



**Fair
Trading**

Real Estate Fraud Prevention Guidelines

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1. Introduction

These Guidelines have been issued by the Commissioner for Fair Trading and are intended to help real estate agents verify the identification of vendors when dealing with clients in order to prevent real estate fraud.

2. Background

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

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

These sales were undertaken by real estate agents who were contacted by criminals masquerading as the true owners. In both cases, the properties were tenanted and being managed by a real estate agent on behalf of the registered proprietor, prior to a fraudulent request being made to sell the property. Contact with the agent by the fraudsters was made by telephone in addition to other forms of contact. The person masquerading as the owner notified the agent of new contact details which formed the basis of future contacts.

These two events highlight how easily a fraud can commence and emphasise that agents need to be on high alert for potential fraudulent real estate transactions.

3. The Law

Section 37 of the *Property, Stock and Business Agents Act 2002* provides that the regulations may prescribe rules of conduct to be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration.

Penalties apply for breaches of rules of conduct. The maximum penalty is 100 penalty units – presently \$11,000. In addition, disciplinary action can be taken under the Act which can lead to licence cancellation and disqualification.

- Rule of Conduct two in the *Property, Stock and Business Agents Regulation 2003* requires agents to comply with the fiduciary obligations arising as an agent.
- Rule of Conduct three requires that an agent must act honestly, fairly and professionally with all parties in a transaction.
- Rule of Conduct four requires that an agent must exercise reasonable skill, care and diligence.
- Rule of Conduct six requires that the agent must act in the client's best interest at all times unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

Section 191 of the Act provides that disciplinary action can be taken against the holder of a licence for, among other things, acting unlawfully, improperly, unfairly or incompetently while carrying on business or exercising functions under the licence or certificate of registration. Disciplinary action

can lead to a range of penalties ranging from a caution or reprimand, a monetary penalty, to cancellation of a licence and disqualification.

Section 55 of the *Property, Stock and Business Agents Act 2002* provides that an agent is not entitled to any commission or expenses from a person for, or in connection with, services performed by the licensee in the capacity of licensee for or on behalf of any person unless the services were performed pursuant to an agency agreement signed by, or on behalf of, the person and the licensee.

Section 63 of the *Property, Stock and Business Agents Act 2002* prohibits a real estate agent from offering residential property for sale unless the required documents are all available for inspection at the real estate agent's registered office at all times at which an offer to purchase the property may be made.

Section 63 prescribes the situations when an agent is considered to offer residential property for sale, and sets out the required documents which must be available. These documents include a copy of the proposed contract for the sale of the property and the documents required by section 52A of the *Conveyancing Act 1919*.

4. Commissioner's Guidance

The licensee in charge should have adequate procedures in place so as to ensure that proper procedures are followed and all employees are aware of their responsibilities under the Act.

In their procedures and in performing their duties, the agent should conduct an identification check using the recommended *Proof of Identity Checklist for Vendors or appointed representatives (Attachment 1)* or a similar document to show that the client has satisfactorily proven that they own the property.

DOCUMENTS SHOULD BE RETAINED IN THE SALES FILE FOR INSPECTION IF REQUIRED.

5. Prescribed Documents

The prescribed documents which must be included with the contract for the sale of the property are listed in Schedule 1 of the *Conveyancing (Sale of Land) Regulation 2010*. These documents include a property certificate. A copy of this Regulation can be accessed from the Government's legislation website at www.legislation.nsw.gov.au.

A property certificate is a title search from *Land and Property Information* relating to the property for sale. The certificate describes the land using the lot and deposited plan. The first schedule on the property search sets out the full name of the current owner of the property. The second schedule sets out any notifications, including details of any mortgagee, or any caveats on the property.

6. Confirming Identities of Vendors or Representatives

Agents should use the following guidelines when selling a property to confirm the identity of vendors (or appointed representative) in order to prevent real estate fraud.

1. When selling a property, confirm that dealings are with the true owner(s) of the property (i.e. the registered proprietors or their properly appointed representative).

- While the *Property, Stock and Business Agents Regulation 2003* requires that the agency agreement must contain a statement to the effect that the principal warrants that they have authority to enter into the agreement, this may not be sufficient to protect an agent and they should ensure that this authority is verified in some manner before acting for the principal.
- In some cases, the person with the legal right to sell the property may not be the registered owner. These would include but would not be limited to:
 - the holder of a Power of Attorney or Enduring Power of Attorney; or
 - an executor, a mortgagee in possession, or a person with an appropriate Court order.

In these cases, the original or a copy that has been certified as a true copy of the document conferring the power of sale must be sighted and, where possible, confirmed with the current registered owner that the person is authorised to act on their behalf.

