



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

Guidance note

Code of conduct for agents and sales representatives

Client identification verification and real estate fraud prevention

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DISCLAIMER

The information provided in this publication should not be taken as a statement of law for which you should refer to the *Real Estate and Business Agents Act 1978*; the *Real Estate and Business Agents (General) Regulations 1979*; and the *Code of Conduct for Agents and Sales Representatives*.

LEGAL ADVICE

The Department of Commerce strongly recommends that you seek legal advice of a competent experienced lawyer who practices in this area if you are uncertain about your obligations under the Act, the Regulations or the Code of Conduct.

This publication is available on request in other formats to assist people with special needs.

Introduction

Identity fraud and scams are increasingly prevalent throughout the community, and the property industry is not immune to falling victim to such events.

Two highly publicised incidents in September 2010 and March/April 2011 resulted in properties being sold in Western Australia without the knowledge and consent of the lawful property owners.

These sales were undertaken by real estate agents who were contacted by criminals masquerading as the true owners.

How the fraud commenced

In both cases:

- the properties were tenanted and being managed by a real estate agent on behalf of the registered proprietor, prior to a fraudulent request being made to sell the property;
- contact with the agent by the fraudsters was made by telephone in addition to other forms of contact; and
- the person masquerading as the owner notified the agent of new contact details which formed the basis of future contacts.

In the most recent case, one form of identification (unprompted) was also provided to the real estate agent.

These events highlight how easily a fraud can commence and emphasise that in exercising due care and diligence, agents need to be on high alert for potential fraudulent real estate transactions.

The need to remain vigilant in other circumstances

In the two previous fraud cases the real owner of the property was overseas when the fraud was committed.

It is not necessarily the case that any future property fraud attempts will occur along the same lines as the two recent cases.

For example, it may not always be the case that a fraudster is out of the state, but instead approaches an agent in person requesting the sale of a property. It may even be that the property to be sold is currently occupied by a person who masquerades as the owner, or alternatively the property for sale is vacant land.

A further possibility, and more probable, is that the person wanting to sell the property is a party to either a family/business dispute or fraud and has inside knowledge of the registered proprietors.

For all of these reasons it is imperative that:

1. When selling a property an agent confirms he/she is dealing with the legal proprietor as shown on the certificate of title, or the person legally entitled to sell the property.
2. At all times when dealing with a client, a real estate agent is vigilant to ensure they are dealing (and continue to deal) only with the true owner or the person legally entitled to sell the property.
3. Documented procedures are in place and are consistently applied to ensure verification of identities for all sales.
4. Appropriate arrangements are in place to ensure security of documents and privacy of clients' information.

What is being done to minimise the risk of property fraud?

Action is being taken on several fronts.

1. Amendments have been made to the Statutory Codes of Conduct for real estate agents (and settlement agents) to require Client Identity Verification (CIV) to be undertaken.
2. Changes have been implemented by Landgate to improve identity security through new witnessing and CIV requirements for overseas sellers in the execution of transfer of land documents. A new form of caveat to prevent improper dealings has also been introduced.
3. All lenders have also been alerted to ensure careful scrutiny before releasing mortgages over Certificates of Title.
4. In 2012, client identity verification and other procedures to manage fraud risks will be included as part of mandatory Compulsory Professional Development (CPD) training.

Amended Code of Conduct

To minimise the risk of successful property fraud, the Code of Conduct for Agents and Sales Representatives (the Code) has been amended effective from **1 November 2011**.

Please note that because two new articles have been added for citation and commencement, the numbering of the previous Articles has changed. Titles have also been added for each Article.

Article 9 of the Code (previously Article 7) has been slightly amended to require agents to exercise **due** skill, care and diligence. The insertion of 'due' indicates that the standard of conduct required is one that is sufficient to fulfil an agent's duty to their client.

As a general practice, given recent events agents should exercise due skill, care and diligence in taking measures to reduce the risks of identity fraud, to ensure documents are carefully evaluated and procedures are in place and applied to safeguard transactions.

Article 10(3) (previously Article 8(3)) has been amended to include that agents refer to the Certificate of Title that is obtained for the names of the registered proprietor of the property.

A new article has also been included in the Code. Under new Article 10(4), as soon as practicable after receiving instructions to act in the sale of a property and prior to executing a sale contract, an agent must make all reasonable efforts to verify the identity of each person who claims to be (or act for) the owner(s), and their authority to dispose of the property.

These Notes are a guide to assist agents in their compliance with the amended Code, however are not exhaustive.

Guidance Note 1:
When selling a property, confirm that dealings are with the <u>true</u> owner(s) of the property (ie the registered proprietors on the Certificate of Title at Landgate) or their properly appointed representative.

To ensure an agent is dealing with the true owner or their properly appointed representative when selling a property there are three key elements:

1. Verify the names of the registered owner(s) of the property

The requirement for agents to promptly obtain a copy of the Certificate of Title for the property still applies under the Code.

Once a current copy of the Certificate of Title is obtained from Landgate, the Code states that agents refer to that copy for the name(s) of the registered proprietor. Agents should continue to note and attend to other material issues revealed on the title.

2. Verify the names of the person(s) entitled to deal on behalf of the owner

There will be cases where the person with a legal right to sell the property may not be the registered owner. These would include but are not limited to: the holder of a Power of Attorney or Enduring Power of Attorney, an executor, a mortgagee in possession or a person with an appropriate Court order.

In this situation, the original or a copy that has been certified as a true copy of the document conferring the authority to act on behalf of the current registered owner must be obtained, and where possible, confirm with the current registered owner that the person is authorised to act on their behalf.

3. Confirm that each of the person(s) representing themselves as the owner(s) or their properly appointed representatives, are who they say they are

This will be through confirming the identity of each of the owners or the person or persons with the legal right to sell a property via a 100 point CIV. The methodology associated with this process is at Attachment 1.

The 100 point CIV should be undertaken face-to-face as the standard practice. In carrying out such checks, agents should sight original documents to verify identity wherever possible.

If the person, or persons, are not directly accessible to the agent to enable face-to-face CIV, ensure that the documents used by the person or persons to meet the 100 point CIV check are sighted and verified as a true copy of the original, by a suitable independent and verifiable witness.¹

If agents deviate from this method, then the onus will be on them to prove they have taken and documented reasonable steps to confirm the person's identity.

If a document is signed on behalf of a company, the identity of the signatories such as the company director or secretary should be established by obtaining a current company search at the Australian Securities and Investments Commission (ASIC) and conducting a 100 point ID check in respect of the officers who sign on behalf of the company.

Agents should retain copies of all documents obtained in the process of verifying identities and in verifying the authority of a person to act in the sale of the property.

¹ The Oaths, Affidavits and Statutory Declarations Act 2005 lists various occupations/professions available for witnessing purposes – some of these include a Justice of the Peace, doctor, police officer, Australia Post branch managers, pharmacist.

Guidance Note 2:

At all times agents should be vigilant to ensure they are dealing (and continue to deal) with the registered proprietor on the Certificate of Title at Landgate, or their properly appointed representative.

While identity checks are one tool to detect fraud other measures are necessary.

The two successful frauds (and a previous unsuccessful attempt) highlight the need to be very careful when approached by someone representing themselves as a current client of the agency – particularly someone for whom you have a property management agreement.

Agents should be especially vigilant if the client is overseas or remote, or if dealings with that person are not face-to-face.

Actions a prudent agent should take include:

- Pre-establish security questions with confirmed owners that only the owner will be able to answer and which are asked for at every material contact.
- Correspond only to addresses (postal or electronic) held on file, which are already known to be genuine.
- If an owner changes their contact details, confirm new contact details and addresses by corresponding with all of the owner's original and new contact points.
- Seek original rather than facsimile or scanned/PDF signatures.
- Carefully check signatures of property owners against original signatures on file and on the transfer of land document. Any major differences should prompt further investigation.
- If doubts about the authenticity of a document arise:
 - seek to have it independently verified by the issuing authority;
 - contact the police; and
 - do not act if doubts remain.
- When replying to an e-mail, type in the known genuine email address from agency files rather than simply clicking on the 'reply' button – an email received may have a hidden address embedded in it.
- During the course of providing customer service do not inadvertently disclose information or documents such as signatures that might be misused.

