

Notes for practitioners

This document contains information to assist practitioners when using the VOI client information sheet. The purpose of the VOI client information sheet is to obtain details from a client before they attend your office and to tell the client what to bring to the interview.

VOI client information sheet

Please complete

At the VOI interview we will take your photo

*Have a digital camera available for use in the office.

Your personal and contact details	
First name:	Middle name:
Last name:	
Also known as: *It is not uncommon for someone to use a nick name and/or a shortened version of their name. As this name does not match up with the identity documents it is recommended that the client provide a simple declaration as to their name. Refer 'Troubleshooting VOI' for a sample declaration.	
Date of birth:	Place of birth: *Where the client is a director compare this to the details on the ASIC records
Home address:	
Postal address if different:	
Telephone:	Email:
Website:	
Tax file number: *Banks require this to invest funds on behalf of a client	ABN: *Check the ABN – http://abr.business.gov.au/ The ABN may disclose a trust.
Tick a box to select your preferred method of contact with us *Some clients prefer to communicate a certain way because this is the best way they take in information. Even where a preferred method is selected remember it is important to keep good contemporaneous file note and confirm advice / instructions in writing.	
<input type="checkbox"/> Email	<input type="checkbox"/> Face to face
<input type="checkbox"/> Telephone	<input type="checkbox"/> Post
<input type="checkbox"/> Specify other:	

Current employer details

*You can contact the employer where the client cannot be contacted. It may be the client is away on leave.

Name:

Address:

Telephone:

Email:

Website:

You authorise us to contact your employer in the event of an emergency or where you are uncontactable.

Your specimen signature – please use a black pen

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

Please complete if instructing us in your capacity as a director of a company

Company name:

Company address:

Company ABN:

Company telephone:

*Check the ABN – <http://abr.business.gov.au/>
The ABN may disclose a trust.

Number of directors:

Please complete if instructing us in your capacity as an attorney

*Note below the requirement for the client to bring a copy of the power of attorney to the meeting.

Donor name:

Donor address:

Donor contact number:

Relationship to donor:

Closest relative's details
First name:
Last name:
Address:
Telephone:
Email:
Relationship:
You authorise us to contact your relative in the event of an emergency or where you are uncontactable.

What to bring to our office for your VOI interview

- Completed VOI client information sheet. [*Retain on file.](#)
- Marriage or change of name certificate where the name on your identity documents has changed. [*Retain a certified copy.](#)
- Original power of attorney if instructing us as an attorney. [*Retain a certified copy.](#)
- The original documents listed in category 1 must be provided. If those documents are not available move to the next category down the list until you have all of the listed documents. [*Retain a certified copy.](#)

For Australian citizens and residents

Category 1: An Australian or Foreign Passport

- plus either an Australian driver's licence or Australian Government-issued card with photo evidencing age and/or identity

Category 2: An Australian or Foreign Passport

- plus a full birth certificate, citizenship certificate or descent certificate
- plus a Medicare, Centrelink or Department of Veterans' Affairs card.

Category 3: An Australian driver's licence or Australian Government-issued card with photo evidencing age and/or identity

[*A proof of age card is an example of an Australian Government-issued card.](#)

- plus a full birth certificate, citizenship certificate or descent certificate
- plus a Medicare, Centrelink or Department of Veterans' Affairs card.

Category 4a: An Australian or Foreign Passport

- plus another form of Australian or Foreign Government issued photographic identity document

Category 4b: An Australian or Foreign Passport

- plus a full birth certificate
- plus another form of Australian or Foreign Government issued identity document

Category 5a: An Identifier Declaration*

- plus a full birth certificate, citizenship certificate or descent certificate
- plus a Medicare, Centrelink or Department of Veterans' Affairs card.

Category 5b: An Identifier Declaration* from a specified class of person

- plus a Medicare, Centrelink or Department of Veterans' Affairs card.

For non-Australian citizens and residents

Category 6a: A Foreign Passport

- plus another form of Australian or Foreign Government issued photographic identity document

Category 6b: A Foreign Passport

- plus full birth certificate
- plus another form of Australian or Foreign Government issued identity document

* Please contact our office if you require an Identification Declaration.

