



CONVEYANCING SERIES 2022 Mastering The Essentials

Conveyancing and VOI

Presented by | Phil Nolan, Risk Manager, LPLC



Quote

Most people are other people. Their thoughts are someone else's opinions, their lives a mimicry, their passions a quotation.

Oscar Wilde



Four key points

1. Know your VOI obligations.
2. Have a written office policy about VOI.
3. Use a VOI checklist
4. Audit files to check for compliance.



Agenda

1. Introduction

3. When to do the VOI

5. Cases

2. Why do VOI

4. How to do a VOI

6. VOI and ethics

INTRODUCTION

Doing VOI well protects you and your good clients, and deters bad clients.





WHY DO VOI?



Quiz

What is your reason for doing a VOI?

Do you do a VOI of every client?



Why

To prevent **identity fraud**.

See:

[Marsh Insights: fraud and scams increasing awareness](#)



More about fraud prevention

Exercise **extra caution** when:

- taking on a matter which is partly completed
- instructed by an Attorney / agent / broker
- the matter is urgent
- the client is difficult to contact.

Tips:

- Hover over the email address to check the details
- Do a google search of the email address
- Telephone the client to verify instructions about any funds transfers.



Why

- International obligations to prevent money laundering and fraud. For example, [Austrac](#)
- Requirements of:
 - [ARNECC](#)
 - Registrar of Titles
- Section 87A of the Transfer of Land Act 1958
- Common law obligations



Why

Because one in every two hundred and fifty births are **identical twins**.





WHEN TO DO VOI?



Poll

When do you do the VOI when acting for a vendor?

- a) Start of the matter
- b) During the matter

Example - after the contract of sale is signed.

- c) Towards the end of the matter

Example – just prior to giving your certifications to Land Registry.



When

Most conservative approach:

At the start of the matter, verify the identity of every client using the VOI standard in schedule 8 of the ARNECC Model Participation Rules.



MODEL PARTICIPATION RULES
Version 6

Poll

Background

You act for a vendor selling their home.

The purchaser is not represented.

Question

Are you obliged to do a VOI of the purchaser?

- a) Yes
- b) No
- c) Don't know



Sacre bleu

Risk management tip

Identify and fix any identity issues at the start of the matter.

Example – identity issue

Ann-Maree Duval - birth certificate

Anne Marie Duval - driver's licence

Ann Maree Duval - title

Ann-Marie Duval - ATO records



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Session break: 3 steps to recharge

1. Get your circulation going

- Stand up and stretch your arms way up high
- Try some jumping jacks
- Bend down and try to touch your toes

2. Reduce eye strain

- Look away from your computer and gaze at an object in the distance  at least 20 seconds
- Adjust your computer display settings – like brightness or contrast

3. Remember to stay hydrated

- Drink a big glass of water
- Have a refill ready for the next part of the session!



HOW TO DO VOI?



Poll

Do you have a written policy about doing a VOI?

a) Yes

b) No



How – starting point

Have an office policy to cover:

- when an identification must occur
- who will undertake the identification
- who will check the data
- identification process to be followed
- how the data will be stored



Exercise

You act for a foreign person buying an off-the-plan apartment in Melbourne.

The client was referred to you by the selling agent. The agent informs you that the client resides in Panama and is buying the apartment for his son to live in.

The client's son informs you they will obtain a loan from ANZ to fund half of the purchase price.



Exercise

What are three reasonable steps you would take to verify the identity of your client?

1.

2.

3.



How – common law / reasonable steps

Common question

Will LPLC prescribe what are reasonable steps?

