



# CONVEYANCERS RULES NSW

**Third Edition  
July 2011**

**Australian Institute of Conveyancers NSW Division  
3/5 Macquarie Street Parramatta NSW 2150  
DX 8223 Parramatta  
Tel: 9633 1355  
[www.aicnsw.com.au](http://www.aicnsw.com.au)**

## INDEX

Introduction	Page 2
Definitions	Page 2
1. Application of Conveyancers Rules	Page 2
2. Employed Conveyancers	Page 3
3. Professional Responsibilities	Page 3
4. Relations with Clients	Page 3
4.1 Fees commissions and charges	Page 4
4.2 Ownership of client's documents – termination of retainer	Page 4
4.3 Acting for more than one party	Page 5
4.4 File register	Page 5
4.5 Safe Custody register	Page 5
5. Relations with other Conveyancers	Page 5
5.1 Communications	Page 6
5.2 Undertakings	Page 6
5.3 Communicating with another conveyancer's client	Page 6
5.4 Place of settlement	Page 7
6. Relations with Third Parties	Page 7
6.1 Contracting for services	Page 8
6.2 Undertakings	Page 8
6.3 Communications	Page 8
7. Conveyancing Practice	Page 8
7.1 Sharing of premises	Page 8
7.2 Conducting a branch office	Page 8
9. Conveyancers Licensing Regulation 2006	Page 9
<b>Annexure:</b>	
Copy: Schedule 3, Rules of Conduct, Conveyancers Licensing Reg. 2006	Page 10-15

# Conveyancer's Rules

## Introduction

The Rules that follow apply to Licensed Conveyancers who are members of the Australian Institute of Conveyancers NSW Division Limited. The Rules have been written so that they incorporate the Rules of Conduct applicable to and included in the Conveyancers Licensing Regulation 2006, those Rules of Conduct are reproduced at the end of these rules.

## Definitions

### “conveyancer”

A reference to a conveyancer shall mean the holder of a current conveyancers license issued under the Conveyancers Licensing Act 2003 and where applicable may also include a practising solicitor.

### “Conveyancers Licensing Act 2003”

A reference to the Conveyancers Licensing Act 2003 shall include any current Act of Parliament that controls or regulates the activities of a Licensed Conveyancer.

### “Conveyancers Licensing Regulation 2006”

A reference to the Conveyancers Licensing Regulation 2006 shall include any current Regulation that controls or regulates the activities of a Licensed Conveyancer.

### "costs"

A reference to costs, unless the context of a rule indicates a contrary intention, includes disbursements.

### “council”

Shall mean the council of the Australian institute of Conveyancers NSW Division

## 1. Application of Conveyancers Rules

The council has approved these rules as the Conveyancers Rules appropriate to the practice of conveyancing by Licensed Conveyancers in New South Wales

Amendments and additions to these rules may be made by resolution of the council by motion on at least 14 days notice.

The council may at any time in its absolute discretion in any particular case vary the application of any rule either wholly or partly and on such terms and conditions as it thinks fit.

These rules supersede any previous Conveyancers Rules

These rules will take effect from 1<sup>st</sup> April 2007.

## **2. Employed Conveyancers**

Employed Conveyancers are subject to the same rules as apply to conveyancers in private practice and in the event of a conflict between the duty to an employer and a duty as a conveyancer the latter shall prevail.

Employed conveyancers may act for clients other than clients of their employer provided that in doing so:

- They act pursuant to an express right of private practice in their contract of employment; and
- They comply in all respects with the current Conveyancers Licensing Act and Conveyancers Licensing Regulation; and
- They hold professional indemnity insurance as required by the current Conveyancers Licensing Act and Regulation

## **3. Professional Responsibilities**

A conveyancer will comply with all legislation and regulations that govern their activities and will refrain from any conduct or activity that would cause harm to others

A conveyancer will keep up to date with the laws relating to conveyancing and other essential facts and public policies that affect their clients.

A conveyancer will abide by the rules and practice directions of the Institute, Land & Property Information and other relevant bodies.