[*The process for completing an Identification Document and the document itself is contained in schedule 8 and 9 of the ARNECC Model Participation Rules.](#)

Insert firm logo here

VOI client information sheet

Please complete

At the VOI interview we will take your photo

Your personal and contact details	
First name:	Middle name:
Last name:	
Also known as:	
Date of birth:	Place of birth:
Home address:	
Postal address if different:	
Telephone:	Email:
Website:	
Tax file number:	ABN:
Tick a box to select your preferred method of contact with us	
<input type="checkbox"/> Email	<input type="checkbox"/> Face to face
<input type="checkbox"/> Telephone	<input type="checkbox"/> Post
<input type="checkbox"/> Specify other:	

Current employer details	
Name:	
Address:	Telephone:
Email:	Website:

You authorise us to contact your employer in the event of an emergency or where you are uncontactable.

Insert firm logo here

Your specimen signature – please use a black pen

X

Please complete if instructing us in your capacity as a director of a company

Company name:

Company address:

Company ABN:

Company telephone:

Number of directors:

Please complete if instructing us in your capacity as an attorney

Donor name:

Donor address:

Donor contact number:

Relationship to donor:

Closest relative's details

First name:

Last name:

Address:

Telephone:

Email:

Relationship:

You authorise us to contact your relative in the event of an emergency or where you are uncontactable.

What to bring to our office for your VOI interview

- Completed VOI client information sheet.
- Marriage or change of name certificate where the name on your identity documents has changed.
- Original power of attorney if instructing us as an attorney.
- The original documents listed in category 1 must be provided. If those documents are not available move to the next category down the list until you have all of the listed documents.

For Australian citizens and residents

Category 1: An Australian or Foreign Passport

- plus either an Australian driver's licence or Australian Government-issued card with photo evidencing age and/or identity

Category 2: An Australian or Foreign Passport

- plus a full birth certificate, citizenship certificate or descent certificate
- plus a Medicare, Centrelink or Department of Veterans' Affairs card.

Category 3: An Australian driver's licence or Australian Government-issued card with photo evidencing age and/or identity

- plus a full birth certificate, citizenship certificate or descent certificate
- plus a Medicare, Centrelink or Department of Veterans' Affairs card.

Category 4a: An Australian or Foreign Passport

- plus another form of Australian or Foreign Government issued photographic identity document

Category 4b: An Australian or Foreign Passport

- plus a full birth certificate
- plus another form of Australian or Foreign Government issued identity document

Category 5a: An Identifier Declaration*

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Category 6a: A Foreign Passport

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Category 6b: A Foreign Passport

- plus full birth certificate
- plus another form of Australian or Foreign Government issued identity document

* Please contact our office if you require an Identification Declaration.

Face to face VOI

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

Steps for practitioners

To undertake a VOI of a client you need to be familiar with the following documents as a minimum:

- Q Model Participation Rules. In particular clause 6.5 and schedules 8 and 9.
- Q ARNECC MPR guidance note 2 – verification of identity.
- Q LPLC flow chart - capacity, authority and identity.

Step 1

Send / give the client:

- Q VOI client information sheet
- Q Client authorisation form

Step 2

Arrange a face to face meeting with the client to complete the VOI. At this point:

- Q ask the client which identity documents they will bring to the VOI meeting
- Q refer to the categories in the *VOI client information sheet* and the client must have a valid reason for not being able to provide the highest category.

Step 3

Meet face to face with one client at a time. At this meeting:

- Q take a photo of the client
- Q check the VOI client information sheet is properly completed
- Q complete the LIV VOI checklist
- Q obtain the original identity documents from the client
- Q check the identity documents by comparing them to each other
- Q look at the ID documents very carefully – look for typos, poor quality etc
- Q look at the client and compare them to the photo in the identity documents
- Q compare the signature on the photo ID to that on any document(s) to be witnessed at the meeting.

