



Australian RMBS Minimum Representations & Warranties Standard ASF100.60

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Revision History

Version	Issue Date	Description	Author
1.01	18 July 2011	Initial draft	Chris Dalton, ASF
1.02	9 August 2011	Amend consistency of description of each category	Chris Dalton, ASF
1.03	19 September 2011	Revision following review by APRA	Chris Dalton, ASF
1.04	4 October 2011	Final revisions from working group	Chris Dalton, ASF

Reference Documents

Title	Date	Organisation
Australian Securitisation Standards 100.10, 100.20, 100.30 & 100.50	July 2010	ASF

1. Overview

The purpose of this Standard is to outline the principles of a minimum set of representations and warranties to be given by a seller of residential mortgage loans to the purchaser of those residential mortgage loans and other persons where the purchase is funded via a securitisation transaction involving the issue of residential mortgage-backed securities (RMBS).

The Standard describes the principle that should be addressed in each representation or warranty and is not intended to prescribe the exact wording to convey the representation or warranty. Further it is intended to provide a minimum and common set of principles contained in an Australian RMBS transaction. It can be expected that some issuers and their legal advisors may wish to provide both additional or more comprehensive representations and warranties, as they see fit.

This Standard assumes that the seller of residential mortgage loans is not the same person as the purchaser of the residential mortgage loans and that the legal title to the residential mortgage loans will remain with the seller after completion of the sale of the residential mortgage loans to the purchaser. The representations and warranties are to be given at the time of specified under each category, as of the cut-off date of the pool, and it is not intended that they be repeated after closing which may contravene APS120 where the seller is an ADI.

This Standard was developed by the Australian Securitisation Forum in response to, among other things, the *Final Report – Unregulated Financial Markets and Products* of The Technical Committee of the International Organization of Securities Commissions (September 2009) and in consultation with the Australian Securities and Investments Commission.

The Standard is consistent with other ASF Standards, specifically the RMBS Reporting Standards (ASF100.10, ASF100.20, ASF100.30, and ASF100.50). The ASF expects to have this Standard reviewed on at least an annual basis or as judged necessary by changes in market practices.

Under Prudential Standard APS 120 – Securitisation (APS 120), it is the responsibility of each ADI to assess its involvement in securitisation and perform a self-assessment against the requirements. The requirements in APS 120 Attachment E cover the provision of representation and warranties by the ADI in respect of its involvement in securitisations. Additional information on APRA's views of representations and warranties is provided by Prudential Practice Guide APG 120-Securitisation (APG 120). Our expectation is that each ADI providing any representation and warranty under ASF 100.40 will need to assess the compliance of the particular representations and warranties it is entering into and it should not be presumed that because they comply with the ASF standard that they would also automatically comply with the requirements of APS 120.

2. RMBS Standard – Representations & Warranties

A. CORPORATE REPRESENTATIONS AND WARRANTIES BY THE SELLER

Each of the Corporate representations and warranties listed below should be given by the seller as of the time of entry into the transaction documents and as of the closing date specified in a sale notice in respect of the receivables and related securities being offered by the seller.

1. The seller's obligations under the transaction documents to which it is expressed to be a party constitute its valid and binding obligations and, subject to any necessary stamping and registration, are enforceable against it in accordance with their terms subject to laws relating to insolvency and generally affecting creditors' rights and subject to principles of equity.
2. The seller has taken all necessary corporate and other action to authorise the execution and delivery, and the performance of its obligations under, the transaction documents to which it is expressed to be a party.
3. The Seller is not subject to any insolvency event.
4. The seller has the power and authority to enter into and perform its obligations under the transaction documents to which it is expressed to be a party.
5. The execution and delivery by the seller of, and the performance by the seller of its obligations under, the transaction documents to which it is expressed to be a party will not breach or result in a contravention of its constitution or other constituent documents, any law, regulation or authorisation, or any security interest, document or agreement which is binding on it or any of its assets.
6. The seller is properly incorporated or registered (or taken to be registered) as a corporation and is validly existing under the applicable companies law in its jurisdiction of incorporation or registration.

B. ASSET OWNERSHIP AND SALE REPRESENTATIONS AND WARRANTIES BY THE SELLER

Each of the Asset Ownership and Sale representations and warranties listed below should be given by the seller as of the cut-off date specified in the transaction documents and referable to the receivables and related securities being offered by the seller.