A conveyancer will be responsible for the actions of their employees in their business dealings with clients, their colleagues, the public and others.

## **4. Relations with clients**

### **Generally:**

A conveyancer will act in their clients best interests within the limit of their instructions.

A conveyancer will not give any advice or information to a client or do anything on behalf of a client if they know that the client will use it for an illegal purpose.

A conveyancer should not restrain or otherwise attempt to discourage a client from changing conveyancers at any time provided that the client has paid the conveyancer for all work done and disbursements incurred up to the time of the termination of the conveyancer's instructions or acceptable arrangements have been made for such payment.

A conveyancer will offer all such assistance and give all such advice or information as may be necessary to enable any other conveyancer instructed to take over a matter, to take such matter in hand promptly and expeditiously and with the least duplication in costs.

Where a client has been referred to a conveyancer by another person the conveyancer must put the clients' interests before those of the other person.

A conveyancer will not assume to act for a client until they have received instructions from the client.

## **4.1 Fees Commissions and Charges**

A conveyancer will not undertake unnecessary practices that result in charging higher fees to clients.

A conveyancer will give their clients an accurate and complete breakdown of their fees and disbursements together with the method of payment (cost disclosure) and as required by the current Conveyancers Licensing Act and or Regulation.

A conveyancer will not charge their clients for disbursements that they have not incurred and will promptly refund any unused money, which has been paid to them for anticipated disbursements.

A conveyancer will as soon as possible after being asked to do so by a client, unless it is unreasonable or inappropriate in the circumstances provide to the client a written statement of the costs and disbursements the client will incur in their particular transaction.

A conveyancer who is an agent of another conveyancer (the “principal”) to perform specific work, may agree with the principal to share with that principal a proportion of the fees paid or payable for any such work.

## **4.2 Ownership of clients’ documents – Termination of retainer**

A conveyancer must retain, securely and confidentially, documents to which a client is entitled, for the duration of the conveyancer’s retainer and at least six (6) years thereafter, or until such time as the conveyancer gives them to the client or another conveyancer authorised by the client to receive them, or the client instructs the conveyancer to deal with them in some other manner.

All documents and records must be kept in accordance with the Conveyancers Licensing Regulation 2006.

**4.2.1 File storage and retrieval fees:** Unless there is a disclosure of a fee for storage and or retrieval of files from storage provided in the conveyancer’s fee agreement (CLA s.36 ‘Obligation to disclose costs and other matters to clients’) the conveyancers cannot charge a fee for storage or retrieval of files from storage. The fee for storage and retrieval may be disclosed in correspondence provided on completion of the transaction provided a reasonable time is allowed for the client to collect their file before that fee becomes payable.

**4.2.2 Lien for unpaid moneys:** A conveyancer may exercise a lien over a client’s file for unpaid moneys (costs, fees, disbursements etc). The file or any contents of the file need not be released until such time as the outstanding moneys are paid. If the file or any contents of the file are required by another conveyancer instructed by the client in order to complete the transaction to which the file relates, then the file must be released, however the original conveyancer is entitled to have some form of security of payment provided before that release. The usual form of security of payment is by undertaking to pay the outstanding moneys on completion of the transaction.

### **4.3 Acting for more than one party**

The Australian Institute of Conveyancers recommends that conveyancers do not act for more than one party to any transaction. If a conveyancer chooses to act for more than one party to any transaction the 'Rules of Conduct' set out in the Conveyancers Licensing Regulation 2006 must be complied with – see rule 12.

### **4.4 File register**

A conveyancer must, as soon as practicable after receiving instructions to provide conveyancing services –record in a file assigned for the retention of documents and information on behalf of the client

- (i) the full name and address of the client;
  - (ii) the date of receipt of the conveyancer's instructions;
  - (iii) a short description of the services which the conveyancer has agreed to provide;
- and
- (iv) an identifier; and

enter the name of the client and the identifier in a file register, which must be maintained in the conveyancer's office for a period of not less than six years from the date of the last entry in the register.