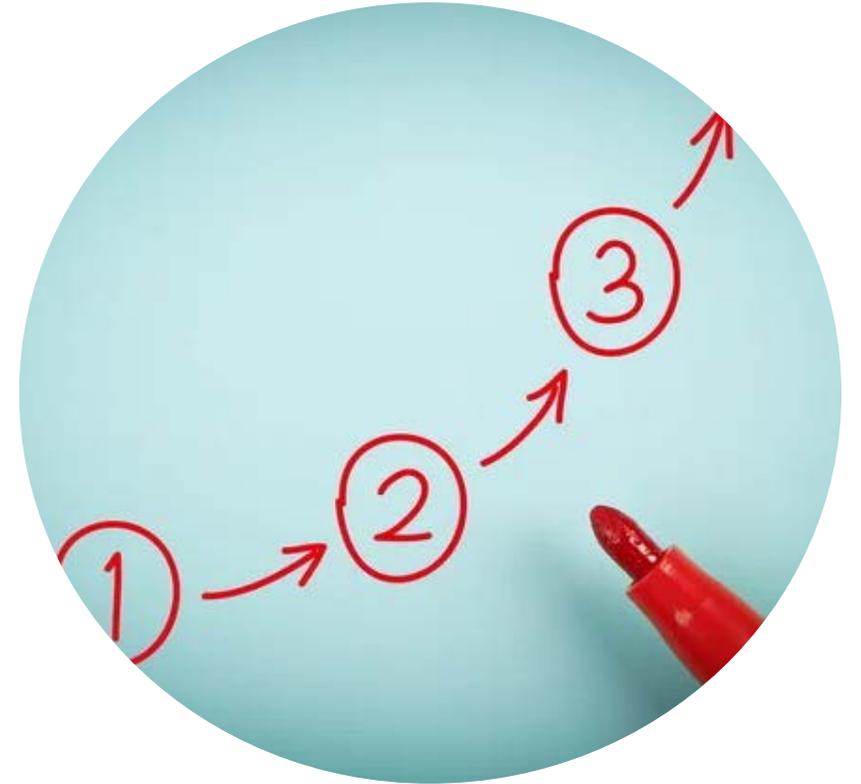
Answer

What constitutes reasonable steps usually depends on the circumstances.

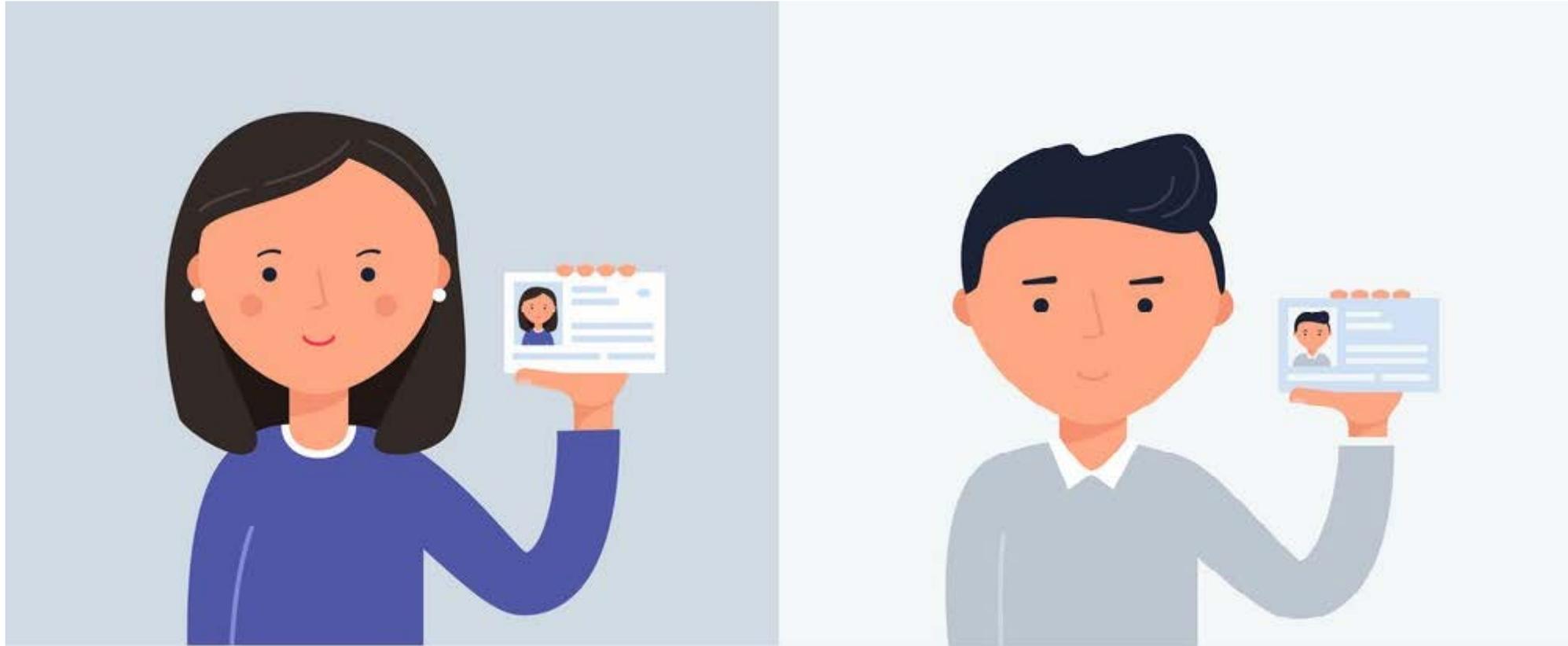


How – example of reasonable steps

The following steps are an example of what may constitute reasonable steps depending on the circumstances.