Step 4

Retain on file:

- Q VOI client information sheet
- Q Client authorisation form
- Q LIV VOI checklist
- Q photo
- Q copies of identity documents. At this stage you may want to make a certified copy of the identity document as this may be required in the future.



Capacity, authority and identity flow chart and notes

Notes on capacity

Where you need to test capacity refer to the [guide](#) issued by the NSW Law Society.

You may also need to consider alternatives such as:

- seeking instructions from any trustee / guardian / administrator / attorney where one has been appointed
- seeking an order from VCAT to appoint a guardian/administrator
- seeking a court order.

Notes on authority

You must take reasonable steps to establish the authority to instruct you such as ensuring:

- the registered proprietor(s) instructs you to act
- where instructed by an attorney you need to sight the original power and check it is valid including:
 - o dated
 - o properly completed and signed by the donor and witnesses
 - o in the correct form. New form of enduring power of attorney commenced 1 April 2004 and replaced by another new form commencing 1 September 2015
- for a corporate client you need evidence of the authority of any individual you are instructed by and who is acting as an authorised representative of the company. For example, proof of directorship, copy minutes and resolutions appointing an authorised officer.

If you have any suspicions about the authority of an attorney to instruct, you need to contact the donor or for a company contact all directors. See [LIV powers of attorney guideline](#).

The client(s) must sign a [client authorisation form](#) when using [PEXA](#).

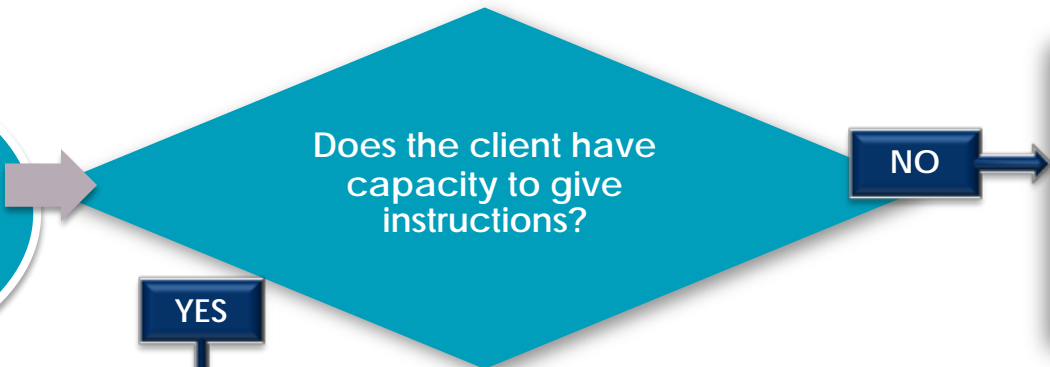
Notes on verification of identity

You must take reasonable steps to verify the client's identity.

Refer to:

- [Model participation rules](#)
- [Model Participation Rules Guidance Note 2](#)
- *Face to face VOI* document in the workshop handouts
- *Troubleshooting VOI* document in the workshop handouts.

**START OF
MATTER**



STOP!
Do not proceed.
Refer to notes on capacity.

YES



STOP!
Do not proceed.
Refer to notes on authority.

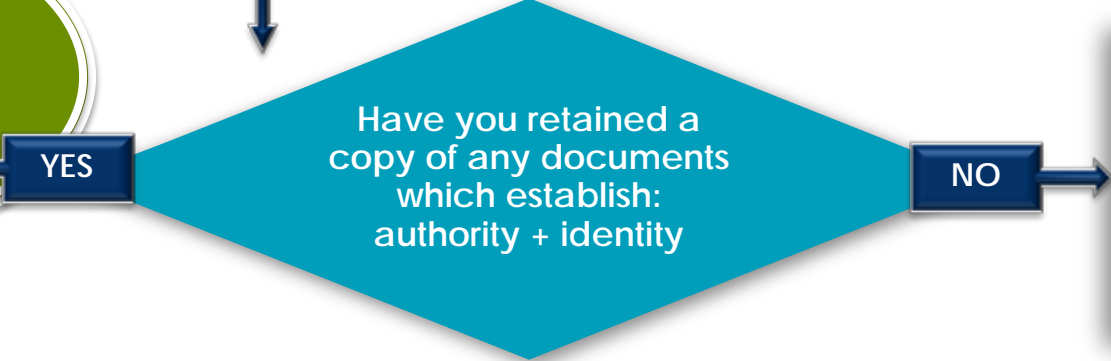
YES



STOP!
Do not proceed.
Refer to notes on verification of identity.