A conveyancer will satisfy the requirements of this clause if the conveyancer records the information and documents in a general file maintained for a particular client or in respect of a particular category of work for a particular client.

### **4.5 Safe custody registers**

A conveyancer who is instructed by a client to hold for that client in safe custody, any deed, document, or other valuable property, must record in a register maintained for that sole purpose in the conveyancer's office –

- (i) the name and address of the client;
- (ii) a short description of the item held for the client in safe custody;
- (iii) the date of the conveyancer's receipt of the item; and
- (iv) the identifier of the safe custody packet, in which the item is held by the conveyancer.

## **5. Relations with other conveyancers**

### **Generally:**

A conveyancer, unless under a legal obligation to do so, will not disparage other conveyancers in their professional calling.

A conveyancer will not attempt to supplant another conveyancer after that conveyancer has been engaged to act for a client in a particular matter.

A conveyancer has a duty to co-operate with another to bring a transaction to a satisfactory conclusion and in particular;

- To reply promptly to correspondence and telephone calls
- To prepare documents and forward them to the other conveyancer in sufficient time for the other conveyancer to have them signed and stamped as necessary
- To prepare settlement statements and forward them to the other conveyancer in sufficient time for the other conveyancer to deal with them and arrange cheques for settlement.

## **5.1 Communications**

A conveyancer, in all of the conveyancer's dealings with other conveyancers or solicitors, must take all reasonable care to maintain the integrity and reputation of the conveyancing profession by ensuring that the conveyancer's communications are courteous and that the conveyancer avoids offensive or provocative language or conduct.

## **5.2 Undertakings**

A conveyancer who, in the course of the conveyancer's practice, communicates with another conveyancer or solicitor orally, or in writing, in terms which expressly, or by necessary implication, constitute an undertaking on the part of the conveyancer, to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the other conveyancer or solicitor will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised, or, if no precise time limit is specified, within a reasonable time.

A conveyancer must not give to another conveyancer or solicitor an undertaking compliance with which requires the co-operation of a third party, who is not a party to the undertaking, and whose co-operation cannot be guaranteed by the conveyancer.

A conveyancer must not, in the course of the conveyancer's practice, seek from another conveyancer or solicitor or that conveyancer's or solicitor's employee, an undertaking, compliance with which would require the co-operation of a third party who is not a party to the undertaking, and whose co-operation could not be guaranteed by the conveyancer, solicitor or employee asked to give the undertaking.

## **5.3 Communicating with another conveyancer's client**

A conveyancer who is acting on behalf of a party in any conveyancing transaction must not communicate directly with any other party for whom, to the conveyancer's knowledge, another conveyancer or solicitor is currently acting, unless—

- notice of the conveyancer's intention to communicate with the other party, in default of a reply from the other conveyancer or solicitor, has been given to that conveyancer or solicitor, who has failed, after a reasonable time, to reply;
- the communication is made for the sole purpose of informing the other party that the conveyancer has been unable to obtain a reply from that party's conveyancer or solicitor, and requests that party to contact the conveyancer or solicitor; and
- the conveyancer, thereafter, notifies the other conveyancer or solicitor of the communication.

A conveyancer who receives notice from another conveyancer or solicitor that the conveyancer's client has instructed or retained that conveyancer or solicitor may, after notifying the other conveyancer or solicitor, communicate with the former client for the purpose of confirming the client's instructions and arranging for the orderly transfer of the client's affairs to the other conveyancer or solicitor.

## **5.4 Place of settlement**

A conveyancer when dealing with other conveyancers or solicitors for the purpose of determining the place of settlement of a conveyancing transaction must comply with the following rules:

- When the settlement involves the completion of a sale of real property and the agreement for sale stipulates the place of settlement, then settlement must occur at that place unless the parties otherwise agree.
- If the parties to a conveyancing transaction agree on a place for settlement of the transaction then settlement must occur at that place.
- In the absence of agreement, and subject to the following clause settlement of a conveyancing transaction must occur at the place where the documents of title to the relevant property are held or at a place nominated by the party presently entitled to the possession of the title documents or the conveyancer or solicitor for that party.

