Mandatory CPD 2012

Risk Management

Real Estate Agents and Business Brokers

Distance Learning Participant Manual
IMPORTANT

This workbook and the accompanying questions have been prepared by REIWA for educational purposes only, as part of the Department of Commerce Compulsory Professional Development Program.

It is not, and should not be construed as, legal advice.

Any person in doubt as to their legal rights and obligations should seek the advice of a suitably qualified and competent legal practitioner.

Copyright

© 2012. Department of Commerce WA

All rights reserved. This training resource manual has been developed and produced through a collaborative approach with key stakeholders within the Real Estate Industry. This work is copyright, and as such no part of this publication may be reproduced, transmitted or stored in a retrieval system, in any form or by any means, without prior written permission of the copyright holder.

Published by: Department of Commerce
Developed by: REIWA Learning
Reviewed by: Department of Commerce and REIWA Learning
First Published: May 2012
Version Number: 1
Contents - Risk Management:

1. Welcome to Mandatory CPD for 2012

2. Introduction

3. Prevention and detection of real estate property fraud
   a. Changes to Code of Conduct
   b. Warning signs of fraud
   c. Identification of clients

4. Privacy and security of client identity documents

5. Landgate Interest Register

6. Smoke alarms and residual current devices (RCDs)
Welcome to Mandatory CPD for 2012

Welcome to the Compulsory Professional Development (CPD) program for 2012.

The purpose of the CPD program is to assist industry members in updating and developing their knowledge and skills in the areas of industry practice and legislative requirements.

The Commissioner for Consumer Protection has determined the subject matter for all mandatory sessions in 2012.

The subject to be covered in this session is:

Risk Management focusing on:
- Prevention/detection of real estate property fraud
- Privacy and security of client identity documents
- Landgate Interest Register
- Smoke alarms and residual current devices (RCDs)

Any questions arising out of this training may be addressed to the Department of Commerce on 1300 30 40 54.
Real estate property fraud - warning signs

Introduction

Identity fraud is increasingly prevalent in the market we work in.

The residential property industry scams of the past two years have been some of the most high profile frauds in WA memory, in any industry.

Both of these cases involved properties allegedly being sold without the knowledge and consent of the lawful property owners, by agents who had been entrusted with the management of the property.

The real estate agents were deceived by criminals impersonating the true owners.

Overview of how the frauds occurred

In both cases:

- the properties were tenanted and being managed by a real estate agency;
- criminals contacted the agency by telephone and email;
- a person impersonating the owner notified the agent of new contact details that were not cross checked with existing agency records;
- a fraudulent request was made to sell the property;
- buyers were found quickly due to a reasonable price being asked;
- the sale contract was entered into;
- the criminals masquerading as the owners became clients of settlement agents;
- the sale was completed;
- the funds were transferred to overseas bank accounts that did not match bank accounts on record for the clients;
- Landgate processed the title transfers well after the funds had been transferred offshore and were not retrievable.

These events highlight how easily fraud can happen.

To be seen to have exercised due care and diligence, agents need to be on high alert for potential fraud.
Initial responses to these scams:

As always in times of crisis there were varied and sometimes emotional responses to these widely publicised incidents:

‘It’s Landgate’s problem’
‘It’s the settlement agent's fault’
‘It’s all down to the real estate agent’
‘It’s a police issue’

Initial responses included shock, defensiveness and criticism of real estate agents, settlement agents, and Landgate.

The police became involved once the fraud was revealed. While the police did not make strong public criticism of the agencies involved, the media had a field day with these stories, and the professionalism of the industry was certainly not enhanced.

On investigation

The full detail of what happened is still under investigation, but it seems that agents involved in these transactions were tricked into co-operating with what turned out to be fraudulent activity.

Some key points that seem not to be disputed include:

- warning signs were missed by each of the responsible parties;
- better systems and processes in the real estate and settlement agencies could have prevented what happened;
- owners need to be able to take measures to better protect themselves;
- by the time Landgate was involved it was too late.

Getting things in perspective

To clarify the extent of the current problem, there were 240,000 title registrations in 2011 in Western Australia. The dollar value of land transfers in WA is between $40 and $50 billion per annum, with mortgages being registered with a value of between $45 and $50 billion per annum.

In spite of this high number of transactions, property fraud is relatively rare in WA. When it does happen it is most often perpetrated by family or close associates.

Nevertheless WA may be becoming an increasingly attractive target for fraudulent activity, given the strong Australian dollar and the number of Australian property owners living overseas. For this reason everyone in the property industry must take fraud prevention seriously!

---

1 Presentation by Bruce Roberts, Registrar of Titles, Landgate (REIWA Members Forum 27 September 2011)
What actually happened in the first case?

The details of these recent cases are of interest to the industry, as we seek to understand how things could have been done differently to safeguard property ownership.

The timeline of events in the first case was as follows:

**August 2009**

A letter was received by the agent managing a Scarborough property. The letter advised the owner was moving overseas, and gave instructions regarding management of the property. It gave the owner’s new address and contact details.

**January 2010**

The agency received a telephone call purporting to be from the owner and an email advising that a property inspection report had been received. The email requested a copy of the tenancy agreement be forwarded to the Gmail address from which the email apparently originated. It said this was needed for a loan. The Gmail address was not the email address held on file with the property’s management instructions.

**March 2010**

The listing authority to sell the property was signed remotely with a signature noticeably different from the signature held on file from previous correspondence.

The property owner’s signature was a flowing, right-slanting script and he always signed his initials. His signature on file used capitals in the traditional way for the initials, for example:

\[ J W \ Property\ man \]

The fraudulent signature was in a more upright handwriting, in all lower case, with some letters not joined and his first and middle names appearing in full i.e.:

\[ john \ wallace \ propertyman \]

**May 2010**

An email was sent by the imposters about providing a copy of the owner’s wife’s death certificate. The email used slightly clumsy English and referred to using the FedEx courier company to send documents to the owner. It gave a false mailing address that did not match the address on record.

**June 2010**

A document witnessed by a Notary Public in Nigeria was received by the agent, apparently from the owner, to authorise the transfer of title. It was again signed with a signature different from the original signatures held on file.

**August 2010**

An email requested funds be deposited into a Bank of China Account. This was not the account used for past rental deposits.
History repeats itself

In the second case a listing authority was signed to sell a property in Ballajura, again under management by the agent approached to sell the property. Again the owners were living overseas when their property was allegedly sold without their knowledge.

A similar case in Sydney was discovered in time because the scammers tried to sell through an agent who was not the managing agent. The managing agent noticed the advertising and contacted the owner, who stopped the process.

Other similarities in the two frauds

While the circumstances relating to the fraudulent dealings in the two WA cases were not identical, there are some striking similarities in both cases.

- Both real estate agents were managing the properties prior to being approached to sell them, so had prior relationships with the real owners.
- The scammers corresponded with the real estate and settlement agents via generic email addresses such as hotmail and yahoo.
- Written English in emails was poor, stilted, and/or not in the style of the original communications from the owner. Some terminology used was not Australian.
- Some documents were signed with signatures similar to the owner’s true signature.
- Other documents had noticeably different signatures from those held on file, which were also different from the owners’ signatures when they purchased the properties.
- Postal addresses used were in Nigeria and did not match addresses on file.
- A Nigerian Notary Public was involved.
- A false death certificate originating in Africa was provided in one case.
- The settlement agency received a referral from the real estate agent.
- Scammers did not appear to understand the WA settlement process, resulting in delays in providing correct documentation and signatures to effect settlement.
- Scammers asked for funds to be deposited into a Bank of China account.
- Scammers said funds were needed urgently to purchase a petrochemical plant.
- There were hints or promises of future business e.g. other properties to be sold.

In summary

- The offender/s operated from South Africa and Nigeria.
- There is limited assistance from the authorities in these countries.
- No monies have been recovered, as the Chinese banking system does not assist in such matters.
- The complainants are seeking compensation.
Other property related scams

‘Nigerian’ scams are not the only scams causing risk to agencies and their clients. Some common scams reported to the Department and the Fraud Squad include:

Inheritance or beneficiary scams

The Department has received a number of reports of a potential purchaser contacting a seller or agent saying that the caller is about to inherit a significant sum of money from an overseas relative and wants to use the proceeds to purchase a listed property. The purchaser advises that an advance fee, often several thousand dollars, must be paid to cover costs and/or taxes. The agency is asked to cover this ‘release’ fee.

Rental scams

Overpayment - Potential tenants overpay an initial bond and rental amount. Common excuses for the overpayment include mistakenly including money that was meant for another purpose (such as buying furniture) or accidentally adding a zero. They then ask for the difference to be refunded. If the agent does this prior to funds clearing, they lose the ‘refund’ amount.

False advertising - Scammers copying details from legitimate advertising falsely advertise properties online. Watermarking photos used online can prevent this.

Rent diversion - Scammers are attempting to provide agents with new bank details to divert rental income to themselves.

Mortgage fraud

Multiple parties defraud the lender, using the identity of a borrower without their knowledge. The scam usually involves a broker who arranges a loan, a valuer who gives an inflated valuation, a settlement agent who makes undisclosed disbursements from loan proceeds and a property owner. This is done to obtain an excessive loan, without the participation of the ‘buyer’ whose identity is used. Criminals share the profits and disappear before the mortgage defaults. Agents need to be aware of this type of fraud.

Overseas investors

This scam involves ‘overseas investors’. While many genuine purchasers contact agents from overseas, the trademark of these scammers is to initiate the transfer of monies via a third party. They often mention a ‘financial professional’ or ‘lawyer’ to gain credibility.

In one case an agent received a bank draft for $250,000 when only $10,000 was needed as a deposit. They contacted the Chinese bank and found the draft was forged. It seems the scam was to request a refund of the $240,000. In another case a buyer paid ahead of time with a very real looking, but fraudulent cheque.

Agents should keep abreast of fraud reports in the media, be aware that these scams are out there, and report irregularities. The case following shows that commercial agents should also be aware of the potential for fraud.
Case Study
Gold bars just a whisker from crooks' grasp
Summarised from Philip Cornford July 22, 2006 smh.com.au

IT WAS to be the Great Gold Heist - 605 kilograms of bullion worth $14 million. But first, the fraudsters had to "steal" the 13-storey Australian Rugby House to bankroll their brazen crime.

They forged title deeds, falsely claiming ownership of 181 Miller Street, North Sydney, the headquarters of the Australian Rugby Union, and secured a $14.4 million mortgage cheque, which was sent straight to a gold dealer.

The bullion, 605 one-kilogram gold bars, was flown from Perth to Sydney and was awaiting delivery. The heist came within a whisker of succeeding. But at the last minute, the Perth Mint and Brinks security smelled a rat and called the police.

Although it was foiled, the crime showed the vulnerability of even big corporations to bold and clever forgers who know how to manipulate property ownership.

What are the lessons?

In each of these cases a range of communications between scammers and real estate and settlement agents occurred over an extended period of time.

The first issue to consider is that these communications appeared legitimate because of information the scammers had about the owners and the property.

The lesson is that agents must be conscious that just because someone has information, it doesn't mean they are who they say they are.

Agents must also be vigilant in protecting owner's personal details, and encouraging owners to be more aware of protecting themselves, as criminals perpetrating this type of fraud do so by acquiring many of the victim's personal details. This can be done by:

- theft of mail or discarded documents from rubbish or by copying mail

  In one of these cases it appears significant information was gleaned through the illegal copying of mail in overseas post offices.

- theft of other hard-copy information

  Most identity theft still occurs through theft of items such as credit cards, mail and documents taken and misused by criminals. This can happen in the owner's place of employment, from rubbish, or through an owner's family, associates or domestic staff. It can also happen within an agency.
Below are a variety of ways theft of information can happen online.

**Activity 1  Information Theft**

Discuss what you know about these methods of information theft and how to prevent them.

Make a note of what you know, then check the Activity answers on page 44.

Hacking

Key-logging viruses

Skimming

Phishing

Spoofing

Spyware
**Consequences of real estate fraud**

The consequences of the frauds discussed earlier were devastating for the victims, who lost their homes and potentially suffered a significant emotional loss as well.

The time, resources and energy that those agents involved have devoted to assisting investigators and the damage to their reputation are obvious areas of impact. There is of course also the risk that victims will make a claim of negligence against agents in circumstances like these.