YES

**PROCEED
TO ACT**



STOP!
Make a copy and keep on file.

YES

2016 REGIONAL RISK MANAGEMENT TOUR APRIL – MAY



Workshop – foreign client

Tips

- Refer to the ARNECC Model Participation Rules Guidance Note 2 for information on:
 - FAQ 1 – How do I verify the identity of my client overseas?
 - the Australian Embassy/High Commission/Consulate Overseas Verification of Identity and Witnessing Process
- Request that the client send you a copy of their identity document(s) issued by the government in their country of origin. The client needs to be told to select the documents from the highest category.

The best form of identity document is one with a photo. However, photo ID may not be issued by some governments.

Have any document(s) translated in to English.

- Skype the client. During the skype meeting have the client show you their original identity document(s). See example below.

This skype meeting is a good opportunity to provide advice to the client about their matter. It is prudent to confirm this advice in writing. Alternatively, you may wish to record the skype meeting.



- Any documents which need to be signed by the client should be witnessed by consular staff or a local lawyer where the local lawyer is identifying the client. See notes below on using a local lawyer.
- Tell the client to:
 - attend the nearest Australian Embassy so that they can be identified by a consular official once you have completed the pre-meeting requirements as set out in the ARNECC Model Participation Rules Guidance Note 2 ARNECC Model Participation Rules Guidance Note 2.
 - send to you the confirmation of identity documents and any other documents that the client receives from the consular staff.

Using a local lawyer

In some circumstances the client may not be able to attend an Australian Embassy.

It seems reasonable in such circumstances to use a local lawyer who speaks English to undertake the verification of identity.



You should tell the local lawyer that they need to meet face to face with one client at a time. At this meeting:

- take a photo of the client
- complete the LIV VOI checklist
- obtain the original identity documents from the client
- check the identity documents by comparing them to each other
- look at the ID documents very carefully – look for typos, poor quality etc
- look at the client and compare them to the photo in photo identity document(s)
- compare the signature on the photo ID to that on any document(s) to be witnessed at the meeting.

The local lawyer should send you the following:

- photo
- completed LIV VOI checklist
- certified copy original identity documents
- any documents signed by the client and witnessed by the lawyer
- certified copy of their practicing certificate and contact details for the professional / government organisation which issues practicing certificates.

Once you have received the documents referred to above or from the local lawyer check them carefully.

Additional tips when acting for a vendor

Obtain from Land Registry a copy of the registered transfer of land signed when the vendor purchased the property. This way you can compare the signature on the transfer to that on the photo ID documents and any other documents signed by the client.

Speak with the client directly to confirm important information such as payment of funds at settlement, especially given that emails from fraudsters may be sent from an address almost identical to the client's address and the differences can be difficult to spot. You can read more about this issue in the LPLC blog of 22 May 2015 titled [Verify that email is really from your client](#).

Where the client's identity is still in doubt consider seeking confirmation from any selling agent and/or mortgagee registered on title that they have identified the vendor.

