

House of Representatives

Supplementary Order Paper

Tuesday, 9 May 2017

Land Transfer Bill

Proposed amendments

Denis O'Rourke, in Committee, to move the following amendments:

New clause 54

After *clause 53* (page 37, after line 2), insert:

54 Verification of identity of mortgagor by mortgagee

- (1) Before a mortgage instrument is lodged for registration, the mortgagee must take reasonable steps, or ensure that reasonable steps are taken, to verify the identity of the mortgagor and the identity and the authority of any person who executes the mortgage.
- (2) A person verifying the identity of a mortgagor or the identity and authority of a person who executes a mortgage under **subsection (1)** complies with that subsection if the person complies with standards set by the Registrar under **section 234**.
- (3) **Subsection (2)** does not limit the ways in which a person may comply with **subsection (1)**.
- (4) The person who verifies the identity of a mortgagor or the identity and authority of a person who executes a mortgage under **subsection (1)** must ensure that—
 - (a) a record of the steps taken under this section is kept for not less than the prescribed period; and
 - (b) the documents or copies of the documents and other evidence relied on to comply with this section are kept for not less than the prescribed period.

- (5) Every person who fails without reasonable excuse to comply with **subsection (4)** commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$25,000.
- (6) The Registrar may require a person who verifies the identity of a mortgagor or the identity or authority of a person who executed a mortgage under **subsection (1)** to—
 - (a) inform the Registrar of the steps taken to comply with this section; and
 - (b) produce the material referred to in **subsection (4)** for inspection.
- (7) The court may, in any proceeding, set aside the registered estate or interest of the mortgagee in the land if—
 - (a) the registered mortgagee fails to comply with this section; and
 - (b) through fraud, the mortgage instrument was executed by a person other than the mortgagor or a person with lawful authority to execute the mortgage on behalf of the mortgagor.
- (8) Nothing in this section limits or affects any rule of law relating to the duties of a mortgagee.

Explanatory note

This Supplementary Order Paper would reinsert *clause 54* into the Land Transfer Bill so that before a mortgage instrument is lodged for registration, the mortgagee must take reasonable steps to verify the identity of the mortgagor and the identity and the authority of any person who executes the mortgage, as a means to assist in the prevention of fraud or mistake.