While legal action may not follow in these cases, agents who fall for scams in the future have a higher risk of being seen as negligent, because of the publicity that has occurred.

For this reason agents need to be extremely vigilant in the future and set up watertight processes within their agencies. They need to be able to show that they not only take due care themselves, but that they train and instruct staff to take due care.

Checks and balances are needed so that dependence on any one person’s judgement is reduced and the risk of the re-occurrence of these frauds is minimised.

Real estate agents, business brokers, real estate representatives, settlement agents and Landgate are all now acting to put in place processes and procedures that will help to protect consumers.

Should fraud continue to occur and achieve the level of publicity accorded to these cases, consumer confidence in the real estate industry will no doubt be impacted, to the detriment of everyone who cares about their profession.

*Everyone in the real estate industry must get serious about fraud prevention!*

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

Action has been taken on several fronts.

1. Amendments to the statutory Code of Conduct for real estate agents require an agent to make all reasonable efforts to verify:
   a. The identity of each person who claims to be, or to act for, a person who is to dispose of all or any of the real estate; and
   b. Each person’s authority to dispose of the real estate, or to act for the person disposing of it, as the case requires.

2. Changes implemented by Landgate improve identity security through:
   a. new witnessing and CIV requirements for overseas sellers in the execution of transfer of land documents
   b. a new form of caveat to prevent improper dealings.

3. Alerting lenders to recommend careful scrutiny before releasing mortgages over certificates of title.

4. Professional development training to communicate the requirement for client identity verification and other procedures to reduce fraud risks to industry.
In addition, REIWA and AICWA (representing settlement agents) have been conducting awareness sessions and assisting their members in strengthening their business practices to avoid future problems.

The Department of Commerce and Landgate, in collaboration with REIWA and AICWA have been participating in developing strategies and communicating via the media, to ensure the public are aware of the risks and of their options to reduce risk if they are an absentee owner.

The Department and Landgate have also been promoting awareness of fraud risks within the industry and to the public.

Changes to the Code of Conduct

To minimise the risk of property fraud, the Code of Conduct for Agents and Sales Representatives (the Code) was amended effective from 1 November 2011. Two new articles were added so numbering has changed and Titles have been added. The new Code of Conduct is attached as Appendix 1.

Article 9 of the Code of Conduct (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 must be sufficient to fulfil an agent’s duty to their client. To exercise due care, avoid acts or omissions which it can be reasonably foreseen are likely to cause harm to others.

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)) is amended to require that agents refer to the certificate of title for the names of the registered proprietor(s) of the property.

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 to act for) the owner(s), and their authority to dispose of the property.

Guidance notes have been developed by the Department to assist agents, property managers and sales representatives in compliance. They have also provided a guide to the use of different documents when conducting a 100 point check – this is attached as Appendix 2.

The following notes interpret and at times summarise the Guidance Notes. The complete version of all Guidance Notes are attached as Appendix 3.
Guidance Note 1

When selling a property, confirm that dealings are with the true owner(s) of the property (i.e. 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**

   Promptly obtain a copy of the Certificate of Title for the property as required by the Code. Refer to that copy for the name(s) of the registered proprietor.

   Continue to note and attend to material facts that may need to be disclosed, such as encumbrances shown 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 is not the registered owner, but someone who represents them. For example, the holder of a Power of Attorney, Enduring Power of Attorney, or an executor.

   In this case, the original document conferring authority to act on behalf of the current registered owner (or a copy that has been certified as a true copy of the original) must be obtained and a copy should be retained on file.

   If possible confirm with the registered owner that the person is authorised to act.

   A mortgagee in possession, or person taking possession of a property by court order, must verify their authority to act. Agents should make appropriate checks e.g. verify that the mortgagee on title matches the entity claiming possession. Retain copies of documentation from the mortgagee, and of any court order.

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

   You must confirm the identity of each owner (or person with the legal right to sell a property) via a 100 point CIV check. Appendix 2 shows the documents used in this process and explains how they are weighted.

   The 100 point CIV should be undertaken face-to-face as is the standard practice. In carrying out such checks agents should sight original documents to verify identity wherever possible. Copies may only be accepted as outlined below.

   If seller(s) cannot be present to enable face-to-face CIV, documents used to meet the 100 point check must have been sighted, and verified to be true copies of the originals, by a suitable independent, verifiable witness. A list of people who may witness such documents (as well as statutory declarations) is attached as Appendix 4.
If agents deviate from this method, as it has been argued they should be able to do in certain circumstances (for example when selling property for relatives or long-standing acquaintances), then the onus will be on them to prove they have taken reasonable steps to confirm the person's identity. They must document those steps.

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.

The Regulator's proactive compliance checks will be used to ensure that agents are complying with these requirements.

More detail of identification processes covering a variety of circumstances is provided in the Guidance Notes on Client Identity Verification developed by REIWA which is attached as Appendix 5.

Appendix 6 is a sample of the REIWA Client Identification Form.

This has been included with the permission of REIWA and is available for the use of REIWA members.
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 with 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 these 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 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 email, 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 around the time instructions to sell a property are received.
- The transaction involves people located overseas, or documents issued overseas: especially from countries known for scams.
- There is a request for funds to be sent to a different bank account from the account 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.

Graphic reproduced with permission of watoday.com.au
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 compliance visits to agents by the Department 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.

The Department 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.
Activity 2  Client Identification

Consider the following questions.

1. What are the identification obligations for a conjunctional agent?

2. What are the identification obligations when dealing with a Mortgagee in Possession?

3. What are the identification obligations where a company is the registered proprietor?

4. These sellers are going to be identified by the conveyancer so why are real estate agents involved?

5. What are the identification obligations in relation to buyers?

6. I have performed the checks but I am suspicious. What should I do?

7. Where should the agency store personal information?

8. If a seller is overseas and signing the O&A, do they need a special witness?

9. Can a sales representative do the face to face identification check?

Note your answers and then check the Activity answers on page 47.
Privacy and security of client identity documents

The Department of Commerce requires agents to introduce proper procedures to ensure the privacy and security of client documents. Agents must also train staff to follow them.

In support of the Guidance Notes provided by the Regulator, the following checklist may provide some guidelines for agents when reviewing their procedures for dealing with existing property management clients.

Agencies should:

- Set up security questions for all new and existing clients with properties under management with the agency.
- Use stringent security processes to protect owners who do not live locally.
- When an email comes from a 'new' email address, check directly with the client using contact details on file as to whether the change is genuine.
- If an email asks you to sell a property under management, or to change banking details, always check whether it is genuine even if it seems to be from the correct email address. Hit 'forward' - this will show you where the email came from - and type in the address on record, do not just hit reply!
- Call the phone number you have on record to check on any newly provided number - confirm new contacts through pre-existing communication channels.
- Always compare signatures / initials held on file with those on documents and written instructions received, particularly when dealing with owners remotely.
- If instructions come by telephone, confirm in writing at a known contact point.
- Be cautious if a seller provides bank account details that are not the same account details used previously for rental income, particularly if the bank is in China.
- If a caller asks you to confirm facts / send copies of documents, first verify independently that they are the owner, using questions only the owners know the answer to. Also consider:
  - Is the accent right?
  - Does the voice match the age / background of the person on record?

If they claim to be contacting the agency on behalf of the owner, verify that they are properly authorised to act.

Approaches from new clients

As well as risks relating to people impersonating owners of properties managed by the agency, every agency faces the risk that they could be approached by someone trying to fraudulently sell a property that is not managed by the agency, as happened in Sydney. The approach may be by telephone, letter, fax, email or face to face.
If this were to happen you would have no signatures on record to compare, and no background knowledge of the owners.

While some points already covered might apply, consider what else might alert you and how you can strengthen your procedures so that agency staff members take extra care, knowing that scammers are operating in our market.

Basic checks that should always happen include:

- names given by purported ‘owners’ are checked against the title search;
- 100 point identification check including original photo and signature ID and independent proof from other sources (such as utilities) is carried out;
- contact details (telephone, email and physical address) are verified independently e.g. utility bills, phone directory.

Apart from looking for any anomalies in the above areas, be alert and cautious if:

- only hotmail, yahoo or Gmail addresses are used;
- the person seems nervous, or makes excuses about access to the property;
- identification documents (or any other documents) appear irregular - if in doubt have verified by the issuing authority not by the person seeking to rely on them.

Signs that something isn't right with a passport may include:

- passport pages not exactly aligned, corners not well rounded;
- irregular stitching, or extra stitch holes (it may have been re-stitched);
- watermarks are not ‘built in’, latent image or see-through security feature is missing.

Forged documents are usually high quality and are often overseas passports, which are hard to detect.

Agency staff cannot be expected to be familiar with all international documents. The only way to spot a problem may be if the photo isn’t like the person you see before you or the signatures or birth dates on two documents don’t match.

Always handle documents with care - if you damage a passport you may have to pay for it.

It may offend if you inspect documents too closely. Ask permission to take a copy so you can refer it to an expert. This can be very helpful to police in fraud prevention.

If suspicious, ask for advance payment of fees - scammers resist any financial outlay.

Do not ignore anomalies - if you have any reason to suspect that the person you are dealing with is not the registered owner of the property (or a person authorised by them) CONTACT THE MAJOR FRAUD SQUAD ON (08) 9220 0700.
General issues - privacy and security

The information provided so far relates to minimising the risk of fraud within a real estate office.

Some agents may want to provide this information to others e.g. using it to raise awareness of identity theft risks among owners and tenants, or in staff training. You can help to prevent fraud by encouraging owners in particular to take precautions to safeguard their personal information.

The following precautions are provided by the Australian Securities and Investments Commission (ASIC) to assist in protecting individuals from identity fraud.

Day-to-day protection

- Never give personal details to strangers - if you get a call or email to 'verify details', supposedly from your bank, don't give any details. Call the bank to check. Never click on a link or call a number in an email - look up the number.
- Check bank and superannuation statements closely. If you see any unusual transactions, contact your bank, credit card provider or super fund immediately.
- If unusual transactions appear, or just to be cautious once per year, get your personal credit report from a reporting agency like Dun and Bradstreet and check that no-one is using your name to borrow money or run up debts.
- Carry only essential information. Avoid taking important documents out of home, to minimise the chance of them being lost or stolen.
- Destroy old personal/financial documents - shred old bills, expired cards etc.
- Secure your letter box and collect your mail regularly.
- Protect your mobile phone, and be wary of free apps - some apps from little known sources plant malicious software to steal passwords / bank details.

Computer and mobile protection

- Keep phones / mobile devices safe. Know where they are and don't lend them.
- Type website addresses into your browser. Don't click on emailed links.
- Be careful what information you give on social networking sites.
- Disable pop-ups on your browser. They can install programs that record key strokes to find out passwords to bank and other accounts.
- Choose strong passwords. Use numbers and letters, and change them often. Do not select the option for the computer to remember passwords.
- Keep anti-virus, firewall, anti-spyware and anti-trojan software up-to-date.
- Log out after using social media and bank websites and email accounts: If you don't log out, anyone can access details. Lock your phone with a pin.
- Only download apps from the official app store or market.
- Enable security settings: turn off wifi, Bluetooth and GPS when not in use.
- Never use public computers for banking or payments.
Privacy procedures and legislation

The real estate industry handles personal information on a daily basis.

While some real estate agents are not covered by the Privacy Act because they have a turnover of $3 million or less, most either must comply with the Privacy Act or choose to comply with its principles as a matter of good business practice.

Agents covered by the Privacy Act must comply in the way they collect, use, disclose and secure personal information. They must not misrepresent the reason they are collecting information and should use it for the purpose it was originally collected for.

Proper storage of personal information is a requirement. Agencies must ensure that filing systems and software protect personal information and can only be accessed by those who need access for valid work reasons.

Personal information must be protected either by being under lock and key or be protected by passwords and firewalls if it is stored electronically. People have a right to access information the agent holds and correct it if it is wrong.

Strict rules apply to sensitive personal information (i.e. religious beliefs, criminal record, race and sexual orientation). This can only be collected with a person’s consent.

Identification procedures required by the Regulator raise some questions about how best to identify individuals without breaching their privacy and how best to comply with the requirement to retain proof of having verified identity for the recommended 6 years.

As agents begin implementing these requirements, they need to consider these issues.