Step 1 – compare client to photo ID



Step 2 – look at the ID document(s) carefully



Step 3 – compare signatures

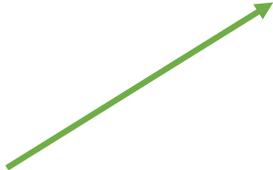
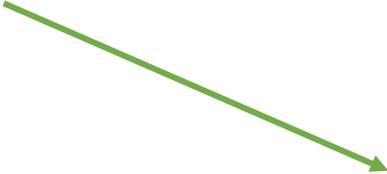


Your specimen signature – please use a black pen

X *Jane Citizen*

*Compare this to the signature on the photo identity documents and any power of attorney and documents which you witness for the client.

Step 4 – keep a copy and store securely



How

Refer to the **Capacity, authority and identity notes** on the LPLC website:

<https://lplc.com.au/resources/checklists/voi-notes-capacity-authority-and-identity>

Conveyancing, Will Making, Estate Administration, Verification of Identity | Last updated on 01 April 2021

VOI Notes: Capacity, authority and identity

These notes provide direction and useful links to assist in establishing capacity, authority and identity of clients.



VOI notes: Capacity, authority, identity.docx (DOCX, 1.42 MB)

Download



How

Conveyancing, Verification of Identity | Last updated on 21 April 2021

Face to face verification of identity

A step-by-step process and checklist for face-to-face verification of identity (VOI).



Face to Face VOI Checklist.pdf (PDF, 166.81 KB)

Download



Face to Face VOI Checklist.docx (DOCX, 970.08 KB)

Download

Refer to the **Face-to-face VOI checklist** on the LPLC website:

<https://lplc.com.au/resources/checklists/verification-of-identity>

How

Refer to the **VOI client information sheet** on the LPLC website

<https://lplc.com.au/resources/checklists/voi-client-information-sheet>

This VOI client information sheet is designed to send to the client before they attend your office to inform them what to bring to the interview and to obtain details from them beforehand.

Conveyancing, Verification of Identity | Last updated on 02 April 2021

VOI client information sheet

This VOI client information sheet is designed to send to the client before they attend your office to inform them what to bring to the interview and to obtain details from them beforehand.



VOI Client Info Sheet.docx (DOCX, 38.85 KB)

Download

How – safe harbour / practitioner certificates

Verification of Identity Standard means the standard set out in Schedule 8 of the ARNECC Model Participation Rules (MPR).

Clause 6.5.5 of the MPR:

'....compliance with the Verification of Identity Standard.... will be deemed to constitute the taking of reasonable steps...'



Poll

Do you use the safe harbour process when doing a VOI?

- a) Yes
- b) No
- c) Sometimes





VOI CASES



VOI cases

- [Trani & Anor v Trani & Ors \(No 2\) \[2019\] VSC 723](#)
- [XPAK Pty Ltd v Scibilia & Ors \[2013\] VCC 1260](#)
- Mascarello & Anor v Registrar General of New South Wales [2018] NSWSC 284

Illustrates the importance of a solicitors' duty when identifying clients before witnessing their signatures on loan and associated security documents.

More information about this case:

Who do you think you are?

NSW Law Society Journal issue 47 August 2018.



VOI cases

- [Braham v Catalano & Anor \[2013\] VSC 437](#)
- [Mulder v Director of Public Prosecutions \(Cth\) \[2015\] NSWCA 92](#)



VOI – DO THE RIGHT
THING



VOI – do the right thing

There are a number of ethical issues that may arise in relation to VOI.

- Rule 14, VOI and handing over documents to another law firm.
- Reporting a matter to the police.

Help

If you have an ethical issue about VOI contact LIV ethics:

Phone: **03 9607 9336**

Email: ethics@liv.asn.au



Poll

Before handing over a paper title to another law firm can you insist that the client verifies their identity?

- a) Yes
- b) No
- c) Don't know

More information:

LIV ethics ruling no. R4924



Poll

Can you make a report to the police about a client whose identity you cannot confirm and where you are suspicious about their conduct?

- a) Yes
- b) No
- c) Don't know



REFLECTION

What have you learned from this session and materials that might help you and your colleagues in your work?



Conclusion

*Our identity is like an onion.
With each experience we
endure, a layer is peeled away,
finally revealing who we really
are at the core.*

Afnan Ahmad Mia





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