VERIFICATION OF IDENTITY (VOI) CHECKLIST



**LAW
INSTITUTE
VICTORIA**

NOVEMBER 2015

FULL NAME OF THE PERSON BEING IDENTIFIED:

DATE THE IDENTIFICATION WAS PERFORMED: FILE NO:

OTHER DETAILS OF FILE TO WHICH VOI RELATES

Name:

Description:

MEANS OF IDENTIFICATION (tick at least one)

- Verification of Identity Standard (see below)
 Previous verification within 2 years (go to page 2)
 Other reasonable steps (go to page 2)
 Mortgagee etc verifying mortgagor (go to page 2)

IF VERIFICATION OF IDENTITY STANDARD USED (tick each completed item)

A — INDIVIDUAL

- Face to face interview
 Sighted the originals of the documents listed below (VOI Documents)
 Copied the VOI Documents and certified the copies as true copies of the originals
 Retained copies of the VOI Documents (electronically or in safe custody – not solely in the client's file) Note any that are not copied or retained (retain copies for 7 years)
 Compared photo ID with facial features of the person being identified (noting shape of mouth, nose, eyes, position of cheek bones etc.)

B — CORPORATIONS & INCORPORATED ASSOCIATIONS

- Existence & identity confirmed by:
 current ASIC search
 other (specify)
 Established who is authorised to sign by:
 s129(2) Corporations Act
 other (specify)
 Verified the identity of each individual signing or affixing the seal (complete extra checklists as required)

C — ATTORNEYS

Details as shown in the Power of Attorney (Power):

* of donor/principal

* of the Attorney

* date of Power

- Confirmed that this transaction is authorised by the Power (Note: enduring powers must be for financial matters)
 Copied the Power and certified the copy as a true copy of the original
 Verified the identity of each Attorney (complete extra checklists as required)

D — DOCUMENTS USED TO IDENTIFY ACCORDING TO THE VOI STANDARD

<ul style="list-style-type: none"> The documents you need to use to identify the individual under each category are marked in grey. Start with category 1. If the individual cannot meet category 1, move to category 2, and so on. Documents must be current (or for Australian passport expired w/in 2 yrs) 	Australian or foreign passport	Australian driver licence or photo card	Marriage or Change of name certificate (if required)	Medicare, Centrelink or DVA card	Full birth, citizenship or descent certificate	Full birth certificate	Another form of government issued photo ID	Foreign passport only	Another form of government issued ID
Category 1									
Category 2									
Category 3									
Category 4: Option (a)									
Category 4: Option (b)									
Category 5(a): non Australian citizens									
Category 5(b): non Australian citizens									

E — ARE FURTHER STEPS REQUIRED TO VERIFY?

If there are non-genuine identity documents, lack of reasonable likeness with photo ID, discrepancies between documents and person or between signatures etc. insert or annex details and describe the extra steps taken.

Print Full Name of Identity Verifier Signature of Identity Verifier

VOI CHECKLIST (CONTINUED)

IF VERIFICATION BY OTHER REASONABLE STEPS I.E. NOT THE VOI STANDARD

Checklist of factors to be considered

Complete one form for each person. Circle or highlight relevant items. ('Positive' factors may indicate that a lesser degree of VOI is required.)

Factor	Positive	Negative	Insert any relevant detail
Acquiring estate or interest	✓		
Disposing of an interest		Caution	
Disposing apparently at full value	✓		
Disposing not at full value – arm's length		Warning	
– related party		Caution	
Client is (also) mortgaging to a bank etc.	✓		
Client is a mortgagor from a private lender		Caution	
Client is a mortgagee	✓✓		
Client has/will produce paper Title	✓		
Person's identity verified (within last 2 years)	✓✓		
Person – is your relative	✓		
– is personal friend	✓		
– is existing client (2+ years)	✓		
– is overseas/interstate/remote	✓		
– is aged/infirm/immobile	✓		
Have you met face to face (if so, when)	✓		

List of VOI Documents sighted

If documents have been produced to you which are not sufficient to satisfy the VOI Standard, they may still be relevant to prove that reasonable steps were taken. List below any VOI Documents sighted, noting if they were originals, copies or certified copies and whether or not the person identified had similar facial features to the person in any photograph, whether you compared signatures etc. If possible copy all documents, and certify each copy as a true copy of the original.

