot (Form 1);
- b. an instrument of mortgage for a lot (NMF);
- c. an instrument releasing a mortgage of a lot (Form 3);
- d. a caveat for a lot (Form 11);
- e. a request to withdraw a caveat lodged over a lot (Form 14);
- f. a priority notice for a lot (PNN);
- g. a request to extend a priority notice over a lot (PNE);
- h. a request to withdraw a priority notice over a lot (PNW);
- i. an application to be registered as a personal representative for a registered owner of a lot who has died (only Form 5 is currently available).

[62-6020] Exemptions

Exemptions to the eConveyancing mandate are provided for in sections. 5(2) and 5(3) of the *Land Title Regulation 2022* and can be divided into two categories, which are:

- a. Instrument Specific Exemptions; and
- b. General Exemptions.

A required instrument under the eConveyancing mandate does not need to be lodged using an Electronic Lodgment Network (ELN) if it meets any of the following criteria:

1. It meets one of the applicable 'Instrument Specific Exemptions' listed on the [Titles Queensland website](#).
2. It is covered under one of the 'General Exemptions' to the Mandate provided for in section 5(2) and 5(3) of the *Land Title Regulation 2022* (see [62-6022] below); or
3. The instrument was executed by a party prior to 20 February 2023 (refer to section 6 of the *Land Title Regulation 2022*).

Instrument Specific Exemptions are those exemptions that are specific to the type of instrument being lodged. Refer to [62-6021] for a further explanation.

General Exemptions are those exemptions that apply to all the instruments captured by the eConveyancing mandate and are contained in s. 5 of the *Land Title Regulation 2022*. Refer to [62-6022] for a further explanation.

[62-6021] Instrument Specific Exemptions

Because no Electronic Lodgment Network (ELN) presently has the functionality to allow for every possible variation that every instrument can be utilised for (in the way that a paper form would), an exemption is provided for in the mandate for circumstances where the functionality to prepare, lodge or deposit the required instrument does not exist.

For example, some types of Form 1 – Transfer (e.g. Mortgagee exercising power of sale) cannot be processed through an ELN. Such transfers are therefore exempt from the mandate and are permitted to be lodged in paper form.

For a full list of the instrument specific exemptions for each of the required instruments refer to the [Titles Queensland website](#).

[62-6022] General Exemption Categories

Under sections 5(2) and 5(3) of the *Land Title Regulation 2022*, the eConveyancing Mandate does not apply if any of the following exemptions apply:

1. The Electronic Lodgment Network and/or Titles Queensland system does not have the functionality to complete the particular transaction; or
2. When the eConveyancing lodgement was attempted, circumstances beyond the lodger's control prevented the lodgement from proceeding e.g. internet access issues for the entirety of the day; the eConveyancing platform is unavailable for use for the entirety of the day; or
3. A party to the transaction, is an individual who is not a Subscriber and is not represented by an Australian legal practitioner or an incorporated legal practice. Note: This exemption applies to a natural person and does not apply to a corporate entity.
4. The transaction is required to be lodged with:
 - another instrument that cannot be lodged using eConveyancing e.g. a transfer that must be lodged with a plan of survey and the plan of survey cannot be lodged using eConveyancing; or
 - another instrument for which a party to that instrument is an unrepresented natural person.
5. The transaction replaces an instrument:
 - that was initially lodged using eConveyancing, but was rejected or withdrawn under section 157 or section 159 of the *Land Title Act 1994*; and
 - for which an associated financial transaction has been completed e.g. purchase price for the property has been paid; money has been given in return for granting a mortgage or charge over the property; taxes, duty (including stamp duty), fees or charges payable relating to the transaction have been paid.
6. The instrument(s) being lodged give effect to a transaction that is not an ELN lodgement or ELN transfer within the meaning of the *Duties Act 2001* section 156D.

[62-6030] Application of the Mandate

The mandate applies to all required instruments executed on or after 20 February 2023 in accordance with s. 5 of the *Land Title Regulation 2022*. The mandate applies only to instruments dealing with freehold land. For a list of required instruments see [62-6010].

[62-6040] Practice Requirements where an exemption applies

Where an exemption applies, an 'eConveyancing Mandate - Exemption Request Form' (ERF) should be completed and deposited in conjunction with the required (mandated) instrument. The ERF, properly completed, is a formal request deposited by the lodger for a required instrument to be accepted for lodgement in paper form.

The exemption to the mandate that applies to the lodgement must be selected on the ERF. For more information see [62-7000].

[62-7000] Exemption Request Form (ERF)

In circumstances where an exemption applies (see [62-6020]) an 'eConveyancing Mandate – Exemption Request Form' (ERF) should be completed and deposited with the required instrument being lodged. The ERF, properly completed, is a formal request deposited by the lodger for a required instrument to be accepted for lodgement in paper form. For a list of required instruments refer to [62-6010].

The ERF can be obtained from the [Titles Queensland website](#). This form should have the reason for the exemption clearly ticked and should be signed and dated by the party lodging the form. An example of a completed request for a fictitious entity is provided on the [Titles Queensland website](#), inside the guide to completion. See Guide to Completion - ERF [62-7010].

[62-7010] Guide to Completion – Exemption Request Form (ERF)

To assist with the completion of the 'eConveyancing Mandate – Exemption Request Form' (ERF), Titles Queensland has produced a guide to completion document which covers all aspects of the completion of the ERF. The guide to completion also includes an example of a completed ERF for a fictitious entity to further demonstrate the practical completion of the ERF. The guide to completion for the ERF can be obtained from the [Titles Queensland website](#).

[62-8000] Attachments to Electronic Conveyancing Documents (Supporting Evidence or other documents)

Including an attachment with an Electronic Conveyancing Document is only permitted in limited circumstances.

Unlike paper instruments or documents, in most instances, Electronic Conveyancing Documents are not required to be accompanied by supporting evidence or other documentation.

The Registrar relies on certifications made by the Subscriber who digitally signs the Electronic Conveyancing Document under the Participation Rules, including certifications that they have retained evidence supporting the Electronic Conveyancing Document and that they have taken reasonable steps to ensure that the Electronic Conveyancing Document is correct and compliant with relevant legislation.

Information on the attachments to be included with each dealing type is detailed in each relevant part of the Land Title Practice Manual under the heading eConveyancing.

[62-9000] Cross References and Further Reading

Part 59 – Forms

Part 60 – Miscellaneous