Activity 3 Privacy

Consider the following statements:

The Major Fraud Squad recommends agents take copies of identification documents wherever possible when listing properties. The Department has stated that agents "should retain copies of all documents obtained in the process of verifying identities and in verifying the authority of the person to act in the sale of the property." Guidance Note 1.

The Australian Information Commission website says that a real estate agent covered by the Privacy Act must not collect more personal information than they need. It gives this example:

"If an agent wants you to prove your identity (such as with a driver’s licence) ..... ask them if they can just look at the information rather than copying it. If they need to keep a record, the agent could write down the minimum necessary details on their file and record the type of document they have sighted."
http://www.privacy.gov.au/component/content/article/940

Think about how the Regulator's requirements might be reflected in agency procedures for identifying sellers.

How might taking images of documents be dealt with, without breaches of privacy?

Refer to the REIWA Client Identification form (Appendix 6), while considering this question and to the answers on page 46.
Changes implemented by Landgate

Transfer of land documents executed by the Transferors outside of Australia

In order to reduce the risk of WA landowners being the subject of improper dealings on their property, Landgate has introduced a number of measures. Agents need to consider how these measures might also reduce agency risk.

The first measure requires that where a seller's land transfer documents are executed outside of Australia, witnesses must be Australian consular officers. Landgate's Customer Information Bulletin 210 gives details of this - it states:

\[
\begin{align*}
&\text{The following Registrar's requirements only relate to transfer of land documents where the transferor(s) executes the transfer outside of Australia...} \\
&\text{• transfers of land executed by transferors outside of Australia are required to be witnessed by an Australian consular officer;} \\
&\text{• prior to witnessing the execution of the transfer of land the Consular Officer is to undertake an identity check of the transferor(s) and provide certified copies of all the identity documents sighted; and} \\
&\text{• conveyancers are to provide the original certified copies of the identity documents sighted by the Consular Officer who witnessed the transfer of land to the Registrar of Titles at the time of lodging the transfer of land at Landgate.} \\
&\text{While it is recommended, an identity check of the buyer/transferee is not required by the Registrar of Titles.}
\end{align*}
\]

An Australian Consular Officer is defined by Section 145 (4) of the Transfer of Land Act 1893 as a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside the Commonwealth, such as:

- Ambassador
- Minister
- High Commissioner
- Head of Mission
- Commissioner
- Charge D’Affaires
- Consul or Secretary at an Embassy
- High Commissioners Office
- Legation or Other Post
- Consular-General
- Consul
- Vice-Consul
- Trade Commissioner
- Consular Agent

Note. In some countries Canadian Embassies provide consular services to Australians including witnessing documents. A Consular Officer at the Australian Commerce and Industry Office in Taipei, Taiwan is also acceptable. For the latest information see the Department of Foreign Affairs and Trade’s web site at www.dfat.gov.au/missions. In exceptional circumstances the Registrar of Titles may accept an alternate witness. A request for this must be made in writing prior to execution of the transfer document. The requirement to travel a long distance to a Consular Office is not considered an exceptional circumstance.
Real estate agents must ensure that settlement dates allow time for this process to take place, and that sellers overseas understand the need to have the necessary original documents with them when they attend the Consular Office.

Prior to witnessing execution of the transfer of land, the Consular Officer must identify each transferor by sighting all the following current and original documents:

- An original **rate notice** issued by local Government for the property being sold.
- The transferor(s) **passport**.
- A **driver's licence** of the transferor(s).

Where a transferor is a company or incorporated body, the identity of the natural person executing the transfer on behalf of the transferor must be verified, as above.

The Consular Officer must copy the documents and certify that they are true copies, completing their name, position, Consular Office and date and time on the copies.

They must then witness the transferor execute the transfer of land document and clearly print their witness details on the Transfer of Land form.

The transferor(s) are then responsible for providing the original executed transfer of land form and the original certified copy of the identity documents to their settlement agent. These documents cannot be faxed or emailed.

Transfers of land executed by the transferor(s) outside of Australia and lodged with Landgate for registration by the Registrar of Titles must be accompanied by:

- An original statutory declaration by the settlement agent acting for the transferor(s), stating that they are satisfied that the registered proprietor for the property is the person from whom they are taking instructions and that the person has the legal authority to sell the property.
- The original certified copy of the transferor's identity documentation sighted by the Australian Consular Officer.

The Registrar may not register the transfer of land if the requirements are not met.

*This information was summarised from Landgate's Information Bulletin 210.*

Landgate have advised that they intend to amend the rules for witnessing Transfer of Land documents signed within Australia. Proposed changes will make it more difficult to commit a scam or obtain a copy of a title.

For the complete details regarding the new requirements, monitor the Customer Information Bulletin section found on Landgate’s website [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)
Landgate Caveat (C4) Improper Dealings

Another measure to reduce risk to WA landowners of improper dealings on their property is the service where a Caveat (Improper Dealings) Form C4 can be lodged.

The caveat, once lodged, will stop the registration of any instruments or documents that would ordinarily need to be signed to sell or lease a property, for example:

- transfers
- mortgages
- leases.

A Caveat (Improper Dealings) must be made in the name of all owners recorded on the Certificate of Title for a property. If one owner does not sign, it cannot be lodged.

The caveat can be signed and lodged with Landgate by all owners in person, or lodged by a solicitor instructed by all owners to act for them in the lodgement of the caveat. A licensed settlement agent does not currently have authority to sign and lodge a caveat to prevent improper dealings on behalf of land owners.

Only the owners of the property can remove the caveat in person. Once a Caveat (Improper Dealings) is in place, then all owners must attend in person at Landgate’s Midland Office and identify themselves using original documents (not copies) to withdraw the caveat. A Power of Attorney cannot be used to withdraw the caveat.

Due to the operation of law, the Caveat (Improper Dealings) will not prevent the following situations occurring, including but not limited to:

- Mortgagee exercising a power of sale would be able to use section 138B of the Transfer of Land Act 1893 if the application is not being signed by the owners.
- Sale of the property by a Local Government for non-payment of rates.
- Sale by the Sheriff under a property (Seizure & Sale) order.
- In case of deceased owner(s) survivorship and transmission.

A fee applies for lodgement or withdrawal of each caveat ($160 at the time of writing).

Real estate agents managing rental properties may see this as a protective measure suited to owners living overseas.

Owners of mortgaged properties should however consult with their lending institution before lodging a Caveat (Improper Dealings), as the terms and conditions of their mortgage may require the mortgagee’s consent.

Owners considering this measure should also be made aware of the requirements to remove this type of caveat which may at times be inconvenient.

Agents dealing with sellers who have lodged such a caveat should ensure that arrangements are in place to remove the caveat prior to settlement.

For further information contact Landgate: email: advice@landgate.wa.gov.au
Landgate Interest Enquiry

Not all agents and agency employees are aware that the Certificate of Title is not the only source of information about property interests. They may not routinely carry out any checks beyond the title search required by the Code of Conduct.

This may be because in the past they would need to have made multiple enquiries through various government agencies to check (for instance) on contamination issues, heritage listing, town planning agreements and proposed state roads.

Not checking for undisclosed interests can however increase agency and seller risk, as interests may be material and not be disclosed to prospective buyers or tenants who may later complain.

Landgate now provides business and community with a single online point for property interest information through their Interest Enquiry service.

Conducting an Interest Enquiry at the time of listing reduces risk and may become a standard industry practice in the future.

What is an interest?

An interest over a property is a right over the property or entitlement to benefit from it, and may affect use of the property or impact on its value.

An interest is a material fact that must be disclosed when the property is sold.

What is an Interest Enquiry?

An online search via Landgate that shows interests on any Western Australian property.

What is a Property Interest Search?

This is when you check whether or not a property is subject to any property interests.

Are all Property Interests recorded on a Certificate of Title?

No. Interests registered with Landgate are recorded on a Certificate of Title e.g. mortgages, leases, memorials, easements and covenants. Some Government agencies are not legally obliged to register their interests with Landgate e.g. heritage, environment, land use planning, energy safety, mining and others.

If I conduct a Property Interest Search, is a Title Search needed?

Yes. The title search is a legal requirement and verifies proof of ownership.

Are all Property Interests accessible through Interest Enquiry?

No. The list of interests is not complete at the time of writing and new interests can be added at any time.

How can I be sure I have discovered all interests that affect a particular property?

An Interest Enquiry or search shows you have taken reasonable steps to do this. Maintain records of the property interest searches you undertake to demonstrate this.

What if I need further information about a property interest?

Use Landgate's Interest Dictionary or contact the Custodian Agency.
Will I incur any charges to browse Interest Enquiry?

Some information can be viewed at no charge. Costs apply if placing orders for Summary of Interest Reports, Detailed Interest Reports, Certificates of Title or Surveys.

Is Interest Enquiry’s information up to date?

Information contained in the interest reports comes directly from the Custodian Agencies that own and maintain the information and is the most up-to-date available.

Activity 4  Landgate changes

Consider the changes being made by Landgate

What is the value to the agency of the new identification processes for overseas sellers?

Who do you think should consider lodging a Caveat (Improper Dealings)?

When do you think the agency should carry out an Interest Enquiry?

Make a note of your answers and check them against the Activity Answers on Page 48
Smoke alarms

TRUE OR FALSE QUIZ  Answers appear on Page 48

1. All dwellings built in WA have had smoke alarms fitted since 1995.

2. If tenants are willing to sign an exemption, owners need not install hard wired alarms.

3. Any dwelling with hard wired alarms is compliant.

4. A caravan in the backyard of a rental property needs its own smoke alarm if power is connected.

Legislation

Since 1997 it has been law, under the Building Code of Australia (BCA), to install mains powered smoke alarms in new properties and any existing properties that have undergone significant renovations.

Effective October 2009 the Local Government (Miscellaneous Provisions) Amendment (Smoke Alarms) Act 2007 required owners to install hard wired smoke alarms in existing residential properties.

a) Before the transfer of land title (when a residential property was being sold).
b) Prior to entering into a new tenancy agreement (an interim measure until 30 September 2011).

The next phase of what the laws required was that owners must ensure that all rental properties were fitted with hard-wired smoke alarms, regardless of whether a new lease was commencing, by 1st October 2011.

The laws require alarms to be in 'good working order' when a property is sold or leased. This means that:

a) the alarm has been tested and found to be functional;
b) the alarm is less than 10 years old (even if it is working well it must be replaced after 10 years).

Agents and sales representatives are not obliged to inspect alarms when listing property but should ask sellers to make disclosure as to whether there are hard wired alarms installed and whether they are in good working order.

What properties are affected?

The law impacts all existing dwellings offered for sale, lease or hire, including houses, duplexes, villas, flats, town houses and apartments (BCA Class 1, Class 1a, Class 1b, Class 2 and Class 4 Buildings) and any boarding houses, guest houses, hostels, bed and breakfast accommodation, farm stay and the like with -

- Total floor area not exceeding 300 m² measured over enclosing walls of a Class 1b building; and
• in which not more than 12 persons would ordinarily be resident; or
• 4 or more single dwellings on one allotment, used for short-term holiday accommodation, and not located above or below another dwelling or other class of building, other than a private garage.
• Holiday homes / apartments/ other dwellings available for hire on a casual basis.
• Dwellings hired out to employees.

Apart from the examples above this legislation does not apply to commercial properties, where the responsibility for fire safety rests with the person in charge of the workplace not the owner of the building.

Installation requirements

Smoke alarms must be installed in compliance with Australian Standard 3786. It is recommended they are installed at least one metre away from air conditioners and fluorescent light fixtures.

To be compliant, smoke alarms must be installed in a Class 1a building on or near the ceiling in -

(a) any storey containing bedrooms;
   (i) between each part of the dwelling containing bedrooms and the remainder of the dwelling; and
   (ii) where bedrooms are served by a hallway, in that hallway, and in
(b) any other storey not containing bedrooms.

Requirements for the other classes of buildings e.g. guest houses, boarding houses and holiday homes are slightly different. These can be obtained from FESA’s website at www.fesa.wa.gov.au
Exemptions
Smoke alarms that are not hard-wired but have a non-removable 10 year battery are allowed:

- in dwellings where the building’s structure does not allow space to conceal wiring; and
- there is no suitable alternative location; or
- if mains power supply is unavailable.