Documents sighted	Original	Certified	Copy	Compared signature	Comment
Australian passport – current/if expired, when?					
Foreign passport					
Driver's licence – current/if expired, when?					
Change of name certificate					
Marriage certificate					
Full birth certificate					
Extract of birth					
Other government photo ID document					
Other government non photo ID document					
Identity Agent Certification in approved form					
Other					

Verification of Authority/Right to Deal

If a Corporation, Association or Attorney, the existence, identity and authority of the persons authorised to affix the seal/the Attorney must also be verified (see sections B & C on page 1)

If previous verification within 2 years:

Date/year of previous verification:

If not verified by you, by whom?

If a mortgage transaction and you rely on a mortgagee or identity agent to identify mortgagor (Tick one)

- Received and checked Identity Agent Certification in approved form
 Received written confirmation from mortgagee that it has applied the VOI Standard
 Satisfied myself that the mortgagee had taken reasonable steps by (insert details)

Troubleshooting VOI

Client unable to attend office to be identified

Consider registering to use [Australia Post](#), [ZipID](#), [IDSecure](#) and/or [IDfy - infortrack](#).

Remember to check the documents received from an identification agent to ensure they are legible and do not contain errors. For example, the documents are not complete because a photo of the client was not provided by the identification agent.

Where any errors are discovered seek an explanation from the identification agent. In some circumstances it may be necessary for the client to be identified for a second time.

Identity documents match up but the client has an alias. For example, their name is Thomas but they are known to your office as Tom.

Prepare a statutory declaration to be signed by the client stating their current correct name and also listing the other name(s) they are known as. Keep this declaration on your file.

See attached sample.

Discrepancies in client's name as disclosed in the identity documents

Ask the client for:

- an explanation as the reason may be cultural or they may have changed their name by marriage
- documents to back up their explanation such as a marriage and/or change of name certificate.

Where they cannot satisfactorily explain the difference you may need to request that they apply to have the identity document(s) re-issued with the name difference corrected.

For example, their passport refers to John Smith and their drivers licence John B. Smith. John should be told to obtain a new drivers licence which is consistent with the name on their passport. Only once the amended document has been provided are you able to verify their identity.

Requested by a lender / mortgagee to verify identity a mortgagor pursuant to section 87A of the *Transfer of Land Act 1958* (Vic) when providing a solicitor's certificate

S.87A(1) relevantly provides that:

At the time of execution of a mortgage or a variation of mortgage, a mortgagee must take reasonable steps to verify the authority and identity of a mortgagor ...

Where the practitioner for the mortgagor undertakes an authority and identity check at the request of a mortgagee it is arguable that they are acting as an agent for the mortgagee. This would give rise to a conflict.

LPLC recommends that a practitioner who is asked to verify authority and identity of the mortgagor notifies the mortgagee in writing that they are unable to so as this would mean

they are acting as agent for the mortgagee which gives rise to a conflict. The mortgagee should be told to undertake its own verification.

Identity documents in another language

The documents will need to be translated. LPLC recommends using a translator accredited by National Accreditation Authority for Translators and Interpreters Ltd ([NAATI](#)).

Unable to verify identity of client

This may occur for any number of reasons including:

- the client looks different to their photo
- the documents do not appear genuine
- the client has no identification documents
- the client is pretending to be someone else

According to the [recent publication by Marsh](#) *Fraud and Scams – How to Protect Your Business* awareness of the threat of frauds and scams is the key to minimising risk.

Marsh also refers to criminals engaging in “social engineering” or more commonly known as “confidence tricks” to overcome risk controls. One example given is where a criminal calls a law firm with some kind of urgent problem and requires immediate network access. These criminals may appeal to vanity, authority and greed but more commonly simply rely on people’s natural helpfulness.

How much should I charge to VOI a client?

Charge a fee which reflects the risk as well as covers the necessary steps and precautions. For example, the process to identify a long standing client would probably be cheaper compared to a client who walks in off the street.

Example of fraud involving a practitioner

You have been acting for a foreign investor selling real estate in Melbourne. Settlement is due 30 June, one of your busiest times in the office. On 29 June you are contacted by someone claiming to be from the firm's bank. This person tells you the client's funds are at risk of being stolen and that you should immediately call a number which they provide to you and to follow the directions of the person you contact. You are told by this person someone will contact you tomorrow about transferring the funds to a safe account.