In the absence of a contrary agreement by the parties and if the conveyancer or solicitor acting for the purchaser in the relevant transaction so requires, settlement must occur at the Land Titles Office in Sydney provided that the purchaser pays the additional costs, if any, which are reasonably incurred by the vendor, or another party holding the title documents, because they have attended at the Land Titles Office.

When two or more transactions are to be settled at the same time the place of settlement must be determined by applying the above clauses to the last transaction, the completion of which depends upon the receipt of money from an earlier transaction.

For the purposes of this Rule "conveyancing transaction" means a transaction in which an interest in real property is conveyed or surrendered and includes a sale and purchase, a mortgage, or discharge of mortgage.

## **6. Relations with third parties**

### **Generally:**

A conveyancer has an obligation to co-operate with and assist, wherever possible, others involved in the conveyancing process such as professionals, experts, finance providers, government departments and real estate agents.

In acting for clients a conveyancer must accept responsibility for attending to the reasonable requirements of finance providers.

A conveyancer will comply with the reasonable requirements of government offices and public authorities.

## **6.1 Contracting for services**

A conveyancer who deals with a third party on behalf of a client for the purpose of obtaining some service in respect of the client's business, must inform the third party when the service is requested, that the conveyancer will accept cliental liability for payment of the fees to be charged for the service or, if the conveyancer is not to accept cliental liability, the conveyancer must inform the third party of the arrangements intended to be made for payment of the fees. Provided that if the conveyancer deals with the third party on a regular basis then the third party need only be advised on one occasion if it is to be a standing arrangement.

## **6.2 Undertakings**

A conveyancer who, in the course of providing services to a client, and for the purposes of the client's business, communicates with a third party orally, or in writing, in terms which, expressly, or by necessary implication, constitute an undertaking on the part of the conveyancer to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the third party will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised (if any) or within a reasonable time.

## **6.3 Communications**

A conveyancer must not, in any communication with another person on behalf of a client:

- represent to that person that anything is true which the conveyancer knows, or reasonably believes, is untrue; or
- make any statement that is calculated to mislead or intimidate the other person, and which grossly exceeds the legitimate assertion of the rights or entitlement of the conveyancer's client;

# **7. Conveyancing Practice**

## **7.1 Sharing of premises**

If a conveyancer conducts the conveyancer's practice in circumstances in which the conveyancer shares premises, services or other facilities with other conveyancers or service providers not otherwise associated with the conveyancer's practice, the conveyancer must maintain clients' files and records securely and separately from those of any other occupants of the shared accommodation.

## **7.2 Conducting a branch office**

A conveyancer must exercise effective control of each office maintained by the conveyancer for the purpose of conducting the conveyancer's practice and, in particular, the conveyancer must ensure that at each office:

- (a) the conveyancer or a partner of the conveyancer or an appointed conveyancer supervises adequately, the work done and the conveyancing services provided;
- (b) all work undertaken and all communications received are given prompt attention; and
- (c) the qualifications and status of the employees engaged in the conveyancer's practice are represented accurately to any clients who have dealings with the conveyancer's practice.

The conduct of any branch office must be done in compliance with the appropriate sections of the Conveyancers Licensing Act 2003.

## **8 Conveyancers Licensing Regulation 2006**

Conveyancers must comply with the “Rules of Conduct” as set out in Schedule 3 of the Conveyancers Licensing Regulation 2006 a copy of which is attached. If a later edition of the Conveyancers Licensing Regulation 2006 comes into force then any “Rules of Conduct” contained in that edition are deemed to be attached.

The Conveyancers Licensing Act 2003 and the Conveyancers Licensing Regulation 2006 override any clause in these rules that may conflict with the subject Act or Regulation.

# Conveyancers Licensing Regulation 2006

---

## Schedule 3 Rules of conduct

(Clause 8)

### **1 Knowledge of Act and this Regulation**

A licensee must have a knowledge and understanding of the Act and this Regulation, and such other laws as may be necessary to enable the licensee to exercise his or her functions as a conveyancer lawfully.