Owners need to have gained local government approval to use a 10 year battery alarm.

These systems do not need to be installed by an electrician.

If the seller expects the residential dwelling to be demolished after sale there can be a mutual agreement between the buyer and the seller that smoke alarms not be installed. This is not a formal exemption and does not make the property compliant, so there is some risk in such agreements.

Alternatives
A mains-powered security system with a smoke detection function incorporated may meet the requirements of the new regulations if it complies with Australian Standard 3786.

The manufacturer of the security system may be able to provide the property owner with a letter to this effect, which could become part of disclosure to buyers if the property were being sold.

Inspection, testing and maintenance
To maintain a smoke alarm so it will work effectively, owners, tenants or agency staff should follow recommendations in the manufacturer’s guide.

The manufacturer or supplier should be able to answer queries regarding the smoke alarm if the guide is lost.

A requirement that tenants carry out recommended maintenance procedures at regular intervals (e.g. quarterly or monthly) can be included as a condition of the lease.

Property managers may also test alarms when making regular inspections if agency policy permits (this may depend on advice from the agency's insurers). If this is done it should be noted on the file.

It is recommended that batteries are routinely replaced at the beginning of every tenancy. Again this should be noted on file.
Generally smoke alarm maintenance routines are:

- regular testing to ensure the battery and the alarm-sounder are operating;
- replacing back-up batteries annually, or as required in the manufacturer’s guide;
- regular cleaning with a vacuum cleaner to remove particles that affect smoke alarm performance.

Smoke alarms sound a warning ‘beep’ if batteries need replacing - the manufacturer’s guide will describe the warning sound. They must never be painted - have them replaced if this has happened.

Some agents encourage owners to pay for an annual inspection of smoke alarms by a specialist company. This saves property managers from the need to carry out tests but is not required by the Act. Such companies should be insured, conduct maintenance in accordance with Australian Standard AS1851.15 and provide a compliance report. The service can include battery replacement, relocation of wrongly sited alarms, replacement of faulty alarms and those that have passed their 10 year expiry date, for one fixed fee.

**Replacement**

Smoke alarms have a maximum service life of 10 years. To check whether alarms need replacing, owners who do not have an inspection service can check the installation and manufacture dates inside the cover of the alarm. If several alarms have different dates, the oldest date is used.

A licensed electrical contractor is required to disconnect or install mains powered smoke alarms.

**Types of alarm**

According to published tests, ionisation alarms detect flames more quickly, but can be prone to false alarms when fitted in kitchens and small areas. Photoelectric alarms are more costly, but better at detecting smouldering fires and less prone to false alarms.

You may find two other major types of alarm installed in residential properties - carbon monoxide alarms or heat alarms. Heat alarms are sometimes used in kitchens, as they are less easily set off by cooking fumes.

These types of alarms can supplement smoke alarms, but should not be used as the sole alarm system as they are not smoke alarms, and do not satisfy the requirements of AS 3786.

Installing a mixture of both ionisation and photoelectric alarms enhances fire safety. If only one type of alarm is installed, the Australian Fire Authorities Council recommends photoelectric alarms.
Hearing impairment and disability

If a managed property is leased to a person with a disability, advise owners to check to ensure that smoke alarms are appropriate for the resident.

If alarms need upgrading for a person with a hearing impairment, options include ultra-loud alarms, alarms with visual indicators and alarms with vibrating indicators. Remote controlled alarms can assist people who are not fully mobile. Tenants may be asked to meet the cost of alarm upgrades.

Inspection/testing regimes may need to be adjusted as tenants may be unable to carry out tests, change batteries and clean the alarm unit.

Do not give advice about smoke alarms. Encourage owners to seek information from authorities such as FESA when deciding on the best way to protect their property.

CSIRO has a register of smoke alarms that comply with AS3786 at www.activfire.gov.au.

Consequences of non-compliance for owners

Buyers who purchase a property and find that smoke alarms are not compliant are not able to delay settlement on this basis. They can however go to court to recover reasonable costs for installation of smoke alarms that comply with the requirements of the Local Government (Miscellaneous Provisions) Amendment (Smoke Alarms) Act 2007.

They can also report sellers who sell a property without complying with this provision of the Act to the authorities, which may lead to a fine being levied by the local government authority.

Tenants can report non-compliant owners and/or serve a Breach Notice on owners who do not provide a compliant alarm system. They can also seek a reduction in rent until appropriate alarms are installed.

If a house-fire were to occur in a home that had been leased without compliant smoke alarms and a tenant or guest suffered an injury, the owner could be liable to a personal injury claim. Insurance policies might not cover such claims if the property owner had not complied with legal requirements. At times agents have been joined in such claims if they have contributed to a failure in duty of care.

Local government inspectors can monitor homes sold (or leased) for compliance with the requirements of the Act. An infringement notice or prosecution action for non-compliance may lead to a fine of up to $5,000.

A new owner of a property where compliant smoke alarms are not installed is required to fit hard-wired smoke alarms within 12 months.

Failure to do this is a breach of the regulations and exposes new owners to the risk of a fine.
Consequences of non-compliance for agencies and their staff

If a tragedy occurs in a home sold or let by an agent without compliant smoke alarms, there could be some liability for the agency or for individuals. A claim for damages might be made against the agent and/or their insurer. The risk is difficult to quantify as the legislation is recent and there is little precedent to go on.

While such a claim might be successfully defended, it could still cause the agency significant loss of time and reputation and no agency wants to see such a tragedy happen in any case.

To ensure the safety of tenants and property buyers and to protect themselves and their staff, agents should take due care to ensure owners who sell or lease through the agency comply with legal requirements regarding smoke alarms.

Encouraging compliance and reducing risk - action points for agencies

- Be aware of the requirements of smoke alarms legislation and inform staff.
- Educate tenants to be responsible for cleaning and interim testing.
- Remember that homes built or renovated from 1997 had hard wired alarms installed at the time - those alarms are now more than 10 years old and need replacing.
- Advise all owners who are clients of the agency of the requirements of the Local Government (Miscellaneous Provisions) Amendment (Smoke Alarms) Act 2007 in writing.
- If owners decline to comply, keep copies of correspondence, and consider declining the listing.
- Consult the agency insurer if considering managing or listing a non-compliant property.
- Make full written disclosure to potential buyers if a property is being sold without smoke alarms.
- Be wary of managing any property where owners will not install compliant alarms.
- Seek written evidence or disclosure from owners who claim to have exemptions.
• If parties agree that smoke alarms are unnecessary, due to plans to demolish the property, explain to sellers they may be liable if the buyer’s plans change and the home is occupied after sale.

• Keep a written record of advice given and the person’s acknowledgement of having received it.

*If the agency manages any Department of Housing tenancies you may be asked to make a declaration on the owner’s compliance in relation to smoke alarms and RCD’s.*
Residual Current Devices (RCDs)

TRUE OR FALSE QUIZ  Answers appear on Page 48

1. Property Managers must by law test RCDs in rental properties.
2. A safety switch is the same as an RCD
3. Agents can sell a property without RCDs but there are risks
4. Extra RCDs are needed if there is a granny flat or workshop out the back.

In the past 17 years, 29 people (including eight children) have been electrocuted in homes in Western Australia. Twenty-three of these deaths could have been prevented if Residual Current Devices (RCDs) had been fitted to the power and lighting circuits.

Since 2000 it has been compulsory for all new homes to have two RCDs fitted to protect the power and lighting circuits as part of an electrical installation.

In August 2009 the Western Australian Government implemented new RCD regulations to begin to bring existing properties up to the same standard, and help reduce deaths from electrocution.

Electricity Regulations Act 1947

Amendments to the Electricity Regulations Act in August 2009 required the installation of at least two residual current devices (RCDs) to protect both the power and lighting circuits in all existing residential properties:

1. before the transfer of the land title (when the property was being sold);
2. prior to entering into a tenancy agreement with a new tenant;
3. before making premises available for rent, lease or hire for the first time.

There were also requirements for RCDs – also known as safety switches - to be installed in switchboards servicing common property in strata schemes.

The second phase of this new law required all rental properties to be fitted with two RCDs by 1st August 2011, regardless of whether there was a change of tenants.
What properties are affected?

**Residential premises** must comply with the *Electricity Act 1945* and supporting Regulations.

This includes all premises that 'constitute or are intended to constitute a place of residence' but does not include common property relating to the residential premises. Guest houses, farm stays etc are included.

Homes occupied by their owners are not included at the time of writing while owners remain in residence, but any residential property being sold or leased must comply with this law, including a residential property being sold or let for a non-residential purpose.

**Installation requirements**

New residential homes, sold homes and re-leased premises must be fitted with at least two RCDs protecting all socket outlets (power points) and lighting final sub-circuits.

The two RCDs must be fitted to comply with AS/NZS3000:2007 Wiring Rules.

**In some cases this may require more than two RCDs**

When an electrician installs RCDs they must provide the owner with an Electrical Safety Certificate. This certificate will state that two RCDs were installed in accordance with the AS/NZS 3000:2007 Wiring Rules.

Electricians may also be asked to provide written verification that a property already has two sufficient RCDs fitted to protect all power and lighting final sub-circuits.

This would involve inspecting the main switchboard, testing the RCDs to ensure they operate correctly, and checking that at least two RCDs are fitted in accordance with AS/NZS 3000:2007 Wiring Rules.

The electrician can then provide the owner with an Electrical Safety Certificate.

Best practice when listing properties for sale or accepting management instructions would be to ask for a copy of this certificate and hold it on file.
Exemptions

EnergySafety has made it clear that an exemption from installing two RCDs will only be given in extraordinary circumstances. This will usually be where the installation has only one circuit breaker for both power and lighting for the entire installation. In this rare event one RCD may be installed.

An exemption may be granted for using only one RCD if there is insufficient room on the meter box and it is not practical or prohibitively costly to modify the switchboard or add another switchboard.

In most cases the requirements for two RCDs will be enforced and achieved by upgrading or extending the meter box. There is no exemption for situations where installing RCDs will mean the owner needs to rewire the house - cost is not a basis for exemption, and the Regulator's view is that if wiring is in such a state that RCDs cannot be installed, it needs replacement anyway.

If owners advise the agency that their property is ‘exempt’ from requiring two RCDs, best practice would be to request a copy of the document providing exemption, which should be endorsed by the Chief Electrical Inspector, EnergySafety.

If an enquiry needs to be made to clarify a related issue contact energysafety@commerce.wa.gov.au.

Demolition of residence

If a buyer of a property intends to demolish the residence, RCDs need not be fitted at the time of sale (transfer of land title) if the new owner provides to the Director of Energy Safety a signed statement that the premises will be demolished within six months of the land transfer date.

The seller of a property, where demolition will occur should obtain a copy of the letter to the Director for their reference. They can then present this letter if requested at a later time.

If demolition does not occur within six months, the new owner of the property must fit two RCDs as prescribed in the Regulations.
Is an RCD the same as a circuit breaker?

Many homes already have circuit breakers installed.

These protect against overloading and short circuits. They do not prevent electrocution.

An RCD looks like a circuit breaker but also has a test button. The attached photo shows two circuit breakers compared with an RCD (note the test button).

Combined RCD/circuit breakers are available. These devices provide protection from overload, short circuit and electrocution. They also have a test button.

Inspection, testing and maintenance

If an assessment is requested by a homeowner or potential purchaser, only a licensed electrical contractor can undertake this work and provide a written report concerning the condition of electrical installations.

All RCDs are manufactured with a test button. Homeowners and tenants should press the test button every three months. The requirement to do this can be part of lease conditions for tenants.

Pushing the test button simulates an earth leakage fault and indicates whether or not the device is working correctly with respect to that type of fault. Electric clocks and timers need to be reset after the test when the RCD is turned back on.

If a house has RCDs fitted, and a buyer or seller wants to tell if they meet the regulations, a licensed electrical contractor is the best person to advise on this.

The Department does advise a process on their website that allows a lay person to determine if a residence is protected in accordance with the new legislation.

This is not something agency staff should carry out but they can make owners aware that the information is available on the website at http://www.commerce.wa.gov.au/energysafety/RCD/faq.htm

Replacement

If an RCD does not work properly when tested it may need to be replaced. If a tenant reports a fault, this should be investigated urgently by an electrician.

Remember, all electrical shocks must be reported immediately to Western Power.

