

Protection against fraud in real estate property listings

VERIFICATION OF IDENTITY

Introduction

There have been several cases in Australia of real estate being sold without the true owner's consent. Many instances of fraud can be identified and prevented prior to a property being listed for sale.

These guidelines provide real estate agents, salespersons and auctioneers with key points to assist with checking a person's identity before listing a property for sale to minimise the risk of facilitating a fraudulent transaction.

DON'T PUT YOURSELF OR YOUR BUSINESS AT RISK.

It is a legal requirement for agents to take reasonable steps to verify the ownership of a property before listing it for sale or auctioning it.

Reference: Property Occupations Regulation 2014, section 19.

These guidelines do not prescribe the only way of taking reasonable steps to verify ownership of a property, however, in most cases, the Office of Fair Trading (OFT) would consider compliance with these guidelines as having fulfilled the 'reasonable steps' requirement of the law.

Property scams and fraud

There are a number of ways a fraud could be perpetrated.

Reported crimes differ in their details but, generally, a criminal takes on the identity of, and masquerades as, the true owner of the property. The property sale is undertaken by an agent. Once settlement occurs, the entire proceeds of the sale are deposited into the bank account provided by the criminal. The transfer of the property to the unsuspecting purchaser occurs while the true owner remains unaware of the situation.

Due diligence by agents can help eliminate much of the risk of fraud occurring.

WARNING SIGNS

It is important for agents to know what to look for, to help detect and prevent identity fraud.

Look out for the following warning signs:

- A recent change in address or other contact details, which are not provided until instructions to sell the property have been received.
- The transaction involves people located, or documents issued, overseas.
- 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 the sale is urgent, or has become urgent, due to matters such as an overseas investment opportunity or family illness which cannot be substantiated.
- A new generic email address being used (e.g. Hotmail, Yahoo or Gmail).
- Witnesses on documentation residing in another country.

VERIFY PROPERTY OWNERSHIP

Follow these steps to verify ownership of a property before listing it for sale or auctioning it.

STEP 1

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

You can do this by obtaining a current title search.

You should verify the basic characteristics of the property that are provided to you by the vendor. For example:

- full names of the owners
- whether the property is owned by a legal entity such as a company or a trust
- the property description.

The next steps you need to take will differ depending on whether the registered owner(s) of the property is an individual, a legal entity (such as a corporation, incorporated association or a trust), or a person with the legal right to sell a property.

STEP 2

Confirm each person(s) representing themselves as the registered owner(s) actually is who they say they are.

FOR INDIVIDUALS

Ideally, you should:

- meet the vendor face-to-face
- discuss in advance that you are required to verify their identity and will need 100 points of identity during the meeting
- sight the original identity documents and take copies
- examine photographic identity documents and compare 'reasonable likeness' with the person presenting the documents
- have the vendor sign a document (such as the Appointment to Act) in your presence so you can match the signature to their identification.

Appendix 1 shows the types of documents that may make up 100 points of identity. Combined, these documents should show evidence of the person's:

- full name
- date of birth
- current residential address
- signature
- photograph.

If you can't meet the vendor face-to-face, because for example they are overseas, you need to take extra care.

The 100 point identity check should still be applied. Make sure you get a copy that has been sighted and verified as a true copy of the original by a suitable independent and verifiable witness.

Where possible, and especially if the vendor is overseas, you should insist on the witness being a:

- Justice of the Peace
- Commissioner for Declarations
- Australian lawyer

- Notary Public
- Licensed conveyancer
- Australian Consular Officer or an Australian Diplomatic Officer.

If such witnesses are not reasonably available, because for example the vendor lives in a remote part of Queensland, other acceptable witnesses include:

- a doctor
- a nurse
- a State or Commonwealth public servant
- a police officer
- a pharmacist
- an Australia Post branch manager
- an Officer of the Australian Defence Force.

FOR CORPORATIONS AND INCORPORATED ASSOCIATIONS

Confirm details including:

- the registered number
- registration status
- if a liquidator, receiver or administrator has been appointed
- details of current officers, liquidator, receiver or administrator
- registered office address
- principal place of business.