1. The seller is the sole legal and beneficial owner of the receivables and related securities being offered under the sale notice given by the seller to the buyer.

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2. Upon assignment of the receivables and related securities being offered under the sale notice given by the seller to the buyer, the receivables and related securities will be free and clear of any security interest granted by the seller over the receivables and related securities¹.
 3. The receivables and related securities being offered under the sale notice given by the seller to the buyer satisfy the eligibility criteria.
 4. The receivables and related securities are not subject to any right of rescission, set off, counterclaim or similar defence by the obligor of the receivables and related securities against the seller.
 5. None of the receivables being offered under the sale notice given by the seller to the buyer has been satisfied in full, cancelled, released, discharged or rescinded.
 6. All stamp duties, other taxes and statutory fees in respect of the receivables and related securities being offered under the sale notice given by the seller to the buyer that are required to be paid have been paid, or will be paid, within applicable time limits².
 7. The receivables and related securities being offered under the sale notice given by the seller to the buyer constitute legal, valid and binding obligations of the obligor enforceable against the obligor in accordance with their terms.
 8. Except in respect of a receivable subject to a fixed rate of interest and except as may be provided by applicable laws, any agreement binding on the seller, any provision binding on the seller³, or by any order of a court or by any order of a competent authority⁴, the interest rate applicable to each receivable being offered under the sale notice given by the seller to the buyer may be varied at the sole discretion of the seller and no consent is required from the obligor of that receivable to give effect to any such variation.
 9. The receivables agreements in respect of the receivables and related securities being offered under the sale notice given by the seller to the buyer are:
 - a. to the extent that they comprise title documents, complete, accurate and up-to-date in all material respects;
 - b. in compliance with all applicable laws;
 - c. in the possession or control of the seller to the extent necessary to enforce the receivables and related securities; and
 - d. contain all the terms of the receivables and receivables rights.

¹Note that (i) the closing of the sale may not coincide with acceptance of the sale notice and (ii) this rep is not intended to, and should be drafted so that it does not, impact on any trust-back assets.

² This is to address that any payment of taxes and fees will be done within any prescribed time limits.

³ The reference to a provision binding on the seller is intended to pick up voluntary codes to which the seller has elected to adopt, such as the Code of Banking Practice and the equivalent applying to mutuals.

⁴ The reference to competent authority is intended to pick up authorities which are not courts, such as ombudsmen and tribunals.

C. ASSIGNMENT OF ASSET REPRESENTATIONS AND WARRANTIES BY THE SELLER

Each of the Assignment of Asset representations and warranties listed below should be given by the seller as of the cut-off date specified in the transaction documents and referable to the receivables and related securities being offered by the seller.

1. All consents required for the assignment of the receivables and related securities specified in the sale notice given by the seller to the buyer have been obtained.
2. The seller is entitled, under the receivables agreements relating to the receivables and related securities offered under the sale notice given by the seller to the buyer, to assign its right, title and interest in and to those receivables and related securities.

D. ASSET ORIGINATION REPRESENTATIONS AND WARRANTIES BY THE SELLER

Each of the Asset Origination representations and warranties listed below should be given by the seller as of the cut-off date specified in the transaction documents and referable to the receivables and related securities being offered by the seller.

1. At the time the receivables and related securities being offered under the sale notice given by the seller to the buyer were originated, the seller was not aware of and had not received any notice that the obligor was insolvent or bankrupt or that the obligor did not have legal capacity to enter into receivable and related security.
2. At the time the receivables and related securities being offered under the sale notice given by the seller to the buyer were originated, each was originated by the seller in all material respects in accordance with all applicable laws
3. At the time the receivables and related securities being offered under the sale notice given by the seller to the buyer were originated, each was originated by the seller in the ordinary course of the seller's business.

3. Terminology

Capitalised terms used throughout this document are set out below:

Term	Definition
ADI	Approved Deposit taking Institution
APS120	Prudential Standard APS 120 Securitisation
ASF	Australian Securitisation Forum
RMBS	residential mortgage-backed security
Seller	Party selling or transferring mortgage loan receivables to a securitisation trust