Any licensed electrical contractor can supply and fit replacement RCDs.
Types of RCD

**Meter box mounted RCDs**

RCDs are generally located alongside circuit breakers in the main meter box or distribution board of the residence. Standard RCDs look like these.

Having two RCDs ensures some light and power remains if one operates. Two RCDs also reduces the possibility of tripping due to some appliances having low levels of earth leakage.

**Combination RCD and circuit breakers**

Home owners can choose to install combined circuit breaker and RCDs.

These protect the electrical circuits and appliances as well as preventing electrocution. Various brands are available.

These combination RCDs are an attractive option for retro-fitting in existing meter boxes with little or no spare space, and look like this.

**Portable RCDs**

Portable RCDs attached to a power board or extension lead are available for people using power tools or electrical appliances outside that are not protected by a meter box RCD or power point RCD.

**Power point RCDs**

RCDs may be fitted to a power point. They have a test button on the face plate and must be fitted to the first power point after the meter box.

They can protect electrical appliances in specific areas such as bathrooms and workshops.

This information is intended to assist you in identifying what is installed at a property. It does not qualify you to give a report or to warrant that what is installed is functioning correctly.
Consequences of non-compliance for owners

Buyers who purchase a property and find that RCDs are not installed or not working properly are not usually able to delay settlement on this basis, although a specific condition can be added to the contract to require compliance that can strengthen the buyer’s position.

Buyers can go to court to recover reasonable costs for installation of RCDs that comply with the requirements of the Electricity Act 1945 after settlement. They can also report sellers who sell a property without complying with this provision of the Act to the authorities, which may lead to a fine being levied by the government authority.

Tenants can also report non-compliant owners and/or serve a Breach Notice on owners who do not comply. They might seek a reduction in rent until two RCDs are installed.

If an electrical accident were to occur in a home that had been leased without compliant RCDs and a tenant or guest suffered an injury, the owner could face a personal injury claim. Insurance policies might not cover such claims if the property owner had not complied with legal requirements.

A new owner of a property where compliant RCDs are not installed is required to fit them as soon as possible. Failure to do this is a breach of the regulations and carries the risk of a fine.

Electrical inspectors monitor compliance with the regulations. Penalties of up to $15,000 for individuals and $100,000 for bodies corporate may apply if RCDs are not fitted.

Consequences of non-compliance for agencies and their staff

While the new RCD legislation has no legal requirement that sellers must provide proof that RCDs are fitted to a residence when selling a property, it is best practice for agents to hold a copy of the certificate if sellers are able to provide it.

This assists buyers and is proof of compliance with the Real Estate and Business Agent’s Code of Conduct requirement to ‘make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent agent would have ascertained’ and to take ‘due care’.

If a certificate is not available and is requested by the purchaser, recommend that the seller or purchaser engage a licensed electrical contractor to inspect the residential installation and provide an Electrical Safety Certificate, stating that two RCDs are installed in accordance with AS/NZS 3000:2007 Wiring Rules.

If a tragedy occurred in a home sold or let by an agent without compliant RCDs, there could be some exposure to liability. A claim for damages might be made against the owner and the agent might be joined in the claim. This could cost the agency money, time and reputation and of course no agent wants to be associated with a tragedy.

To ensure the safety of tenants and property buyers and to protect the agency, ensure owners comply with legal requirements regarding RCDs.
Encouraging compliance and reducing risk - action points for agencies

- Be aware of the requirements regarding RCDs and inform all relevant staff.
- Educate tenants to be responsible for interim testing.
- Advise all owners who are clients of the agency of the requirements in writing.
- If owners decline to comply, keep copies of correspondence, and consider declining the listing.
- Consult the agency insurer if considering managing or listing a non-compliant property.
- Make full written disclosure to potential buyers if a property is being sold without RCDs.
- Be wary of managing any property where owners will not install compliant RCDs.
- Seek written evidence or disclosure from owners who claim to have exemptions.
- If parties agree that RCDs are unnecessary, due to plans to demolish the property keep a copy of the signed statement from the buyer to the Director of Energy Safety stating that the premises will be demolished within six months of the land transfer date.
- Keep a written record of advice given to clients and acknowledgement of them having received it.
Activity 5  Smoke alarms and RCDs

Consider the following statements and make a note of your thoughts.

What might be the pros and cons of either taking on these responsibilities or requiring owners to prove that they have been compliant?

Agents and sales representatives should physically check whether RCDs and hard-wired smoke alarms are installed before listing a property for sale.

Agents and sales representatives should physically check whether RCDs and hard-wired smoke alarms are functioning before listing a property for sale.

Property Managers should physically check whether RCDs and hard-wired smoke alarms are installed before listing a property management.

Property Managers should physically check whether RCDs and hard-wired smoke alarms are functioning each time they carry out a property inspection.

Answers can be found on page 49
Sources:

Fire and Emergency Services Authority of Western Australia (FESA), Smoke Alarm Legislative Requirements www.fesa.wa.gov.au


CSIRO ActivFire® Scheme www.activfire.gov.au
Activity Answers
Below are a variety of ways theft of information can happen online. Discuss these methods:

Activity 1 Information Theft

**Hacking into a database** such as the agency’s property management system. Agencies need up-to-date systems and strong firewalls as well as good offsite back up. A consultant may be needed to advise you.

**Key-logging viruses** - Keyboard strokes are covertly recorded by spyware. A consultant may be needed to advise you.

**Skimming** - Stealing information from a credit card, driver’s license, or even passport using an electronic device known as a skimmer.

**Phishing** - Can happen via email or phone - it is contact asking for information that appears to be from a trusted source. Scammers ask for information direct, or ask the recipient to click on a link.

REBA News Winter 2004 recommended:

- Look for incorrect web addresses, bogus reply-to and sender details.
- Never click on the links provided. Delete “phishy” emails immediately.
- Install a reliable updated antivirus software package and firewall.
- Install updates to the operating system as soon as they are available.
- Reconcile trust accounts often i.e. daily to detect “foreign withdrawals.”
- Change password to the trust account monthly or more frequently.
- Limit the number of staff who are able to access the password.
- Limit amounts that can be transferred by direct debit, have a daily limit approval.
- Pay monthly rentals using separate files and different password.
**Spoofing** - Scammers harvest information from sites like Facebook to allow them to crack banking passwords. They can take over accounts if the person has clicked on a malicious link and revealed their password and send messages to that person's contacts, e.g. asking them for money to help in a fake emergency. Links in tweets and texts can also be used for fraud.

Protect against this in similar ways to phishing and by not being careless with information like birthdates on Facebook.

Spoofing can also occur when someone attempts to access your system by pretending to be a network system that you normally trust.

**Spyware** - Sites visited by staff may leave spyware which can gather confidential information.

Microsoft advise that Antispyware software can help protect your computer from spyware and other potentially unwanted software.

---

**Activity 2 Client Identification**

Consider and discuss the following questions.

1. **What are the identification obligations for a conjunctional agent?**

Strictly speaking there are no expectations because the Code refers to an agent taking instructions to act for a seller. The conjunctional agent has not received any instructions.

It would be prudent to ask the listing agent if they have conducted identity verification and make a file note of the response.

2. **What are the identification obligations when dealing with a Mortgagee in Possession?**

It is interesting to note that the Landgate requirements do not apply to a mortgagee in possession.

The Department of Commerce’s Guidance note does not make any exemption.

If attempts to verify the mortgagee fail, then it is reasonable to rely upon the letter of instruction from the mortgagee or the mortgagee’s appointed solicitor to the agent.

The agent should be able to show that they have tried to contact the mortgagee and have tried to verify the identity of the person who will execute the contract on behalf of the mortgagee.

Relevant notes should be made on the Client Identification form.
3. What are the identification obligations where a company is the registered proprietor?

You should perform a company search (current extract) to determine the office holders and conduct checks on the persons who will sign the contract.

4. These sellers are going to be identified by the conveyancer so why are real estate agents involved?

To maintain the integrity of the whole process of sale from listing to land transfer and to act as an additional hurdle for the fraudsters.

5. What are the identification obligations in relation to buyers?

There are none.

6. I have performed the checks but I am suspicious. What should I do?

You have put yourself under notice to conduct further investigations. Talk to people in your agency. Perform a transfer search to check signatures. Try to contact the person through sourcing alternative contact information. If you continue to have doubts contact the Department or the Police.

7. Where should the agency store personal information?

In a secure lockable area or in electronic, password-protected storage.

8. If a seller is overseas and signing the O&A, do they need a special witness?

No

9. Can a sales representative do the face to face identification check?

Yes

Activity 3 Privacy

This is a discussion activity and has no formal answer.
Activity 4  Landgate changes

Discuss the changes being made by Landgate

a) No answers

What is the value to the agency of the new identification processes for overseas sellers?

Reducing risk for agency clients and therefore the agency.

Who do you think should consider lodging a Caveat (Improper Dealings)?

This is a matter for clients to decide. It is likely to appeal to owners living remotely.

When do you think the agency should carry out an Interest Enquiry?

This is a matter of agency policy and for discussion with sellers, but it could be carried out on most sales as a risk minimisation measure.

<table>
<thead>
<tr>
<th>TRUE OR FALSE QUIZ</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All dwellings built in WA have had smoke alarms fitted since 1995.</td>
</tr>
<tr>
<td>2. If tenants are willing to sign an exemption, owners need not install hard wired alarms.</td>
</tr>
<tr>
<td>3. Any dwelling with hard wired alarms is compliant.</td>
</tr>
<tr>
<td>4. A caravan in the backyard of a rental property needs its own smoke alarm if power is connected.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TRUE OR FALSE QUIZ</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Property Managers must by law test RCDs in rental properties.</td>
</tr>
<tr>
<td>2. A safety switch is the same as an RCD</td>
</tr>
<tr>
<td>3. Agents can sell a property without RCDs but there are risks</td>
</tr>
<tr>
<td>4. Extra RCDs are needed if there is a granny flat or workshop out the back.</td>
</tr>
</tbody>
</table>

Activity 5  Smoke alarms and RCDs

Discuss the following statements - what do you think?

What might be the pros and cons of either taking on these responsibilities or requiring owners to prove that they have been compliant?
Agents and sales representatives should physically check whether RCDs and hard-wired smoke alarms are **installed** before listing a property for sale.

Agents and Sales Representatives are not qualified to do this. There is a risk that they will get it wrong and cause liability.

It is reasonable to ask owners to disclose whether the property is compliant and to ask them for documentation, if it is available.

Some agents may choose to allow staff to make a visual check if documentation is not available and sellers are unsure. They should be wary of doing this as alarms and RCDs may appear to be in place but not be properly connected. It may be prudent to suggest that sellers have an electrician in to provide a certificate.

---

Agents and sales representatives should physically check whether RCDs and hard-wired smoke alarms are **functioning** before listing a property for sale.

Agents and Sales Representatives who take on testing of RCDs and smoke alarms may increase the safety compliance rate of homes they sell. They may also risk:

a) the tests being carried out incorrectly, and resulting liability for agency
b) injury to staff e.g. falling off a ladder

It should be a matter for agency policy.

---

Property managers should physically check whether RCDs and hard-wired smoke alarms are **installed** before listing a property management.

Property managers are not qualified to do this. There is a risk that they will get it wrong and cause liability.

It is reasonable to ask owners to disclose whether the property is compliant and to ask them for documentation, if it is available.

Some agents may choose to allow PMs make a visual check if documentation is not available and owners are unsure. They should be wary of doing this as alarms and RCDs may appear to be in place but not be properly connected. It may be prudent to suggest that owners have an electrician in to provide a certificate.

---

Property managers should physically check whether RCDs and hard-wired smoke alarms are **functioning** each time they carry out a property inspection.