Compare this scenario to a [recent case in the UK](#) (search BBC/ Legal career 'hit by vishing scam') where criminals posed as bank staff and told a lawyer funds in her firm's bank account were at risk. The practitioner transferred the funds into a new account which were quickly transferred by the fraudsters to other accounts and withdrawn.

If you are contacted by someone claiming to be from your bank and have caller ID keep a written record of the number of the caller.

Ask the caller to give you their contact details.

Before doing as directed by the caller contact the branch of your bank where your account was established and ask them whether they can verify the directions you have been given.

If you receive an email which contains directions for transferring funds, even where the email is from the client, always telephone the client to verify the information. For more information see the LPLC blog [Identify your client and ensure they are instructing you](#).

Where you are unable to verify the identity of a client the client may be attempting to commit a fraud. You need to be strategic and careful when dealing with a client whose identity is in doubt. Having a written office policy is one way of ensuring the situation is handled properly.

Consider the following scenarios and our comments which may help you to develop an office policy to deal with this situation.

First scenario

You have received via post original and/or copy identity documents from a client that you doubt are genuine.

Check any Australian-issued identifying credentials such as birth certificates, driver licences and passports using the Commonwealth Government's [Document Verification Service \(DVS\)](#). The DVS will verify whether the number of the identity document is valid or invalid.

If the number of the identity document is invalid:

- you are not obliged to notify the client of your suspicions but may wish to notify the client that you are unable to act for them
- consider the need to contact your local police station to inform them that you are in possession of identity documents which you suspect may be false.

To assist you in making a decision about whether to contact the police refer to the attached four rulings issued by the Law Institute Ethics committee. In summary the LIV Ethics committee view seems to be that a practitioner is not breaching the conduct rules by notifying the police of their suspicions.

Where you decide to contact the police ask the police what they would like you to do. They may require that you complete a fraud report form. This form and more information can be found on [Victoria Police's Crime Prevention and Community Safety>Fraud>Reporting fraud](#) page.

- retain a copy of the documents. Where the client requires you to return any documents you may do so unless told otherwise by the police.

Second scenario

- **A new client attends your office and instructs you to act for them in the sale of a piece of real estate. The client gives you the certificate of title and a discharge of mortgage.**
- **You send the client to an identity agent to verify their identity but the agent informs you they were unable to as the client does not look like the person in the photo identity documents.**
- **Shortly after receiving this call the client shows up at your office demanding you give them back the certificate of title.**

Don't panic but be aware that a client may be upset. It may be that you have caught them out and they are in a panic. Always be alert to the possibility that the client may become violent. They may also demand that you give back any documents they have given you.

Before confronting the client inform someone else in the office what has occurred preferably a principal and/or office manager, and have someone accompany you when you see the client.

Ask the client to provide you with their identity documents and explain that you need to verify their identity to enable you to continue to act.

Where the client's identity remains in doubt you are not obliged to return the title(s) to the client.

If the client refuses to co-operate and/or demands the return of the title(s) ask the client to leave your premises. If they refuse to go tell them they are trespassing and should leave immediately or you will have no alternative than to contact the police.

See our comments above about contacting the police. You should also notify the Land Registry.



Sample name declaration

Statutory declaration

Re: Verification of identity

I,

of

1. My name as shown on my[insert identity document, eg. passport / birth certificate] is
2. I am also commonly known as
4. My true and correct name is

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Declared at)
)
).....
on theday of20.....)

Before me:

Witness to print full name, address and qualification:

.....
.....
.....

Ethics rulings

Ruling Number: R4676

Category: Checking Identity - Release of documents

Area of Law: Legal practice management

Ruling Date: 18 Nov 2010

Publication Date: 4 May 2011

Background

A law firm is entitled to request any type of identification it wishes (within reason) to ensure that the client authority to release documents is genuine. However, it is not necessary to view 100 points of identification where the request comes from another legal practitioner.

