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How Fraud Savvy Are You?

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There has been an increase in claims involving fraud by and against clients interstate which is causing a pattern of professional indemnity insurance claims.

Are you a practitioner that is too trusting when you receive instructions via an 'agent' of a client? Do you ascertain and verify the scope and limits of an agent's authority?

Do you look for signs of fraud? Do you adhere to preventative strategies, such as the exercise of professional scepticism and routines to make fraud difficult to succeed, such as identity checking?

Practitioners and firms can become the victims of crimes in all areas of practice. Practitioners should therefore consider what could be signs of fraud and abuse of authority in every matter.

Some examples of fraud we have seen include:

- **Property and Mortgage Fraud (biggest area)**
 - Residential and commercial/investment fraud
 - Loss of title, purchase price, security or loan funds
 - Owners who lack legal capacity
 - Identity fraud
 - Family member fraud of elderly/incapacitated relatives
- **Corporate/Commercial Fraud**
 - Financial mis-statements, fraudulent entities, fake bids
 - Fraudulent schemes to invest in property, shares, business ventures
 - 'Ponzi', 'Pyramid', 'Boiler Room' schemes
 - Transactions lacking legitimate purpose or involving fraudulent accounts, documents, payments, pricing and valuations
- **Estate 'Planning' Fraud**
 - Asset transfer fraud (i.e. migrating assets out of reach of tax authorities, family, partners, investors, liquidators or claimants)
 - Fraudulent wills

- **Disputes and Litigation Fraud**
 - False claims about loss, entitlements or injury (e.g. false claims for compensation from insurance, employer or statutory fund, false claims on bankrupt or deceased estates)
 - Fraudulent allegations or evidence
- **'Advance Fee' Fraud that targets lawyers. A typical scam involves:**
 - Fake client, fake law firm referral, fake matter and fake funds.
 - New client whom the lawyer may or may not meet (typically not).
 - New matter such as debt recovery or other dispute to be settled by another party, e.g. a property or commercial contract requiring the client to pay a deposit; or client will pay fees on account of costs.
 - Fake cheque is given to lawyer by fictitious other party, client or referring law firm for deposit into trust account.
 - Cheque is a good counterfeit or drawn on a foreign or fictitious bank which means it will take some time for cheque to clear or 'bounce'.
 - Before fraud is detected, the fake client persuades or pressures the lawyer into releasing some or all of the funds with a story or threat such as the vendor has agreed to smaller deposit, or the client will sue or complain if funds are not released immediately.
 - If lawyer pays out there will be a deficiency in the trust account.
 - Messy legal and indemnity position (e.g. if you are not providing a genuine legal service what is the position?)¹

Preventing fraud claims requires practitioners to be informed and actively alert for fraud risk and to use practice routines that make the fraud difficult to perpetrate. Some tips to assist practitioners include the following:

1. Trust but verify – Practise professional scepticism

Commit to developing and supporting the skills, experience, mindsets, behaviours and culture of professional scepticism by:

- Well-designed matter processes and checklists that prompt consideration and identification of fraud risk
- Supervision, training and teamwork that includes fraud risk
- Technology to support checking and compliance with anti-fraud measures
- Record keeping protocols to enable lawyer to show that fraud risk was considered and how professional scepticism was applied

2. Know your client

- Must have direct contact with clients and co-clients, if only to confirm identity, retainer and authority

3. Understand the transaction

- Satisfy yourself about the legitimacy and purpose of the transaction
- Who benefits? Follow the money.
- Be mindful of your duties to comply with the law and to avoid misleading and deceptive conduct
- Cease acting if your client fails to provide 'lawful, proper and competent instructions'. Be willing to cease acting if it doesn't 'feel right'

4. Witnessing and execution of documents

- Strict compliance with legal obligations (e.g. No 'telephone' witnessing or other witnessing without the person present)
- Query unusual characteristics including where warranted, verifying signatures/execution by lawyers and other witnesses you don't know

5. Control the release of documents

- Secure title deeds against theft or interception
- Strict protocols for checking identity and authority to release documents to co-clients and intermediaries²

Law Claims is running Risk Management fraud sessions on Thursday 8th and Friday 9th August 2013 and we urge practitioners who do transactional work or deal with Powers of Attorney, to attend the fraud workshops which will expand on the issues raised in this article in much further detail.

For any queries about this or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677 or gdistefano@lawguard.com.au.

¹ Page 8 of the handout of Claims Involving Fraud – Don't be the scapegoat seminar program and contents

² Page 16 of the handout of Claims Involving Fraud – Don't be the scapegoat

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