### **2 Honesty, fairness and professionalism**

- (1) A licensee must act honestly, fairly and professionally with all parties in a transaction.
- (2) A licensee must not misinform or otherwise mislead or deceive any parties in negotiations or a transaction.

### **3 Skill, care and diligence**

A licensee must exercise reasonable skill, care and diligence.

### **4 Fiduciary obligations**

A licensee must comply with the fiduciary obligations arising from the licensee's activities as a conveyancer.

### **5 To undertake only work within competence**

A licensee must not accept instructions to act as a conveyancer unless the licensee is competent to perform the conveyancing work concerned.

### **6 To perform work promptly**

A licensee must only accept instructions to act as a conveyancer if he or she reasonably expects to be able to carry out the conveyancing work concerned reasonably promptly.

### **7 To act in client's best interests**

A licensee must act in the client's best interest at all times unless it would be contrary to the Act or this Regulation or otherwise unlawful to do so.

### **8 To communicate regularly with client**

A licensee must communicate regularly with a client to ensure that the client is kept up to date with the progress of the client's matter.

### **9 To act in accordance with client's instructions**

A licensee must act in accordance with a client's instructions unless it would be contrary to the Act or this Regulation or otherwise unlawful to do so.

## **10 To confirm client's oral instructions in writing**

A licensee must ensure that oral instructions (other than those of a trivial nature) received from a client are confirmed with the client in writing as soon as possible after they are received.

## **11 Conflicts of interest**

A licensee must not accept instructions to act, or continue to act, as a conveyancer for a client if doing so would place the licensee's interests in conflict with the client's interests.

## **12 Acting for more than one party to a transaction**

- (1) A licensee may only act for more than one party to a transaction if the licensee discloses in writing to each party that the licensee is intending to act for the others, and each party consents in writing to the licensee so acting.
- (2) If a licensee who is acting for more than one party cannot continue to act for all of the parties without acting in a manner contrary to the interests of one or more of them, the licensee must cease to act for all of the parties.
- (3) The disclosure referred to in subclause (1) must indicate that, as a consequence of acting for more than one party to the transaction:
  - (a) the licensee may be prevented from:
    - (i) disclosing to each party all information within the licensee's knowledge that is relevant to the transaction, and
    - (ii) giving advice to one party that is contrary to the interests of the other, and
  - (b) the licensee will cease to act for all parties if the licensee would, otherwise, be obliged to act in a manner contrary to the interests of one or more of them.

## **13 Confidentiality**

A licensee must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client unless:

- (a) the client authorises disclosure, or
- (b) the licensee is permitted or compelled by law to disclose the information.

## **14 Noting of instructions, enquiries and telephone conversations**

- (1) A licensee must make a written record of the following communications (other than those of a trivial nature):
  - (a) all instructions received from the licensee's clients and advice given,
  - (b) all telephone conversations made or received in connection with conveyancing work,
  - (c) all enquiries made in connection with conveyancing work and responses given.
- (2) The record must be in the form of a file note and be kept on the file of the client to whom the conveyancing work relates.
- (3) The record must be retained for at least six years after it is made.
- (4) A record required to be kept under this rule may be maintained in electronic form, provided it can be produced in a permanent legible form in the English language.

## 15 Referral to service provider

- (1) A licensee who refers a client or prospective client to a service provider must not falsely represent to the client or prospective client that the service provider is independent of the licensee.
- (2) A service provider is considered to be *independent* of a licensee if:
  - (a) the licensee receives no rebate, discount, commission or benefit for referring a client or customer to the service provider, and
  - (b) the licensee does not have a personal or commercial relationship with the service provider.
- (3) The following are examples of a personal or commercial relationship:
  - (a) a family relationship,
  - (b) a business relationship,
  - (c) a fiduciary relationship,
  - (d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.
- (4) If the service provider is not independent of the licensee, the licensee must disclose to the client or prospective client:
  - (a) the nature of any relationship, whether personal or commercial, the licensee has with the service provider, and
  - (b) the nature and value of any rebate, discount, commission or benefit the licensee may receive, or expects to receive, by referring the client or prospective client to the service provider.
- (5) In this rule:

*service provider* means a person who provides a service in relation to a conveyancing transaction (for example, a building inspector, pest inspector, valuer, surveyor, insurer, mortgage originator, mortgage broker or another licensee).