Property managers who take on the testing of RCDs and smoke alarms may increase the safety compliance rate of homes they let. They may also risk:

a) the tests being carried out incorrectly, and resulting liability for agency
b) injury to staff e.g. falling off a ladder

It should be a matter for agency policy.
Appendix 1 – Code of Conduct

Western Australia

Real Estate and Business Agents Act 1978

Code of Conduct for Agents and Sales Representatives 2011

As at 01 Nov 2011 Version 00-a0-00
Extract from www.slp.wa.gov.au, see that website for further information
Western Australia

Code of Conduct for Agents and Sales Representatives 2011

CONTENTS

1. Citation 1
2. Commencement 1
3. Terms used 1
4. General duty to principal 2
5. Certain inducements prohibited 2
6. Acting within authority and instructions 2
7. Duty to behave fairly 2
8. Duties to manage, to supervise, to attend at place of business 3
9. Standard of service 4
10. Duties as to details of the transaction 4
11. Duty to advise of market price 4
12. Conflict of interest 5
13. Confidentiality 5
14. Communicating offers to principal 5
15. Restrictions on commission and other benefits 5
16. Further restriction on reward for service 6
17. Claiming expenses from principal 6
18. Disclosure required when recommending 7

Notes
Compilation table 8
Western Australia

Real Estate and Business Agents Act 1978

Code of Conduct for Agents and Sales Representatives 2011

1. Citation

This is the Code of Conduct for Agents and Sales Representatives 2011.

2. Commencement

This Code comes into operation as follows —
(a) sections 1 and 2 — on the day on which this Code is published in the Gazette;
(b) the rest of the Code — on 1 November 2011.

3. Terms used

In this Code —
Act means the Real Estate and Business Agents Act 1978 as amended;
agent means an agent or a sales representative;
commission includes fees, charges, reward, or other remuneration, whether monetary or otherwise;
principal in relation to a sales representative means the principal of the agent by whom the sales representative is employed.
**Code of Conduct for Agents and Sales Representatives 2011**

4. **General duty to principal**
   An agent must act in the best interests of his or her principal except where it would be unreasonable or improper to do so.

5. **Certain inducements prohibited**
   (1) An agent must not knowingly induce or attempt to induce a person to breach a contract of sale, letting or agency.
   (2) An agent must not knowingly induce or attempt to induce a person to enter into an agency contract which would make that person liable to pay commission to more than one agent in relation to a sale or a lease of any real estate or business.

6. **Acting within authority and instructions**
   (1) An agent must not act as agent or represent himself or herself as acting as agent on behalf of a person without written authority.
   (2) An agent must act in accordance with the instructions of a principal, except where it would be unreasonable or improper to do so.
   (3) An agent must not advertise that any real estate or business is for sale or lease or erect or display a notice of sale or leasing without written authority.
   (4) An agent must not —
       (a) advertise or offer for sale or lease any real estate or business at a price or on terms different from that, authorised by the principal; or
       (b) advertise or offer to purchase or lease any real estate or business at a price or on terms different from that authorised by the principal.

7. **Duty to behave fairly**
   (1) An agent must act fairly and honestly.
Code of Conduct for Agents and Sales Representatives 2011

s. 8

(2) An agent must not knowingly mislead or deceive any parties in negotiations or a transaction.

(3) An agent must not engage in harsh or unconscionable conduct.

8. Duties to manage, to supervise, to attend at place of business

(1) An agent must properly supervise the agency business carried on by the agent and take reasonable steps to ensure that sales representatives and other employees of the agency business comply with the provisions of the Act, this Code and other relevant statutes, rules and regulations where applicable to them.

(2) The person in bona fide control of the agency business carried on by a corporation must properly supervise the agency business carried on by the corporation and take reasonable steps to ensure that sales representatives and other employees of the agency business comply with the provisions of the Act, this Code and other relevant statutes, rules and regulations where applicable to them.

(3) The person in bona fide control of the agency business carried on by a firm must properly supervise the agency business carried on by the firm and take reasonable steps to ensure that sales representatives and other employees of the agency business comply with the provisions of the Act, this Code and other relevant statutes, rules and regulations where applicable to them.

(4) An agent who personally carries on an agency business, the person in bona fide control of the agency business carried on by a corporation and the person in bona fide control of the agency business carried on by a firm must —

(a) personally manage the agency business full-time; and

(b) carry out the principal managerial duties of the agency business; and

(c) frequently attend at the offices at which the agency business is conducted.
Code of Conduct for Agents and Sales Representatives 2011

s. 9

9. **Standard of service**

An agent must exercise due skill, care and diligence.

10. **Duties as to details of the transaction**

(1) Prior to the execution by the agent’s principal of any contract relating to the sale or lease of any real estate or business the agent must make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent agent would have ascertained.

(2) If an agent ascertains a fact which is material to a transaction in which the agent’s principal is involved the agent must promptly communicate that fact to any person who may be affected by it unless it is clear that person was already aware of that fact.

(3) When an agent receives instructions to offer real estate for sale he or she shall promptly obtain a copy of the certificate of title for the real estate and, after obtaining it, refer to that copy for the names of the registered proprietor.

(4) Without limiting the generality of subsection (1), an agent must, as soon as practicable after receiving instructions to act for a person in arranging a disposal, by way of sale, exchange or otherwise, of real estate and before a contract for that disposal is executed, make all reasonable efforts to verify —
   
   (a) the identity of each person who claims to be, or to act for, a person who is to dispose of all or any of the real estate; and

   (b) each person’s authority to dispose of the real estate, or to act for the person disposing of it, as the case requires.

11. **Duty to advise of market price**

An agent engaged to sell or purchase any real estate or business must advise his or her principal as to what the agent considers to be the current market price of that real estate or business and, if requested, give reasons for that opinion.
12. **Conflict of interest**

(1) An agent must not accept an engagement to act, or continue to act, where to do so would place his or her interest in conflict with that of the principal.

(2) An agent shall not without the prior written consent of the principal, directly or indirectly, purchase or take on lease or be in any way concerned or interested, legally or beneficially, in the purchase or taking on lease of any real estate or business which the agent is engaged to sell or lease.

(3) An agent who directly or indirectly purchases or takes on lease or is in any way concerned or interested, legally or beneficially, in the purchase or taking on lease of any real estate or business which the agent is engaged to sell or lease shall not demand, retain or receive a commission unless the principal has agreed in writing to pay the commission at the same time as or following the signing of the consent referred to in section 10(2).

13. **Confidentiality**

An agent must not at any time use or disclose any confidential information obtained while acting on behalf of his or her principal, except for information that an agent is required by law to disclose.

14. **Communicating offers to principal**

An agent must communicate all written offers to his or her principal as soon as practicable.

15. **Restrictions on commission and other benefits**

(1) An agent must not accept or demand any commission from any person other than his or her principal in respect of any service performed or to be performed by the agent, being a service in respect of which the agent received commission or is entitled to receive commission from his or her principal.
Code of Conduct for Agents and Sales Representatives 2011

s. 16

(2) An agent must not demand, retain or receive a discount or rebate which relates to a service by a stocktaker or tradesperson, or to advertising, in connection with a transaction or a service provided by the agent unless the agent has —
   (a) disclosed to his or her principal the full nature, extent and amount of the discount or rebate sought or to be retained; and
   (b) obtained the written consent of the principal to the seeking or retaining of the discount or rebate by the agent.

16. Further restriction on reward for service

An agent must not demand, retain or receive a commission, reward or other valuable consideration for a service which is —
   (a) greater than the amount agreed in writing with the principal; or
   (b) unjust in the circumstances; or
   (c) not initialled on the agreement by the principal.

17. Claiming expenses from principal

(1) If an agent is entitled to seek reimbursement from his or her principal of any expense which the agent has incurred the agent shall promptly supply to the principal all relevant information and material which the principal may reasonably require in order to be satisfied as to the amount of the expense and that the expense was properly incurred by the agent.

(2) An agent shall not seek or retain reimbursement of an expense which the agent has incurred in respect of advertising, sign boards, printed material and promotions unless —
   (a) the principal has agreed in writing to pay the expense; and
   (b) the agreement specifies a maximum amount which the agent may seek or retain by way of reimbursement; and
Code of Conduct for Agents and Sales Representatives 2011

s. 18

(c) the maximum amount is stated on the agreement and has been initialled by the principal.

18. Disclosure required when recommending

(1) An agent who recommends to a party to a transaction, a settlement agent, finance broker or any other supplier of goods or services, must make a written disclosure to the party of any significant relationship, connection or affinity between the agent and the supplier.

(2) Where the relationship, connection or affinity between the agent and the supplier is capable of producing a conflict between the interests of the party to the transaction and the agent, the agent shall include in such written disclosure an explanation of the nature of the potential conflict.
Code of Conduct for Agents and Sales Representatives 2011

Notes

1 This is a compilation of the Code of Conduct for Agents and Sales Representatives 2011. The following table contains information about this Code.

Compilation table

<table>
<thead>
<tr>
<th>Citation</th>
<th>Gazetted</th>
<th>Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code of Conduct for Agents and Sales Representatives 2011</td>
<td>21 Oct 2011 p. 4475-85</td>
<td>s. 1 and 2: 21 Oct 2011 (see s. 2(a)); Code other than s. 1 and 2: 1 Nov 2011 (see s. 2(b))</td>
</tr>
</tbody>
</table>
Appendix 2 – 100 point identity check

<table>
<thead>
<tr>
<th>Primary Documents</th>
<th>70 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Birth Certificate or Extract</td>
<td></td>
</tr>
<tr>
<td>• Citizenship Certificate</td>
<td></td>
</tr>
<tr>
<td>o International Travel Document a current passport</td>
<td></td>
</tr>
<tr>
<td>o expired passport which has not been cancelled and was current within the preceding 2 years</td>
<td></td>
</tr>
<tr>
<td>o 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)</td>
<td></td>
</tr>
<tr>
<td><strong>Note: Do not score additional points for more than one document in this category.</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of person verified from one of the following (but only where they contain a photograph or signature that can be matched).</th>
<th>40 Points for first document from this category. 25 Points for additional document/s from this category.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A licence or permit issued under law of the Commonwealth, a State or Territory (e.g. an Australian driver’s licence)</td>
<td></td>
</tr>
<tr>
<td>• An identification card issued to a public employee</td>
<td></td>
</tr>
<tr>
<td>• An identification card issued by the Commonwealth, State or Territory as evidence of the person’s entitlement to financial benefit</td>
<td></td>
</tr>
<tr>
<td>• An identification card issued to a student at a tertiary education institution</td>
<td></td>
</tr>
<tr>
<td><strong>Note: Additional documents can be awarded 25 points.</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name and address of person verified from any of the following:</th>
<th>35 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A current employer, or a previous employer within the last 2 years</td>
<td></td>
</tr>
<tr>
<td>• A rating authority (e.g. land rates)</td>
<td></td>
</tr>
<tr>
<td>• The Credit Reference Association of Australia (subject to the Privacy Act 1988)</td>
<td></td>
</tr>
<tr>
<td>• Land Titles Office Records</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name, address and telephone number verified:</th>
<th>25 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• By reference to the latest telephone directory published by Telstra or by advice provided by Telstra.</td>
<td></td>
</tr>
<tr>
<td>• By telephone contact with the signatory on that telephone number.</td>
<td></td>
</tr>
<tr>
<td>Name of person verified from any other secondary identification document.</td>
<td>25 Points</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>e.g. marriage certificate (for maiden name only), credit card, council rates, telephone account, foreign driver’s licence, Medicare card etc. <strong>Note:</strong> More than one document may be counted, but points scored from a particular source may be counted only once. e.g. If MasterCard and Visa Card issued from the same financial institution, only one may be counted.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name and address of the person verified from any of the following:</th>
<th>25 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>The records of a public utility</td>
<td></td>
</tr>
<tr>
<td>A record held under a law other than a law relating to land titles (for which see No.3)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name and date of birth of person verified from any of the following:</th>
<th>25 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>The records of a primary, secondary or tertiary education institution attended by the signatory within the last 10 years</td>
<td></td>
</tr>
<tr>
<td>The records of a professional or trade association of which the signatory is a member</td>
<td></td>
</tr>
</tbody>
</table>
Appendix 3 – Guidance notes – Code of Conduct

Guidance Note 1

When selling a property, confirm that dealings are with the true owner(s) of the property (i.e. 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.

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.
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.

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 these 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 e-mail address from agency files rather than simply clicking on the ‘reply’ button – an e-mail 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.

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.

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.