You can do this by doing a company search on the ASIC website or a company information database provided by a 3rd party like Veda or SAI Global. Ensure any data you rely upon is current.

FOR TRUSTS

Confirm the details of the trustee listed on the Current Title Search. If the trustee is an individual, you should confirm the details as set out in 'For Individuals' above. If the trustee is an incorporated entity, you should confirm the details as set out in 'For companies and incorporated associations' above.

LEGAL RIGHT TO SELL

There will be cases where a person with the legal right to sell the property is not the registered owner.

These situations include, but are not limited to:

- the holder of a Power of Attorney or Enduring Power of Attorney
- an executor of a deceased estate
- a mortgagee in possession
- the Sheriff with an appropriate court order.

In these situations:

- Verify the identity of the relevant individual/s.
- Sight the document which confers the vendor the authority to act on behalf of the current registered owner.
- Take a copy of this document.

If you can't sight the original, make sure you get a copy that has been sighted and verified as a true copy of the original by a qualified witness, such as those listed.

STEP 3

For each sale, you should:

- record the steps you took when verifying the vendor's identity
- keep copies of identity documents appropriately secured.

You should set procedures within your office to ensure these steps occur for every sale.

It is important that agents collect, store, secure and dispose of sensitive client information in accordance with the *Privacy Act 1988* and National Privacy Principles. Further information about these requirements is available from the [**Australian Information Commissioner**](#).

Verification of Identity for a property transaction

Further verification of identity is required at settlement. Guidelines for these requirements are available from the [Land Titles Registry](#).

Agents who have verified identity for a property listing should not witness land titles forms even if they are a qualified witness. However, it is recognised that this may not always be possible in remote locations.

Consequences of failing to verify property ownership

Agents who fail to meet their obligations may:

- expose themselves to civil action should a party suffer loss as a result of the agent's inaction
- have disciplinary action initiated against them by the OFT.

Where a disciplinary action case is proven in the Queensland Civil and Administrative Tribunal, an agent may be subject to:

- a reprimand
- a fine
- a compensation order (including repaying commission)
- licence suspension
- licence cancellation
- permanent disqualification from holding a licence.

Reference:

Property Occupations Act 2014, section 235;
Property Occupations Regulation 2014, section 19.

For more information about your responsibilities as a property agent in Queensland contact:

Office of Fair Trading
www.qld.gov.au/fairtrading

Phone: 13 QGOV (13 74 68)

Email: BrisbaneOFT@justice.qld.gov.au

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Appendix 1 Documents acceptable for a 100 point identity check

Combined, these documents should be current and show evidence of the person's:

- full name
- date of birth
- current residential address
- signature
- photograph.

Primary documents <ul style="list-style-type: none"> • Birth certificate • Citizenship certificate • A current passport • A passport expired for less than 2 years, provided it has not been cancelled • Other document of identity having the same characteristics as a passport (this may include some diplomatic documents and some documents issued to refugees) 	70 points Only one document from this category should be accepted
Secondary documents (Must include a name, photograph and signature) <ul style="list-style-type: none"> • An Australian driver licence • An Australian proof of age card • Australian Firearms licence • A public service employee identification card • A financial benefit identification card (e.g. Concession card or Pension card) • Department of Veterans Affairs Card • A tertiary education institution student identification card 	40 points for the first document from this category 25 points for each additional document from this category
Verification of name and address <ul style="list-style-type: none"> • A payslip from a current employer, or a previous employer within the last 2 years • A land valuation certificate • A credit check • Credit card statement • Council rates account • Telephone account • Foreign driver licence • Medicare card • Utility account (telephone, gas, electricity, water) • Property insurance documents • Vehicle registration or insurance documents 	25 points More than one document may be counted, provided they come from different sources (i.e. different banks or utility providers)
Verification of name and date of birth of person by: <ul style="list-style-type: none"> • The records of a primary, secondary or tertiary education institution attended within the last 10 years • The membership records of a professional or trade association 	25 points
Verification of name: <ul style="list-style-type: none"> • Marriage certificate (for maiden name only) 	25 points