

General Requirements for Verifying Identify for Landgate

Real Estate Update

In an effort to reduce the risk of fraud in real property transactions in Western Australia, the Western Australian Registrar and Commissioner of Titles recently issued their Joint Practice: Verification of Identity (the "Practice")¹. The Practice commenced transitionally on 1 July 2012, with full compliance required by 2 January 2013. The Practice was devised in direct response to a number of recent successful frauds attempts involving the sale or attempted sale of properties without the knowledge of the owners.

This article sets out the general requirements relating to verification of identity.

Types of documents captured

Table 1 of the Practice specifies the types of documents to which the Practice applies ("Document"):

- Transfers of Land;
- Mortgages;
- Requests for Duplicate Certificate of Title;
- Applications for Replacement Duplicate Certificate of Title;
- Transmission Applications;
- Survivorship Applications; and
- Powers of Attorney.²

Who does this affect?

- Real estate agents
- Settlement agents
- Property owners
- Property buyers
- Mortgagors
- Anyone dealing with Landgate in relation to land
- Donors under Powers of Attorney

Article Highlights

- In order to reduce fraud in real property transactions the Western Australian Registrar and Commissioner of Titles recently introduced a Verification of Identity Practice that will help prevent fraud involving attempted sale of properties and other Landgate transactions.

¹Land Titles Registration Practice Manual, Chapter 14

²Land Titles Registration Practice Manual, paragraph 14.1.4, Table 1



Authorised Identifiers

Persons authorised to undertake the verification of identity (“Identifier”) within Australia include:

- staff at Australia Post³;
- conveyancers;
- lawyers;
- mortgagees; or
- a third party appointed by a conveyancer, lawyer or mortgagee as agent to undertake the verification of identity on their behalf.

Verification of identity outside of Australia must be completed by an Australian Consular Officer.

Verification of Identity Requirements

Verification of Identity must be undertaken with respect to each natural person:

- executing a Document;
- executing a Document on behalf of a Company; and
- making a Declaration of Identity (see the Practice paragraph 14.4.5.1.1⁴).

The following steps are necessary to satisfy verification of identity requirements:

Verification of natural persons

1. Identity document production – the individual to be identified must produce to the Identifier current, original identity documents from the highest category possible in Table 2 of the Practice, if verification is taking place within Australia, or Table 3 of the Practice, if verification is occurring outside Australia. Signatures on the transaction documents should be compared to signatures on the original identity documents; and
2. Visual verification of identity – the Identifier must conduct a visual ‘face to face’ assessment of the identity documents and the person to whom they relate, to establish whether the individual appears to have similar facial characteristics to those in the photographs contained in the original identity documents.

³Refer to the Landgate Panel of Identifiers located at www.landgate.wa.gov.au

⁴Land Titles Registration Practice Manual, paragraph 14.4.5.1.1

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Verification of Companies

In addition to completing the two steps above, when a natural person is signing a Document on behalf of a company the Identifier must satisfy themselves (to the standard that a reasonable person would) that:

3. The company exists at the time of execution of the Document; and
4. The natural person/s signing or attesting to the seal on the Document are current officers of the Company and are authorised to sign the Document.

For companies incorporated under the *Corporations Act 2001* (Cth), this requirement can be satisfied by obtaining a company search that is not more than 30 days old at the time of conducting the verification of identity.

For other incorporated bodies, the Practice suggests Identifiers obtain the following evidence⁵:

- evidence establishing the continued existence of the body that is not more than 30 days old at the time of conducting the verification of identity;
- an extract from the body's constitution that establishes which officers of the body are authorised to execute documents on behalf of the body; and
- a current resolution that is not more than 90 days old at the time of the verification of identity, certified by an officer identified under the preceding paragraph, that specifies the full names of the persons and positions held by such persons in that body.

For a statutory body, evidence and/or knowledge of the existence of the statutory body and the authority of the persons to act on behalf of that body is sufficient.

Ideally, verification of identity should occur immediately prior to the execution of the Document, but must occur before the Document is lodged for registration.

Exception for continuous business relationships

Where an Identifier is a conveyancer, lawyer or mortgagee, this Identifier is not required to repeatedly verify the identity of a client with which they have a long standing professional relationship in the following two circumstances:

1. Transfer of Land documents – where a client is represented by the same conveyancer or lawyer on a continuous or ongoing basis with respect to the sale of real property in Western Australia, verification of identity is required on the first and second transfers of Land only, but not on any subsequent Transfers of Land with in the next two years; and

⁵Land Titles Registration Practice Manual, paragraph 14.4.4



2. Mortgage documents – where a person obtains a mortgage from the same mortgagee on a continuous or ongoing basis, which is registered against land in Western Australia, verification of identity is required on the first and second mortgages, but not on any subsequent mortgages within the next two years.

Verification of identity procedure must be completed every two years for an ongoing client.

With respect to the same directors/secretaries of different companies obtaining verification of identity, if:

1. Verification of identity has already been completed twice for those directors/secretaries within a two year period; and
2. Provided that, each time the directors/secretaries sign a Document, the Identifier has ascertained that the directors/secretaries:
 - a) are current directors/secretaries of the relevant company; and
 - b) have the required authority to sign the Document,

then no further verification of identity will be required within that two year period. The relevant Statement must still be lodged with the Document in these circumstances.

Further requirements of an Identifier

Represented Parties

For an Identifier that is a conveyancer, lawyer or mortgagee representing a party to be identified, it is recommended (but not required) that the Identifier:

- take a complete copy of the original identity documents relied upon;
- complete a certificate in the form of Identifiers Certificate C-1, an example form of which is attached to the Practice;
- sign and date each copy of the identity documents stating that it is a true copy of the original; and
- witness the execution of the Document after the identity of the person has been verified.

An Identifier that is a conveyancer, lawyer or mortgagee representing a party to be identified must complete a statement in the form of a statutory declaration or on letterhead addressed to the Registrar of Titles or the Commissioner of Titles, which must be lodged with the Documents for registration and which must address the matters set out in paragraph 14.4.7.4.1 of the Practice⁶.

⁶Land Titles Registration Practice Manual, paragraph 14.4.7.4.1



Self Represented Parties

If the person being identified is self-represented, the Identifier should:

- take a complete copy of the original identity documents relied upon;
- complete a certificate in the form of Identifiers Certificate C-2, an example form of which is attached to the Practice;
- sign and date each copy of the identity documents stating that it is a true copy of the original; and
- witness the execution of the Document after the identity of the person has been verified.

The self represented person must ensure that the Document being lodged for registration attaches:

- a complete copy of the original identity documents relied upon by the Identifier, each certified by the Identifier as true copies of the originals; and
- a certificate in the form of Identifiers Certificate C-2 (example form attached to the Practice) completed by the Identifier (presently Australia Post).

Complacency will not be tolerated

The Department of Commerce and the Western Australia Police recently published a Joint Media Statement dated 6 February 2013 containing a warning to real estate agents and settlement agents in Western Australia that they may be subject to disciplinary action by the Department even in situations where fraud attempts are not successful if they fail to follow the Codes of Conduct which incorporate identity verification measures.

Furthermore, the Practice provides that an Identifier must pay attention to detail, and if there are any discrepancies in the identity documents or the Identifier has any concerns regarding the identity documents, there is an expectation that the Identifier will conduct further checks or refuse to verify the identity of the person or Company.

If an Identifier suspects that an improper dealing may be taking place, the Identifier should immediately report the matter to the WA Police and the Department of Commerce (for real estate agents and settlement agents).

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