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.
# Appendix 4 – Authorised witnesses for statutory declarations

**Oaths, Affidavits and Statutory Declarations Act 2005**

Authorised witnesses for statutory declarations  **Schedule 2**

## Schedule 2 — Authorised witnesses for statutory declarations

[s. 12(6)(a)]

<table>
<thead>
<tr>
<th>Item</th>
<th>Formal description</th>
<th>Informal description</th>
</tr>
</thead>
</table>
| 1.   | A member of the academic staff of an institution established under any of the following Acts —  
   - Curtin University of Technology Act 1966;  
   - Edith Cowan University Act 1984;  
   - Murdoch University Act 1973;  
   - University of Notre Dame Australia Act 1989;  
   - University of Western Australia Act 1911;  
| 2.   | A member of any of the following bodies —  
   - Association of Taxation and Management Accountants (ACN 002 876 208);  
   - CPA Australia (ACN 008 392 452);  
   - The Institute of Chartered Accountants in Australia (ARBN 084 642 571);  
   - National Institute of Accountants (ACN 004 130 643);  
   - National Tax & Accountants’ Association Limited (ACN 057 551 854). | Accountant |
| 3.   | A person who is registered under the Architects Act 2004. | Architect |
| 4.   | An Australian Consular Officer within the meaning of the Consular Fees Act 1955 of the Commonwealth. | Australian Consular Officer |
| 5.   | An Australian Diplomatic Officer within the meaning of the Consular Fees Act 1955 of the Commonwealth. | Australian Diplomatic Officer |
| 6.   | A bailiff appointed under the Civil Judgments Enforcement Act 2004. | Bailiff |

---

As at 22 Dec 2007  
Version 00-d0-00  
page 17

### Oaths, Affidavits and Statutory Declarations Act 2005

#### Schedule 2
Authorised witnesses for statutory declarations

<table>
<thead>
<tr>
<th>Item</th>
<th>Formal description</th>
<th>Informal description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>A person appointed to be in charge of the head office or any branch office of an authorised deposit-taking institution carrying on business in the State under the Banking Act 1959 of the Commonwealth.</td>
<td>Bank manager</td>
</tr>
<tr>
<td>8.</td>
<td>A member of Chartered Secretaries Australia Limited (ACN 008 615 950).</td>
<td>Chartered secretary</td>
</tr>
<tr>
<td>9.</td>
<td>A pharmaceutical chemist within the meaning of the Pharmacy Act 1964.</td>
<td>Chemist</td>
</tr>
<tr>
<td>10.</td>
<td>A chiropractor within the meaning of the Chiropractors Act 1964.</td>
<td>Chiropractor</td>
</tr>
<tr>
<td>11.</td>
<td>A person registered as an auditor or a liquidator under the Corporations Act 2001 of the Commonwealth.</td>
<td>Company auditor or liquidator</td>
</tr>
<tr>
<td>12.</td>
<td>A judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court of the State or the Commonwealth.</td>
<td>Court officer</td>
</tr>
<tr>
<td>13.</td>
<td>A member of the Australian Defence Force who is — • an officer within the meaning of the Defence Force Discipline Act 1982 of the Commonwealth; • a non-commissioned officer within the meaning of that Act with 5 or more years of continuous service; or • a warrant officer within the meaning of that Act.</td>
<td>Defence force officer</td>
</tr>
<tr>
<td>14.</td>
<td>A dentist within the meaning of the Dental Act 1939.</td>
<td>Dentist</td>
</tr>
<tr>
<td>15.</td>
<td>A medical practitioner within the meaning of the Medical Act 1894.</td>
<td>Doctor</td>
</tr>
<tr>
<td>15A.</td>
<td>A person appointed under the Parliamentary and Electorate Staff (Employment) Act 1992 section 4(1)(b)(i) or (2)(b)(i)</td>
<td>Electorate officer of a member of State Parliament</td>
</tr>
</tbody>
</table>
### Oaths, Affidavits and Statutory Declarations Act 2005

Authorised witnesses for statutory declarations  
**Schedule 2**

<table>
<thead>
<tr>
<th>Item</th>
<th>Formal description</th>
<th>Informal description</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>A member of the Institution of Engineers, Australia, other than at the grade of student.</td>
<td>Engineer</td>
</tr>
</tbody>
</table>
| 17.  | The secretary of an organisation of employees or employers that is registered under one of the following Acts —  
  - *Industrial Relations Act 1979*;  
  - *Workplace Relations Act 1996* of the Commonwealth. | Industrial organisation secretary |
| 18.  | A member of the National Insurance Brokers Association of Australia (ACN 006 093 849). | Insurance broker     |
| 19.  | A Justice of the Peace.                                                             | Justice of the Peace  |
| 19A. | A person who is a member of the Authority’s staff within the meaning given to that term by the *Land Information Authority Act 2006* section 3. | Landgate officer      |
| 20.  | A legal practitioner within the meaning of the *Legal Practice Act 2003*.            | Lawyer               |
| 21.  | The chief executive officer or deputy chief executive officer of a local government. | Local government CEO or deputy CEO |
| 22.  | A member of the council of a local government within the meaning of the *Local Government Act 1995*. | Local government councillor |
| 23.  | A member of the Australasian Institute of Chartered Loss Adjusters (ACN 074 804 167). | Loss adjuster        |
| 25.  | A member of either House of Parliament of the State or of the Commonwealth.         | Member of Parliament |
| 26.  | A minister of religion registered under Part IV Division 1 of the *Marriage Act 1961* of the Commonwealth. | Minister of religion |
| 27.  | A nurse within the meaning of the *Nurses Act 1992*.                                | Nurse                |
| 28.  | A registered optometrist within the meaning of the *Optometrists Act 1940*.          | Optometrist          |

As at 22 Dec 2007  
Version 00-d0-00  
Extract from www.slp.wa.gov.au, see that website for further information
**Oaths, Affidavits and Statutory Declarations Act 2005**

**Schedule 2** Authorised witnesses for statutory declarations

<table>
<thead>
<tr>
<th>Item</th>
<th>Formal description</th>
<th>Informal description</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.</td>
<td>A physiotherapist within the meaning of the <em>Physiotherapists Act 1950</em>.</td>
<td>Physiotherapist</td>
</tr>
<tr>
<td>31.</td>
<td>A podiatrist within the meaning of the <em>Podiatrists Registration Act 1984</em>.</td>
<td>Podiatrist</td>
</tr>
<tr>
<td>32.</td>
<td>A police officer.</td>
<td>Police officer</td>
</tr>
<tr>
<td>33.</td>
<td>The person in charge of an office established by, or conducted by an agent of, Australia Post within the meaning of the <em>Australian Postal Corporation Act 1989</em> of the Commonwealth.</td>
<td>Post office manager</td>
</tr>
<tr>
<td>34.</td>
<td>A registered psychologist within the meaning of the <em>Psychologists Registration Act 1976</em>.</td>
<td>Psychologist</td>
</tr>
<tr>
<td>35.</td>
<td>A public notary within the meaning of the <em>Public Notaries Act 1979</em>.</td>
<td>Public notary</td>
</tr>
<tr>
<td>36.</td>
<td>An officer of the Commonwealth public service.</td>
<td>Public servant (Commonwealth)</td>
</tr>
<tr>
<td>37.</td>
<td>A person who is employed under the <em>Public Sector Management Act 1994</em> Part 3.</td>
<td>Public servant (State)</td>
</tr>
<tr>
<td>38.</td>
<td>The holder of a licence under the <em>Real Estate and Business Agents Act 1978</em>.</td>
<td>Real estate agent</td>
</tr>
<tr>
<td>39.</td>
<td>The holder of a licence under the <em>Settlement Agents Act 1981</em>.</td>
<td>Settlement agent</td>
</tr>
<tr>
<td>40.</td>
<td>The Sheriff of Western Australia and any deputy sheriff appointed by the Sheriff of Western Australia.</td>
<td>Sheriff or deputy sheriff</td>
</tr>
<tr>
<td>41.</td>
<td>A licensed surveyor within the meaning of the <em>Licensed Surveyors Act 1909</em>.</td>
<td>Surveyor</td>
</tr>
<tr>
<td>42.</td>
<td>A person employed as a member of the teaching staff within the meaning of the <em>School Education Act 1999</em> or as a teacher of a non-government school within the meaning of that Act.</td>
<td>Teacher</td>
</tr>
<tr>
<td>43.</td>
<td>A member, registrar or clerk, or the chief executive officer, of any tribunal of the State or the Commonwealth.</td>
<td>Tribunal officer</td>
</tr>
</tbody>
</table>
**Oaths, Affidavits and Statutory Declarations Act 2005**
Authorised witnesses for statutory declarations  **Schedule 2**

<table>
<thead>
<tr>
<th>Item</th>
<th>Formal description</th>
<th>Informal description</th>
</tr>
</thead>
<tbody>
<tr>
<td>44.</td>
<td>A registered veterinary surgeon within the meaning of the <em>Veterinary Surgeons Act 1960.</em></td>
<td>Veterinary surgeon</td>
</tr>
</tbody>
</table>

Appendix 5 - Guidance notes on client identity verification

(Provided by courtesy of REIWA)

WHEN THE REGISTERED PROPRIETOR IS A COMPANY

Step 1
Do a company search at ASIC and print out the resulting report.
This company search or Current Extract can be obtained from the members’ area of reiwa.com through the National Tenancy Database connection to NTD Tenancy Check. Under search type select “ASIC Search $23.65”.

Step 2
Check the ASIC Current Extract that the company’s “status” shows as registered. If it is anything other than “registered” then you should obtain legal advice.

Step 3
Check on the Certificate of Title that the company is the registered proprietor of the land to be sold. The names should match exactly.

Step 4
Check the Current Company Extract for the details of the office holders/directors and secretary (if there is one).

Step 5
If it is a one-director company, then a 100 point check should be done on that sole director.

Step 6
If there are two directors, then a 100 point check should be done on both directors and/or secretary.

Step 7
If there are more than two directors and/or secretaries, then ascertain from the company which directors or secretaries are likely to sign the contract and do a 100 point check on those who are likely to sign.

Step 8
In doing the 100 point checks, check the date of birth shown on the ASIC Current Extract and the date of birth shown on the identified person’s passport or birth certificate to ensure that they match.

Step 9
If a face to face meeting is not possible with the person whose ID you are checking, then they should provide copies of the documents that are required to be verified as true copies of the original by witnesses who are capable of witnessing a statutory declaration such as a Justice of the Peace, doctor, police officer, post office manager, pharmacist. See the attached list for a full list of acceptable witnesses.

Step 10
You could also check the signatures on the Transfer (at the time the registered proprietor purchased the land) with the signatures on the documents you are obtaining now. These may be different if the directors have changed.

Step 11
If you remain unsure of the instructions that you have received then you could confirm those instructions with some of the other directors who are listed on the Current Company Extract.
WHEN THE REGISTERED PROPRIETOR IS AN INCORPORATED ASSOCIATION

An incorporated association has an elected management committee or Board. That Board would normally have the power (through its Articles, Rules or Constitution) to sell a property vested in the Incorporated Association.

There should be a resolution by the Board to dispose of the property.

Step 1

The Agent should obtain written correspondence from the Incorporated Association:
1. confirming that the property is to be sold; and
2. identifying the people on the Board who will or may sign the contract and the transfer.

Step 2

Check on the Certificate of Title that the Incorporated Association is the registered proprietor of the land to be sold. The names should match exactly.

Step 3

You should conduct a 100 point check on the persons who are nominated by the Association to sign the contract. You can undertake a 100 point check on more than two Board members if it is uncertain which Board members will sign the contract.

Step 4

Check the signatures on the Transfer (at the time the registered proprietor purchased the land) with the signatures on the documents you are obtaining now. These may not match if there are now different Board members.

WHEN THERE IS A MORTGAGEE IN POSSESSION

Step 1

Check that the mortgagee is listed as a mortgagee on the Certificate of Title.

Step 2

You should obtain written confirmation from the mortgagee in possession or the representative of the mortgagee in possession that the lender is indeed a mortgagee in possession.

The mortgagee in possession should also be asked to provide the identity of the person or persons who have the lender’s authority to sign the Agent's authority and the Contract of Sale.

Step 3

Ideally a 100 point check should be done on the persons nominated by the bank as the persons authorised to sign on behalf of the bank. If you are unable to conduct a 100 point check on persons who are authorised to sign, then you should keep the written confirmation received from the lender or their representative and make file notes to reflect the situation. The statutory code only requires an agent to make all reasonable efforts to verify.