Warning signs of a possible fraud that a real estate agent should be alert to, include:

- Recent change in address or other contact details which have not been provided until instructions to sell a property are received.
- The transaction involves people located, or documents issued, overseas, especially from countries known for scams.
- There is a request for funds to be sent to a different bank account to that normally used by the client - including but not limited to offshore accounts.
- Advice is received that the sale is urgent, for example: because of an overseas investment opportunity.
- New email addresses being used are generic such as hotmail, yahoo or gmail.
- Communication is not the usual style used by the owner or English may be uncharacteristically poor.
- Witnesses are listed as 'Notary Public', especially if residing in a different country to where the owner lives.
- Comments by the 'seller' that if this sale is successful, future work will be provided to the agent.

Guidance Note 3:

Documented procedures are in place to ensure verification of identities for all sales, security of documents and the privacy of your clients.

It is expected that agents will have documented processes and procedures to ensure the requirements of the Code relating to CIV are met.

Some form of periodic internal cross checking to confirm that these procedures are being routinely applied should also be undertaken and it is advisable to record these processes. Proactive reviews of agents by the Department of Commerce (Consumer Protection Division) will include checks to ensure that appropriate CIV processes are in place and are being adhered to by agents.

Some of the information collected about clients to confirm identities may be personal information.

The National Privacy Principles enacted under the Commonwealth Privacy Act 1988 will be applicable to some agents and for others the principles provide guidance on the issues which agents should consider in collecting and managing client information.

Agents may obtain further details from the Office of the Australian Information Commissioner about the Privacy Act 1988 implications associated with the collection of personal information of clients.

As copies of identification documents will be held by the agent, appropriate security for this information should be in place.

Consumer Protection encourages agents to ensure that they have implemented within their businesses, appropriate data management policies and systems so as to enable the collection, storage, security and disposal of sensitive client information in compliance with the National Privacy Principles.

www.oaic.gov.au/publications/index.html

Schedule: Documents from which the 100 point identity check may be undertaken

<p>Primary Documents</p> <ul style="list-style-type: none"> • Birth Certificate or Extract • Citizenship Certificate • International Travel Document <ul style="list-style-type: none"> • a current passport • expired passport which has not been cancelled and was current within the preceding 2 years • other document of identity having the same characteristics as a passport (e.g. this may include some diplomatic documents and some documents issued to refugees) <p><i>Note: Do not score additional points for more than one document in this category.</i></p>	<p>70 Points</p>
<p>Name of person verified from one of the following (but only where they contain a photograph or signature that can be matched).</p> <ul style="list-style-type: none"> • A licence or permit issued under law of the Commonwealth, a State or Territory (e.g. an Australian driver's licence) • An identification card issued to a public employee • An identification card issued by the Commonwealth, State or Territory as evidence of the person's entitlement to financial benefit • An identification card issued to a student at a tertiary education institution <p><i>Note: Additional documents can be awarded 25 points.</i></p>	<p>40 Points for first document from this category.</p> <p>25 Points for additional document/s from this category.</p>
<p>Name and address of person verified from any of the following:</p> <ul style="list-style-type: none"> • A current employer, or a previous employer within the last 2 years • A rating authority (e.g. land rates) • The Credit Reference Association of Australia (subject to the Privacy Act 1988) • Land Titles Office Records 	<p>35 Points</p>

<p>Name, address and telephone number verified:</p> <ul style="list-style-type: none"> • By reference to the latest telephone directory published by Telstra or by advice provided by Telstra. • By telephone contact with the signatory on that telephone number. 	<p>25 Points</p>
<p>Name of person verified from any other secondary identification document.</p> <ul style="list-style-type: none"> • eg marriage certificate (for maiden name only), credit card, council rates, telephone account, foreign driver's licence, Medicare card etc. <p><i>Note: More than one document may be counted, but points scored from a particular source may be counted only once. eg If MasterCard and Visa Card issued from the same financial institution, only one may be counted.</i></p>	<p>25 Points</p>
<p>Name and address of the person verified from any of the following:</p> <ul style="list-style-type: none"> • The records of a public utility • A record held under a law other than a law relating to land titles (for which see No.3) 	<p>25 Points</p>
<p>Name and date of birth of person verified from any of the following:</p> <ul style="list-style-type: none"> • The records of a primary, secondary or tertiary education institution attended by the signatory within the last 10 years • The records of a professional or trade association of which the signatory is a member 	<p>25 Points</p>

Department of Commerce

Consumer Protection Division

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(for the cost of a local call statewide)

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