

# The What's and Why's of VOI's



There appears to a great deal of confusion regarding the verification of identity (**VOI**) process and in this factsheet we aim to clarify what VOI is all about.

## **Why do I need to undertake a VOI?**

The Australian Registrars' National Electronic Conveyancing Council's Model Participation Rules (**Rules**) set out strict criteria which law firms must comply with. As part of these obligations, law firms are required to verify the identity of any party that signs a client authorisation form and on whose behalf documents are lodged via PEXA (clause 6.5.1 of the Rules).

## **Why has this been made law?**

These requirements have been introduced to minimise the risk of fraud and help ensure the security and integrity of the Australian land title system.

## **Why aren't all law firms doing VOI?**

We cannot comment on the processes adopted by other firms but we intend to comply with our obligations, especially given that audits will be conducted on law firms to ensure compliance with the Rules.

## **Do I need to perform a VOI every time?**

No, the identity verification process only needs to be done once every two years.

## **I have been dealing with a law firm for some time, do I still need to undertake the VOI process?**

Unfortunately, yes, you will still need to undertake the VOI process.

## **What does the VOI process involve?**

The verification can be via a face-to-face interview with the party or by taking other reasonable steps to verify a party's identity (clause 6.5.2 of the Rules).

There is no set guide to interpreting what would constitute "*the taking of reasonable steps*" and so it is left up to the solicitor involved in the transaction to make the determination. Presumably, this is to allow a degree of flexibility and would be dependent on the circumstances of each individual case



T: (02) 9929 0226

E: [dbannerman@bannermans.com.au](mailto:dbannerman@bannermans.com.au)

P: PO Box 514

M: 0403 738 996

W: [www.bannermans.com.au](http://www.bannermans.com.au)

ABN: 61 649 876 437

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Nonetheless, from the legislation and some relevant case law, a few points become clear:

1. A face-to-face interaction is the most preferred path to identify a client's identity. This is also clearly set out in the Rules; and
2. Given the difficulties at times with arranging a face-to-face interview, some other method of comparing the photo ID to the client's facial features must be used (e.g. WebVOI, video call, etc.).

### **Why am I asked for so many identification documents?**

The Rules set out a list of document categories that should be complied with. However, should these not be available, there is room for a solicitor to taking other reasonable steps to verify a party's identity. As mentioned, there is no set guide to interpreting what would constitute *"the taking of reasonable steps"* and so it is left up to the solicitor involved in the transaction to make the determination.

Relevantly, section 117 of the Real Property Act 1900 (NSW) (**RPA**), which deals with certifications when lodging dealings with Land Registry Services (**LRS**) in paper format, sets out a number of requirements. Rule 6.1.4 of the Conveyancing Rules dated July 2019 made by the Office of the Registrar General states that reasonable steps are sighting an original photo ID (e.g. driver licence or passport) and if a photo ID is not available, then a birth certificate or citizenship certificate and some correspondence from a government department (e.g. ATO notice). This sets the bar relatively high.

Further, in the case of *C & F Nominees Mortgage Securities Ltd v Karbotli & Ors* [2020] VCC 987\* similar requirements for verification identity under section 87A(2) of the Transfer of Land Act 1958 (Vic) (**TLA**) were put to the test. The lender, C&F, argued that it had taken reasonable steps to identify Ms Issa's identity as it relied on numerous documents, being a *"[solicitor's] certificate, the 100-point Identification Check Form, the Statutory Declaration by Ms Grevis [who had known Ms Issa for seven years], the Westpac Bank statement, a letter dated 25 May 2012 from Westpac Banking Corporation to Ms Issa, a letter from Munroe Accountants to J Karbotli and H Issa, a statement from the Australian Taxation Office dated 22 August 2012 and a Quarterly PAYG instalment notice, another Notice of Assessment from the ATO, a visa report, a certified copy of a passport, a certified copy of a Medicare card, the Originator Agreement, a title search of the land and a Berkshire Hathaway Certificate of Insurance"* (at paragraph 31).

However, the Court was of the view that this did not constitute the taking of reasonable steps, stating, at paragraph 87 that: *"In their totality, the 100-point check and related documents established that Ms Issa was a real person whose name had been variously recorded over the years.... In themselves, however, these documents were incapable of establishing that she was the person who purported to execute the mortgage...The entire purpose of "photo ID" is to enable the person seeking to establish the identity of a subject to compare the officially labelled photograph, as in a driver's licence or passport, with the features of the person to be identified. In the absence of such comparison, "photo ID" is incapable of establishing identity."*



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W: [www.bannermans.com.au](http://www.bannermans.com.au)

P: PO Box 514

NORTH SYDNEY NSW 2059

AUSTRALIA

This sets the bar very high for solicitors when interpreting what would constitute “*the taking of reasonable steps*”. Unfortunately, this also means that client’s will be requested for a number of documents to ensure the legal obligations are met and the integrity of the Australian land title system remains intact.

\*Note: this decision isn’t binding in NSW but, given the reference to the standardised participation rules in section 87A(2), there is a high chance that NSW Courts would interpret the reasonable steps provision in the same way

**Prepared by Bannermans Lawyers**  
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T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437  
E: [dbannerman@bannermans.com.au](mailto:dbannerman@bannermans.com.au) W: [www.bannermans.com.au](http://www.bannermans.com.au)  
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA