

DO THEY HAVE THE AUTHORITY?

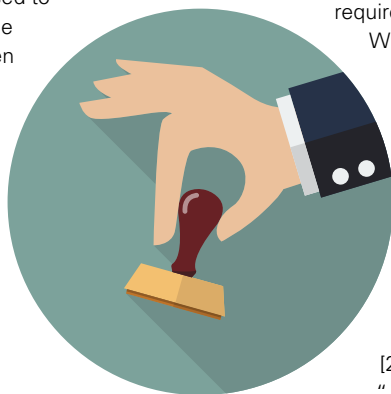
Verifying authority is an essential part of risk management.

It should go without saying that you should not act on a client's instructions if the client has no authority to give them. Verifying authority is an essential part of good practice.

Practitioners who fail to verify authority expose themselves to having a claim made against them. These claims occur most commonly when acting for a company, multiple clients, or on instructions from an attorney.

Acting for a company

In these claims a person represents to the practitioner that they are authorised to sign for a company to facilitate the transfer of company assets. When the assets are not properly accounted for the company seeks to recover their loss from the practitioner. In most cases, a company search would have disclosed that the person instructing the firm was not a director, and that their authority needed to be verified with the director(s) of the company.



Acting for multiple clients

Claims sometimes arise where there are multiple litigants, or multiple registered proprietors on a title, and the practitioner receives instructions from only one person.

In one claim, a couple was registered as tenants in common in equal shares and only one of the two owners provided instructions to the practitioner to act in the sale of their property. Closer to settlement, this person gave instructions to the practitioner to pay the net proceeds to them. After settlement, the other registered proprietor alleged that the practitioner did not have their instructions to pay all the net proceeds to their partner, and sought to recover their loss from the practitioner.

Disbursing funds without authority from all registered proprietors may also breach the Uniform Law, as s138 of the Uniform Law provides that practitioners must hold trust funds on whose behalf it is received and can only disburse the trust money in accordance with a direction given by that person. A civil penalty of up to 50 penalty units (\$8059.50) applies for a breach of this section.

Acting for an attorney

Practitioners can also let their guard down by failing to verify authority where property is transferred between related parties by an attorney for a vendor. The claim comes when the principal discovers the transfer and points out that the power of attorney (POA) was invalid or fake. Questions are then asked about what more the practitioner could have reasonably done to verify the validity of the POA.

A POA or certified copy must be carefully examined to ensure it complies with statutory requirements and is correctly signed.

Where a company has granted a POA, it should be reviewed to determine who can sign on behalf of the company.

Practitioners should also consider the need to consult with the principal where the practitioner's suspicions are aroused by the conduct of an attorney. Chief Justice Young said in *Yaktine v Perpetual Trustees Victoria Ltd* [2004] NSWSC 1078:

“... red lights should flash when

certain factors exhibit themselves, one red light flashes when one can see that the donor of the power of attorney is to receive no benefit at all from a transaction yet the donee is to receive a considerable benefit. One can rationalise that this is because it is a family dealing, but a prudent solicitor when he or she sees the red light, makes enquiries . . .”.

Use a checklist to verify authority

Checklists are a good way to ensure important issues like this are not forgotten or missed. To assist practitioners to verify authority of their clients the LIV has published a verification of authority and right to deal checklist. While specifically aimed at property transactions, it is a useful starting point for other transactions as well.

What does your firm do to ensure authority is verified every time? ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.

SNAPSHOT

- Always verify the authority of the client.
- Be aware of high risk situations including acting for a company, multiple clients or for an attorney.
- Use a checklist to verify authority.