Step 4

Try to contact the registered proprietor to confirm they are subject to a mortgagee in possession sale, and document those enquiries.
WHEN YOU ARE DEALING WITH ADMINISTRATOR OF AN INCAPABLE PERSON

In Western Australia, an administrator or plenary (all powers) attorney may be appointed by the State Administrative Tribunal (“SAT”) to manage the property and financial affairs of a person who lacks the ability to manage their own affairs. This appointment is made pursuant to the Guardianship & Administration Act 1990.

Step 1
You should obtain a copy of the formal document issued by SAT.

Step 2
Check with SAT that the Order is genuine and valid.

Step 3
Check on the Certificate of Title that the incapable person named in the SAT order is the registered proprietor of the land.

Step 4
Check that there is nothing in the Order that prevents the property from being sold.

Step 5
Then conduct a 100 point check on the Administrator or Attorney.

POWERS OF ATTORNEY

There are generally three types of powers of attorney.

(1) 19th Schedule of the Transfer of Land Act
This Power of Attorney allows the attorney to sell land. It is a form of attorney that members of the public commonly obtain from news agencies.

Step 1
Sight the original or obtain a copy of the power of attorney, which is certified as a true copy.

Step 2
Check that the person granting the power of attorney has the same name as the registered proprietor of the property as per the Certificate of Title.

Step 3
Check that there is nothing on the power of attorney that prevents the sale of the property.

Step 4
Do a 100 point check on the attorney.

Step 5
Check whether the power of attorney has been registered at Landgate.

It does not need to be registered at Landgate for the purposes of signing your listing authority or for signing a contract of sale but if the attorney is going to sign the Transfer of Land form, then it would need to have been registered at Landgate for Landgate to accept it. If it is not registered, then you should recommend to the attorney that it be registered as it can take weeks.

Step 6
Use reasonable efforts to check that the person granting the power of attorney (the donor) is mentally capable and aware of the power of attorney.
If they are not mentally capable, then the power of attorney is no longer legally effective.

Step 7
Ascertain why the registered proprietor is selling pursuant to the power of attorney. Try and get confirmation from the registered proprietor.

Step 8
Check the signatures on the Transfer (at the time the registered proprietor purchased the land) with the signatures on the documents you are obtaining now.

(2) Powers of Attorney drawn by solicitors, not pursuant to any statutory form
Powers of attorney of this nature are often lengthy. The powers of attorney are only valid for the specific powers granted pursuant to the power of attorney. This is why they tend to be long.

Step 1
Sight the original or obtain a copy of the power of attorney which is certified as a true copy.

Step 2
Check that the power of attorney specifically authorises the sale of land.

Step 3
Check that the registered proprietor is the donor of the power of attorney. The names should match exactly.

Step 4
Do a 100 point check on the attorney.

Step 5
Check whether the power of attorney has been registered at Landgate. It does not need to be registered at Landgate for the purposes of signing your listing authority or for signing a contract of sale but if the attorney is going to sign the Transfer of Land form, then it would need to have been registered at Landgate for Landgate to accept it. If it is not registered then you should recommend to the attorney that it be registered as it can take weeks.

Step 6
Use reasonable efforts to check that the person granting the power of attorney (the donor) is mentally capable and aware of the power of attorney.

If they are not mentally capable, then the power of attorney is no longer legally effective.

Step 7
Ascertain why the registered proprietor is selling pursuant to the power of attorney. Try and get confirmation from the registered proprietor.

Step 8
Check the signatures on the Transfer (at the time the registered proprietor purchased the land) with the signatures on the documents you are obtaining now.

(3) Enduring Powers of Attorney.
This form of power of attorney is in a statutory form granted pursuant to the Guardianship and Administration Act 1990.
It is also commonly available from newsagencies and many people use this in preference to the other forms of power of attorney.

1. An enduring power of attorney is one in which the person granting the power (the donor) declares that the power either —
   (i) will continue in force notwithstanding his subsequent legal incapacity; or
   (ii) will be in force only during any period when a declaration by the State Administrative Tribunal under section 106 that the donor does not have legal capacity is in force.

(See the attached annexure being section 104 of the Guardianship and Administration Act 1990)

Step 1
Sight the original or obtain a copy of the power of attorney which is certified as a true copy.

Step 2
Check that the donor is the registered proprietor of the property. The names should match exactly.

Step 3
Check that there are not any restrictions set out in the power of attorney that would prevent the land from being sold; for example, that there is no statement “Do not sell my house at 17 Flinders Way”.

Step 4
Check whether the power of attorney applies only when the State Administrative Tribunal says that the person giving the power of attorney is not capable of managing their own affairs.

If the donor has made such a choice, then you need to ascertain whether an Order has been made by SAT that the person is not mentally capable. If there is no such order, the Enduring Power of Attorney is not effective to appoint the agent or to sign a contract for the sale of the property.

Step 5
Check whether the Enduring Power of Attorney has been registered at Landgate. It does not need to be registered at Landgate for the purposes of signing your listing authority for a contract of sale but if the attorney is going to sign the Transfer of Land form, then it would need to have been registered at Landgate for Landgate to accept it. If it is not registered then you should recommend to the attorney that it be registered as it can take weeks.

Step 6
Ascertain why the registered proprietor is selling pursuant to the power of attorney. Try and get confirmation from the registered proprietor unless the registered proprietor is an incapable person.

Step 7
Check the signatures on the Transfer (when the registered proprietor purchased the land) with the signatures on the documents you are obtaining now.
EXECUTOR OR ADMINISTRATOR OF DECEASED ESTATE

An Executor is the person or organisation that has been named in a Will by the deceased as the person or organisation to carry out the terms of their Will.

The Executor or Administrator will need to apply for a Grant of Probate or Letters of Administration from the Supreme Court, to administer the deceased estate; if the Estate includes land.

The Grant of Probate is the document issued by the Supreme Court, which legally authorises the Executor to deal in all matters relating to the estate. The Grant of Probate includes a copy of the Will.

When the Grant of Probate has been obtained, the Executor is able to deal with the assets and liabilities of the estate. Real estate can be sold or transferred.

If two Executors have been appointed then one Executor cannot act on behalf of the other Executor i.e. both Executors must sign agency agreements and contracts.

Step 1

If an Agent is requested to sell real estate for the Executor, then the Agent should sight the original or obtain a certified copy of the Grant of Probate.

Step 2

The Agent should do the 100 point identity check on each Executor named on the Grant of Probate.

Step 3

If the deceased did not have a Will, then an Administrator will have to be appointed by the Supreme Court. You should sight the original or obtain a certified copy of the Grant of Letters of Administration and do the 100 point check on the Administrator.

Step 4

Check that the name of registered proprietor exactly matches the name on the Grant of Probate or Letters of Administration.

COURT ORDER

Step 1

If a Court Order has been issued that authorises a person to sell a property on behalf of the registered proprietor, then you should sight the original Court Order or obtain a certified copy of that Court Order.

Step 2

Check that the registered proprietor has the same name as the person referred to in the Court Order.

Step 3

Do a 100 point check on the person nominated in Court Order as having authority to sell the property.

Step 4

Try and contact the registered proprietor who is subject to the Order, to confirm the Order. Document the discussions and enquiries.
This Checklist is not a substitute for a comprehensive knowledge of the statutory Code of Conduct and the associated guidance note “Client identification and real estate fraud prevention” published by the Department of Commerce. All agents must be familiar with those provisions and should not merely rely on this checklist.

Agents should remember at all times that this checklist and the provisions of the Code and the guidance note should not be seen as being the limit to the steps an agent should take. Agents must act reasonably at all times and take additional steps if warranted.
Appendix 6 - REIWA Client identification form 817

CLIENT IDENTIFICATION

This Checklist is not a substitute for a comprehensive knowledge of the statutory Code of Conduct and the associated guidance note “Client identification and real estate fraud prevention” published by the Department of Commerce. All agents must be familiar with those provisions and should not merely rely on this checklist.

Agents should remember at all times that this checklist and the provisions of the Code and the guidance note should not be seen as being the limit to the steps an agent should take. Agents must act reasonably at all times and take additional steps if warranted.

Property Address

Registered Proprietor on CT

Principal in agency agreement is:  □ Registered Proprietor  □ Mortgagee in Possession  □ Administrator/ Executor  □ Power of Attorney

Copies of Entitlement Documents should be attached  □ Court Order

Where Registered Proprietor is an incorporated entity

...[name of person/s]

That authorisation arises from

...[name of person/s]

The report obtained from the ASIC database on ...[date] confirms that...

...[name of person/s]

Name of person identification conducted on


☐ Face to Face Identification

Agents should endeavour to sight original documents and do face to face identification

☐ Remote Identification

Ensure documents used by the person to meet the 100 point check are sighted and verified as a true copy of the original, by a suitable and verifiable witness e.g. Justice of the Peace, doctor, police officer, Australia Post branch manager, pharmacist.

Documents from which the 100 point identity was undertaken - Copies are attached

<table>
<thead>
<tr>
<th>Sought</th>
<th>Original</th>
<th>Certified</th>
<th>Copy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>100 point Documents</td>
<td>70 Points</td>
<td></td>
<td></td>
</tr>
<tr>
<td>70 Points</td>
<td>Note: Do not score additional points for more than one document in this category</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Birth Certificate or Extract</td>
<td>60 Points</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citizenship Certificate</td>
<td>25 Points</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Travel Document</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a current passport</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ expired passport which has not been cancelled and was current within the preceding 2 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ 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)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name of person verified from one of the following (but only where they contain a photograph or signature that can be matched).</td>
<td>25 Points</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ A licence or permit issued under law of the Commonwealth, a State or Territory e.g. an Australian driver’s licence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ An identification card issued to a public employee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ An identification card issued by the Commonwealth, State or Territory as evidence of the person’s entitlement to financial benefit</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ An identification card issued to a student at a tertiary education institution</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

CLIENT IDENTIFICATION | PAGE 1 OF 2
Mandatory CPD 2012

Risk - Real Estate Agents and Business Brokers

Name of person identification conducted on: 

<table>
<thead>
<tr>
<th>SIGHTED:</th>
<th>ORIGINAL</th>
<th>CERTIFIED COPY</th>
</tr>
</thead>
</table>

- Name and address of person verified from any of the following: 
  - 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

35 Points

- Name, address and telephone number verified: 
  - 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.

25 Points

<table>
<thead>
<tr>
<th>SIGHTED:</th>
<th>ORIGINAL</th>
<th>CERTIFIED COPY</th>
</tr>
</thead>
</table>

- Name of person verified from any other secondary identification document. 
  - e.g., marriage certificate (for maiden name only), credit card, council rates, telephone account, foreign driver’s licence, Medicare Card etc. Note: More than one document may be counted, but points scored from a particular source may be counted only once.
  - E.g., if MasterCard and Visa Card issued from the same financial institution, only one may be counted.

25 Points

<table>
<thead>
<tr>
<th>SIGHTED:</th>
<th>ORIGINAL</th>
<th>CERTIFIED COPY</th>
</tr>
</thead>
</table>

- Name and address of the person verified from any of the following: 
  - The records of a public utility
  - A record held under a law other than a law relating to land titles

25 Points

<table>
<thead>
<tr>
<th>SIGHTED:</th>
<th>ORIGINAL</th>
<th>CERTIFIED COPY</th>
</tr>
</thead>
</table>

- Name and date of birth of person verified from any of the following: 
  - 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.

25 Points

Security Password: (e.g., mother’s maiden name)

Existing Contact Information already held on file:

- Addresses: Postal
  - Electronic
  - Social Media
  - Telephone: Home, Work, Mobile

Where an address or number changes it is prudent to also communicate with an alternate address or number until the agent considers that the change is genuine.

Signatures:
(a) If an existing signature is held on file, then does it match the new signature on the agency agreement.
(b) Does signature on the authority match the signature on the transfer of land form at Landgate when the seller purchased the property.

Name of person conducting the identification: __________________________ Date: __/__/____

Notes: 

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
DISCLAIMER:

The information provided in this publication was adapted from material prepared by the Department of Commerce, Landgate, the Australian Competition and Consumer Commission, the Major Fraud Squad WA, Australian Institute of Conveyancers WA Division and the Real Estate Institute of Western Australia.

This material should not be taken as a statement of law.

REIWA and the Department of Commerce strongly recommend 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.

Participants may also 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 and any other relevant legislation.