## 16 Inducements

A licensee must not offer to provide to any other person any gift, favour or benefit, whether monetary or otherwise, in order to induce any third person to engage the services of the licensee as conveyancer in respect of any matter.

## 17 Soliciting through false or misleading advertisements or communications

- (1) A licensee must not solicit clients or customers through advertisements or other communications that the licensee knows or should know are false or misleading.
- (2) A licensee must not include any matter (including any statement, slogan or logo) on stationery or business cards used in connection with conveyancing work that the licensee knows or should know is false or misleading.

## 18 Termination of licensee's services

A licensee must complete the conveyancing work in respect of which the licensee has accepted instructions to act for a client unless:

- (a) the licensee and the client have otherwise agreed, or
- (b) the client terminates the services of the licensee, or
- (c) the licensee terminates the provision of services to the client by giving 14 days written notice to the client.

## **19 Transfer of conveyancing work**

If:

- (a) a licensee ceases to act for a client before completing the conveyancing work in respect of which the licensee has accepted instructions to act for a client, and
- (b) the client instructs another licensee or a solicitor to take over the conduct of the client's conveyancing work,

the first-mentioned licensee must, within 14 days after receipt of a direction in writing from the client, deliver to the second-mentioned licensee or the solicitor all relevant documents to which the client is entitled and any information that is necessary for the proper conduct of the client's conveyancing work.

## **20 Transfer of conveyancing business**

- (1) If a licensee intends to transfer the whole or part of the licensee's conveyancing business (including clients' work in progress) to another licensee or a solicitor, the first-mentioned licensee must give each client 14 days written notice of the following:
  - (a) the intended transfer of documents to the licensee or solicitor acquiring the business, unless a contrary direction is received from the client,
  - (b) the client's right to give to the first-mentioned licensee a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.
- (2) If the licensee holds money on behalf of the client in trust, the notice referred to in subclause (1) must also advise the client of the following:
  - (a) the balance of money held on the client's behalf,
  - (b) the licensee's intention to transfer the relevant account to the licensee or solicitor acquiring the business, unless advised by the client to the contrary,
  - (c) the client's right to give to the first-mentioned licensee a contrary direction as to the manner in which the licensee should deal with the account on the client's behalf.
- (3) Nothing in this rule limits the operation of any other legislative provisions applicable to the trust money held by the licensee.

## **21 Conducting another business**

- (1) A licensee who engages in the conduct of another business concurrently with the conduct of the licensee's conveyancing business must ensure the following:
  - (a) that the other business is not of such a nature that the licensee's involvement in it would be likely to impair, or conflict with, the licensee's duties to clients in the conduct of the conveyancing business,
  - (b) that separate and independent files, records and accounts are maintained in respect of the conveyancing business and of the other business,
  - (c) that the licensee ceases to act for a client of the conveyancing business if the licensee's interest in the other business is likely to conflict with the client's interests.
- (2) A licensee is taken to be engaged in the conduct of another business if the licensee, or an associate:
  - (a) is entitled, at law or in equity, to an interest in the assets of the business which is significant or of relatively substantial value, or
  - (b) exercises any material control over the conduct and operation of the business, or
  - (c) has an entitlement to a share of the income of the business which is substantial, having regard to the total income which is derived from the business.

## 22 Independence of licensee advising on loan or security documents

- (1) A licensee must provide competent, independent and disinterested advice in advising a proposed signatory to documents creating a loan or a security interest (*loan or security documents*).
- (2) The licensee must not act for the lender in the transaction to which the loan or security documents relate.
- (3) The licensee must not advise a proposed signatory to loan or security documents in any circumstances where the interests of any signatory or proposed signatory to the documents conflict with those of the licensee or with those of any other client of the licensee.