- Confirm the identity of the owner or the person or persons with the legal right to sell the property via an identification check using the recommended *Proof of Identity Checklist for Vendors (or appointed representatives)* or similar document (**Attachment 1**).
- When confirming the identity of the owner, the agent must:
 - Check that the name on the agency agreement is the same as that on the property certificate if the owner is selling the property themselves.
 - Conduct the check face-to-face and original documents must be sighted by the agent to verify identity.
 - Verify the vendor's identity from an original primary photographic identification document and an original or certified copy of a secondary non-photographic identification document, as indicated in *Proof of Identity Checklist for Vendors (or appointed representatives)* (**Attachment 1**).
 - Verify the legal ownership of the property from an original or certified copy of a primary property ownership document such as a property certificate, current rate notice or other document conferring the power of sale.
- In verifying the information from the relevant documents, the agent must be reasonably satisfied that:
 - The documents are legible and do not appear to have been altered in any way.
 - There is no apparent discrepancy between the information collected from the agent and the information contained in the documents (other than a discrepancy that can be reasonably explained and supported, such as a change of name or the owner of the property has recently been married).
 - In the case of a primary photographic identification document, that the photograph contained in the document is a true likeness of the owner of the property.
- Proof of identification or legal ownership of property documents referred to in these guidelines do not include documents that have expired (other than in the case of an

Australian passport that has been expired for less than two years or otherwise noted in the *Proof of Identity Checklist for Vendors (or appointed representatives)*).

- For the purposes of these guidelines, a copy of a document may be certified as a true copy of the original only by a person authorised to take and receive statutory declarations under section 21 of the *Oaths Act 1900*.
- If the person or persons are not directly available (for example, if they are overseas), the original documents should be sighted and verified as a true copy of the original by a suitable independent witness such as a Justice of the Peace or a Notary Public. In addition, the witness should verify that the physical identity of the person matches that shown in the primary photographic identification document.

2. Ensure that you continue to deal with the registered owner or their properly appointed representative.

- Agents should be particularly cautious in situations where no mortgagee is listed on the second schedule. This is because fraudsters know that mortgagees such as banks have stringent security measures in place to stop fraud. Fraudsters target properties which are wholly owned by the owner.
- Agents should be especially vigilant if the client is overseas or remote, or if dealings with that person are not face-to-face.
- Pre-establish security questions with confirmed answers that only the owner will be able to answer and which are asked for at every material contact.
- Correspond only to addresses (postal or electronic) held on the sales 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 held on file.
- When replying to an email, type the known genuine email address from your agency files rather than simply clicking the 'reply' button. An email may have a hidden address in it.

7. Possible Fraud Warning Signs

Possible real estate fraud can be identified when the following 'warning signs' present themselves:

- A 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 are generic such as Hotmail, Yahoo or Gmail.
- Comments by the 'seller' that if this sale is successful or quick, future work or other incentives will be provided to the agent.

8. What should be done if fraudulent activity is suspected?

Agents who suspects real estate fraud must:

- contact the NSW Police or NSW Fair Trading; and
- not act on the sale of the property.

Licensees in charge must have documented processes and procedures to ensure that the process of identifying principals is properly documented and that all employees are aware of, and use, these processes and procedures.

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. These should be retained in the appropriate sales file for later inspection if required.

9. Privacy Requirements for Personal Information

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 some guidance on the issues which agents should consider in collecting, storing and managing client information.

Licensees in charge must ensure that appropriate security is given to the storage of any copies of identification documents that are held.

ATTACHMENT 1



Proof of Identity Checklist for Vendors (or appointed representative)

Vendor name:	
Property Address:	

1 Primary Proof of Identity documents (originals only):

The vendor (or representative) must provide **one** document from the following list.

The original document must be sighted. The document must show the individual's name, day, month and year of birth, current photograph and signature.

Place an 'X' in the box of the document provided.

- A current Australian photo driver's licence or other current photo card issued by a State or Territory Government agency.
- A current Australian passport
- A current non-Australian passport

Enter details of the document provided:

Document Type Eg. Australian Passport	Document number	Date of issue (DD/MM/YYYY)	Expiry date (DD/MM/YYYY)	Place of issue	Original document sighted by (please print name)

2 Secondary Proof of Identity documents (originals or certified copies):

The vendor (or representative) must provide **two** documents from the following list.

The original documents must be sighted. The documents must show the individual's name, signature and residential address where applicable.

Place an 'X' in the box of the document provided - (one of these documents must be provided).

- A current Medicare card **OR** A current credit card

Place an 'X' in the box of the document provided - (at least one document from this list to be provided).

- A current passbook or account statement from a bank, building society or credit union up to 1 year old
- An electoral enrolment card or the evidence of enrolment not more than 2 years old
- A gas or electricity bill up to 1 year old
- Water rates up to 1 year old

3 Proof of Legal Ownership of Property (original or certified copy) must be provided by the vendor (or representative):

The original document or a certified copy must be sighted. The document must show the property's residential address and vendor's name.

- A current rate notice up to 1 year old (or land valuation notice up to 1 year old)

Declaration: I have sighted and confirmed the Proof of Identity documents against original documents provided by the vendor (or appointed representative).

Name of Agent

A division of the Department of Finance & Services

Agent's Signature

July 2012 – v3.0

____/____/____
Date