

## Land dealing certifications need to be taken seriously



Acting in a conveyancing transaction today includes certifying that identity and authority have been verified and where there is a paper title, that it has been obtained and either destroyed or invalidated. These certifications need to be taken seriously and only given if they are true. In the case of [Trani & Anor v Trani & Ors \(No 2\) \[2019\] VSC 723](#) the Court found a conveyancer was liable for providing false certifications as to identity and authority to the Registrar of Titles.

The case involved the sale of a property in Safety Beach owned by three siblings, two brothers and a sister, who were registered on title as tenants in common in equal shares. The two brothers alleged their sister, without their knowledge, consent or authority, fraudulently entered into a contract to sell the property for \$1,350,000 and received the funds from the sale.

The two brothers also alleged that the conveyancer acting for the sister was required to verify their identity but failed to do so. Rule 7.10.1 of the [ARNECC Model Participation Rules](#) (MPRs) requires the subscriber, to provide certain certifications as set out in the Certification Rules, including that the subscriber has taken reasonable steps to verify the identity of the client. The Certification Rules are contained in schedule 3 of the MPRs and require certification be given at the time of digitally signing an electronic registry instrument.

In the Trani case this meant that the conveyancer needed to verify the identity of all three registered proprietors before the certification was given. The court described the certification requirements as going to

'the heart of the checks and balances required for the protection of interests in land associated with registration and had a real facilitative role in the fraud'.

The certifications given by the conveyancer that they had taken reasonable steps to verify identity were found to be false and misleading and deceptive under section 18 of the Australian Consumer Law. The fact that the conveyancer had made some assumptions about authority and identity based on representations made by the sister, did not change the fact that the certifications were misleading and deceptive. The conveyancer should have taken reasonable care to confirm those assumptions and only given the certification if they had verified identity and authority.

The conveyancer was found to be a concurrent wrongdoer with the sister and her associated company. The fact that the sister had been fraudulent did not absolve the conveyancer, whose proportionate liability was assessed at 15 percent.

## Certification about titles

Another certification obligation set out in schedule 3 of the MPRs is that the subscriber acting for a vendor has retrieved and either securely destroyed or made invalid, the duplicate certificate of title. This means the subscriber acting for the vendor in the sale of an unencumbered property must be in possession of the duplicate certificate of title and, subject to instructions from the client, destroy it or make it invalid.

Based on enquiries to LPLC there seems to be some confusion about how to make a title invalid. One method previously used by some banks was to stamp the words 'Destroyed – cannot be used for any legal purpose' on the duplicate certificate of title. For more information about making a title invalid refer to the LPLC article ['Destroy titles or make them invalid'](#).

There are serious consequences for a subscriber who gives false certifications and the Trani case is a timely reminder of the need for all subscribers to ensure they comply with the MPRs. Any practitioner who has breached the Certification Rules should immediately notify PEXA in accordance with rule 10 of the MPRs.