Firm X sent to Firm Y an authority from its client to hand over documents belonging to her and her late husband. Firm Y declined to hand over those documents until Firm X provided 100 points of identification for the client.

Firm X requested guidance from the Ethics Committee in relation to the identification requirements required by Firm Y before releasing deeds from its strongroom. In addition, Firm X asked whether it was necessary to provide 100 points of identification where the requesting entity was a law practice holding professional indemnity insurance.

Firm Y advised that it had formulated a policy within the firm for dealing with requests for deeds from its strongroom. Firm Y advised that simply relying on a law firm's letterhead was no longer enough, given the increase in identity fraud. It had therefore researched identification procedures used by other entities, such as banks, and adopted a similar 100 points of identity requirements.

Firm Y also sought guidance from the Ethics Committee, particularly in relation to the types of identification requirements it should request when the following three scenarios arise:

- where the former client requests documents/deeds (and there is no lawyer involved);
- where the former client's request comes to the firm via the client's lawyer;
- where an agent of the former client (who is not legally represented) requests the documents (for instance, on the death of the former client).

Ruling

In the opinion of the Ethics Committee and on the information presented the practitioner should comply with the original written authority of the former client unless the practitioner has reasonable grounds to doubt the authenticity of that authority.

Ruling Number: R3500

Category: Privilege/confidentiality - Crime/fraud

Area of Law: Criminal

Ruling Date: 1 Mar 1996

Publication Date: 1 Oct 2004

Background

A legal firm requested the Ethics Committee to determine whether the Firm was required to disclose the identity of their client to the Police. The Police suspected the client of committing a criminal offence.

Ruling

In the opinion of the Ethics Committee and on the information provided:

1. That while the identity of the client is confidential, if ordered by a Court to disclose the identity of the client, the Firm would be required to disclose the same.
-

Ruling Number: R4054

Category: Privilege/confidentiality - Crime/fraud

Area of Law: Criminal

Ruling Date: 1 Feb 2004

Publication Date: 1 Jun 2004

Background

A solicitor considered he might have information about a possible murder of a woman by her husband several years ago. He sought a ruling on whether he could tell the police of his suspicions. The solicitor had never acted for either the husband or wife although he employed the wife at one time and acted as mediator in a commercial dispute involving the husband.

Ruling

In the opinion of the Ethics Committee and on the information presented:

1. If any information was not obtained in the course of a retainer, the solicitor was not governed by fiduciary duties of confidentiality or by r3 of the Professional Conduct and Practice Rules 2003. The practitioner must make a decision based on the same ethical principles governing all members of society, keeping in mind his additional obligation not to bring the profession into disrepute.
 2. In all the disclosed circumstances, the Ethics Committee recommends that the practitioner should disclose any relevant information to the police.
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Ruling Number: R4071

Category: Trust account - Crime/fraud - Solicitor as witness

Area of Law: Criminal

Ruling Date: 1 Mar 2004

Publication Date: 1 Jul 2004

Background

A practitioner may not be prevented from representing a client in one matter despite being a potential witness in a separate matter. A firm received trust funds from an incarcerated client whom they represented in his personal injury matter. The money came from another prisoner who owed funds to the client. This appeared to be confirmed by letters signed by the second inmate. The second inmate subsequently advised the firm by telephone that the client had obtained the funds from him by deception. The second inmate had expected the firm to provide the funds to his mother overseas. Funds remained in the trust account pending separate criminal and professional standards investigations. A warrant over the file was exercised and the firm was asked to provide a statement to police.

The firm asked the Ethics Committee to advise:

1. whether it could continue to act in the personal injury matter and, if so,
2. whether that position changed if criminal charges were laid and the firm was called to give evidence against their client.

Ruling

In the opinion of the Ethics Committee and on the information presented:

1. The Ethics Committee did not consider there was a conflict of interest in these circumstances and accordingly has no issue with the firm continuing to act for the client in his personal injury matter.
 2. The Ethics Committee did not anticipate that this position would necessarily change in the event of criminal charges being laid against the client and the firm's being required to give evidence, but the issue should be revisited in the light of the circumstances at such time.
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