## 23 Advising proposed signatories on loan or security documents

- (1) A licensee must advise a proposed signatory to documents creating a loan or security interest (*loan or security documents*) of those matters that the licensee, in exercising the professional skill and judgment called for in the circumstances of the particular case, considers appropriate.
- (2) Without limiting the generality of subclause (1), when advising a proposed signatory who is to be a borrower or a security provider referred to as a borrower in loan or security documents (*the borrower*), the licensee must, where applicable, advise the borrower of the following:
  - (a) that by signing the documents the borrower will be liable for regular payments of interest and repayment of the amount of the loan at the due date,
  - (b) that if the borrower fails to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure,
  - (c) that if the borrower fails to comply with any of the terms and conditions of the loan including the obligations to pay principal or interest:
    - (i) the lender can sue the borrower personally, and
    - (ii) the lender may take possession of the borrower's property and, after notice, sell it to recover the amount owing together with interest and other costs including conveyancer's costs, the costs of selling the property and the costs of maintaining the property, and
    - (iii) if the proceeds of sale of the borrower's property are insufficient to satisfy the debt to the lender, the lender can sue the borrower for the deficit,
  - (d) that if the *Consumer Credit (New South Wales) Code* applies, additional obligations, rights and remedies may apply as set out in the loan documents.
- (3) A licensee giving independent advice to a proposed borrower must obtain the borrower's written acknowledgment of the independent advice.
- (4) Without limiting the generality of subclause (1), when advising a proposed signatory who is to be a third party mortgagor, guarantor, surety mortgagor or indemnifier providing security for the borrower (*the guarantor*), the licensee must, where applicable, advise the guarantor of the following:
  - (a) that if the borrower fails to make any payment on time, the guarantor will be liable to remedy that failure, and that could involve the guarantor in payment to the lender of all amounts owed by the borrower to the lender including principal, interest, default interest and the lender's costs of rectifying the default,
  - (b) that if the guarantor fails to remedy any failure by the borrower to comply with the terms and conditions of the loan in any way, including the obligation to pay principal, interest, default interest, or other charges:
    - (i) the lender can sue the guarantor personally, and
    - (ii) the lender can take possession of the guarantor's property secured to the lender and, after notice, sell it to recover the amount owing together with interest and

- other costs including conveyancer's costs, the costs of selling the property and the costs of maintaining the property, and
- (iii) if the proceeds of sale of the guarantor's property are insufficient to satisfy the debt to the lender, the lender can sue the guarantor for the deficit,
  - (c) if the guarantor is a proposed signatory to documents under which the guarantor's liability can be increased, of that fact and the extent of the possible increase, and of any restriction or limitation of the guarantor's rights or obligations in relation to the security and any other party to the documents,
  - (d) that the lender can exercise the lender's rights against the guarantor even if the lender has not pursued the borrower,
  - (e) that the liability of the guarantor is limited to a specified sum, or is unlimited (whichever is the case) and may be affected by cross guarantees,
  - (f) that if the *Consumer Credit (New South Wales) Code* applies, additional obligations, rights and remedies may apply as set out in the loan documents.
- (5) A licensee giving independent advice to a proposed guarantor must obtain the guarantor's written acknowledgment of the independent advice.
- (6) In any case, a licensee advising a proposed signatory (whether a proposed borrower or a proposed guarantor) must advise the proposed signatory of the following:
- (a) that the licensee does not profess any qualification to give financial advice,
  - (b) that if the proposed signatory has any questions about any financial aspect of the transaction or the loan or security documents, the proposed signatory should consult an accountant or other financial counsellor of the proposed signatory's choice before signing the documents.

**This document headed "Conveyancer's Rules" is and shall remain the property of the Australian Institute of Conveyancers New South Wales Division Limited and shall not be amended, varied or modified without the permission of the Australian Institute of Conveyancers New South Wales Division Limited.**