



Obtaining identification from clients for the purpose of fraud prevention

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In past years there have been a number of property scams that have caused havoc within the real estate industry, Australia wide. These cases have occurred because people have represented themselves as the owner of properties and then undertaken sales transactions to gain financially from the sale of a property that they do not own.

As a result of such cases across Australia, NSW Fair Trading issued a set of guidelines to assist property agents in reducing their client's and their office's exposure to fraudulent behaviours. These initial Fraud Prevention Guidelines, issued by the Commissioner in April 2013 have been updated and are now included in the new 2020 Supervision Guidelines. They are underpinned with the aim of minimising fraud within the property industry. Whilst the aim is to prevent fraud being executed, the Guidelines set standards and requirements to be undertaken by agents to address such fraudulent behaviours and minimise

the impact on agency clients.

The requirements of agents as set out in the new Supervision Guidelines are linked directly to the Code of Conduct, which is Schedule 1 of the Property and Stock Agents Regulation 2014. Breaches of the Guidelines incur financial penalties and disciplinary action can also be taken under the Property and Stock Agents Act 2002, which can lead to licence cancellation and disqualification.

A principal licensee must prepare and maintain written procedures for the verification of the identity of a party with whom it is proposed to enter an agency agreement. This is the most important question at this point, as we are often asked "is this just for residential sales". The very easy answer is **NO**. Clause 4.1 of the Supervision Guidelines states that the Fraud Prevention identification check must be completed whenever an agent is entering into an agency agreement – so very clearly, this means **ANY** agency agreement, be it sales (residential, commercial, industrial, retail, rural, businesses) or leasing (residential, commercial, industrial, retail, rural, on-site management) or buyers agency agreements. Yes – that's every type of

agency agreement.

These written procedures must provide for the following:

- a process to verify that the identity of a person entering an agency agreement is the owner of the property that is subject to the agreement or, the person has the legal right to act on behalf of the owner,
- if applicable, in the case of a person who has the legal right to act on behalf of the owner - where that person is not listed on the certificate of title, the original or a certified copy of the document which confers the power of sale or management on that person must be sighted, and a copy of the document must be retained,
- if applicable, where there is no mortgagee listed on the certificate of title, written confirmation of the power of sale or management is sought from all registered owners listed on the title,
- where it is not possible to comply with the above requirement, a reasonable attempt must be made to verify the power of sale or management with the registered owner of the property and a record retained of each attempt,
- a record must be kept of all documentation relied upon to verify an individual's identity,

In verifying the identity of a person, a licensee must sight an original or certified copy of:

- a primary proof of identity document,
- two secondary proof of identity documents, and

- a document providing proof of legal ownership of the property.
- In the case of the sale of a business, only the first and second requirement apply.
- In verifying a proof of identity document, a licensee must ensure:
 - the documents are legible and appear not to have been altered in any way, and
 - there is no discrepancy between the information collected by a licensee and the information contained in the documents, other than a discrepancy that can be explained and supported with evidence, and
 - the photograph contained in photographic identification documents is a true likeness to the person whose identity is being verified.

NSW Fair Trading have identified that in a planned attempt to minimise fraudulent behaviour, that agents are required to obtain significant forms of identification, as detailed above, to ensure that the client that they dealing with, are truly the owner of the property in question.

We recommend that agents utilise a proforma for gathering evidence that they have sighted the appropriate documentation to confirm the identity of the people with whom they are entering into agency agreements. NSW Fair Trading issues a standard proforma – you would simply need to change the words from vendor to landlord as appropriate.

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