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Know Your Client



By Gianna Di Stefano, PII Risk Manager

Do you identify and verify the identity of your clients when you are initially retained to provide legal services?

Technology has changed the way we communicate and we need to manage the risks in today's technological world in which we practice.

Victims of identity theft are growing and it is necessary to protect yourself and your firm from the fastest-growing crime in the world.

Recently we were alerted by the Law Society of NSW to another email scam targeting the profession in NSW. Apparently, it is gathering momentum and several have surfaced in other States.

The essence of this recent scam is as follows:

The practitioner receives an email relating to overseas persons requesting legal services in regard to debt collection / settlement of family law.

A bank cheque will arrive unannounced for many hundreds of thousands of dollars. In many instances the bank cheque has been drawn on the Westpac Bank, the branch being described as "Surfers Paradise Q".

Following this, an email is received directing the practitioner to deduct generous fees and transfer the funds by electronic funds transfer to an overseas account.

The cheque will be dishonoured as it is fraudulent.

Practitioners should not rely on a special clearance or advice of ordinary clearance when unusual circumstances are involved, as such clearances have been given but the cheque is dishonoured at a later time.

The above example is just one of many types of on-line scams that could affect you or your firm.

Fraudulent dealings concerning real property and mortgage fraud, including identity fraud have become more prevalent particularly for interstate practitioners who have become victims.





Identity examples that have emerged in those cases include:

- Mortgage fraud by a family member (e.g. adult child defrauds elderly parents);
- Lost / missing Certificate of Title;
- No photo identification – no visuals of client;
- Urgency situation (*"It's urgent please witness for me"*);
- Inattention to the importance of witnessing execution of documents;
- Settlement money going to a third party – unexplained (no one asks why);
- Inconsistencies in forms (e.g. spelling mistakes in names);
- Instructions to sell property by email from overseas client;
- Transfer funds overseas on bounced trust account and cheque.



Some overseas jurisdictions are mandated by Rules regarding client identification and verification with these Rules insisting that the client *identification* requirements apply whenever a lawyer provides professional services to a client. These requirements call for basic identification information about individual or organisational clients in every retainer. The identity *verification* requirements are triggered where the lawyer receives, pays or transfer funds on behalf of a client or gives instructions for such activities on behalf of the client. A number of exceptions are included, for example, funds paid to a lawyer by a financial institution, public body or a public company, or received from a trust account from another lawyer are exempted.

Whilst we do not currently have prescribed standards in place regarding client identification and verification it is prudent for practitioners to obtain and record evidence of the identity of all clients.

Ultimately, it may be the case that a basic standard of client identification practice will be developed between Australian Professional Indemnity Insurers and promulgated respectively.

Whether that eventuates or not, you should stop and carefully think before taking on a new client and ensure you have determined exactly who is your client and question the legitimacy and purpose of any proposed transactions. Practitioners may wish to refer to a checklist available on LawCover's website (www.lawcover.com.au) (Identity and Mortgage Fraud Checklist) which has been designed to assist practitioners in the detection and/or prevention of mortgage and identity fraud when acting for a client in a mortgage or real property transaction. That document has been prepared as a guide to assist in identifying steps that can be taken to avoid and/or minimise the risk to practitioners.

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.

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