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Settlement Agents Code of Conduct amendments

Amendments to the Code of Conduct for Settlement Agents requiring mandatory identification checks (by agents) of all people wishing to sell their property, are being gazetted today, 21 October 2011, and will take effect from 1 November 2011. These changes are being implemented to better protect WA property owners following the recent fraudulent sale of two Perth properties. Similar changes are also being made to the Settlement Agents Code of Conduct.

The below information has also been sent in hard copy form to all licensed agents and should be arriving in mailboxes over the coming days.

These changes reflect recommended practice by industry and government alike, and have been formulated in consultation with the Australian Institute of Conveyancers (WA), the Real Estate Institute of Western Australia and Landgate.

IDENTIFICATION CHECKS

Effective 1 November 2011, the Settlement Agents Code of Conduct 1982 will include a provision that requires client identity verification to be undertaken for all settlement transactions (new Article 10(2)). This will mean that as soon as practicable after receiving instructions to act in the settlement of a property and prior to effecting settlement, an agent must ascertain the names of the owner(s) of the property and make all reasonable efforts to verify:

- the identity of the owner(s);
- the identity of the person issuing instructions; and
- their authority to settle (transfer) the property.

Details about the processes required to confirm the identity of property owners are contained in a set of Guidance Notes. These can be viewed on the Consumer Protection website at www.commerce.wa.gov.au/ConsumerProtection/SettlementGuidanceNotes. Documents needed to meet the 100 point verification check are also attached at this site.

ADDITIONAL CHANGE TO THE SETTLEMENT AGENTS CODE

The Code has also been amended to include a new rule which requires settlement agents to make all reasonable efforts to complete work for their clients as soon as is reasonably practicable and to exercise due care and skill in all settlement transactions. The insertion of this article (Article 18) brings the Code more into line with the Australian Consumer Law.

All agents should note and print a copy of the amended Code. It will be available on the Consumer Protection website at [www.commerce.wa.gov.au/ConsumerProtection/Settlement Legislation](http://www.commerce.wa.gov.au/ConsumerProtection/SettlementLegislation) in the coming days.

Non adherence to the above legislation can attract penalties ranging from monetary fines to disciplinary action.

...continued on paged two



Continued from page one

LANDGATE LODGEMENT PROCESS CHANGE

As you may be aware Landgate are currently developing a new lodgement process for all property transfers where the owner or their authorised representative resides in Australia. When that new process is implemented, the new Code of Conduct standard for identity checking by settlement agents will be that required by Landgate.

In the short term, agents are required to apply the standard for identification checks as set out in the aforementioned Guidance Notes for transfers relating to property sellers based in Australia. For sellers living overseas the standard required by Landgate for lodging transfer documents applies.

IMPLEMENTATION ARRANGEMENTS

Strictly speaking the amended Code requires all settlements that take place after 1 November 2011 to conform to the new client identity verification requirements. This includes settlements that commenced prior to 1 November 2011. However, in recognition of the length of time that settlements take, the Department acknowledges that it may not be practicable for agents to fully comply with the new requirements for all transactions commenced prior to 1 November 2011. However, to protect your clients we would recommend that agents apply the new requirements to all new settlements to the fullest extent possible from this point forward.

The Department will expect that agents fully comply with the new client identity verification requirements in every case where instructions to act in settlements are received after 1 November 2011.

If you would like further information or have any enquiries regarding any of the above please call the Consumer Protection Contact Centre on 1300 30 40 54.