

dancing to land registry's signature tune

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Clarification of the Land Registry's identification requirements for attorneys imminent.

Until now, neither developers nor their lawyers have experienced any real difficulties submitting to the Land Registry documents which have been executed by attorneys on behalf of corporate clients. This is largely due to existing Land Registry guidance which implies that where a party acting by an attorney is represented, no separate evidence of identity for that attorney is required. However, a proposed revision of Practice Guide 67 clarifying the application of the rules to attorneys has the potential to cause real practical problems.

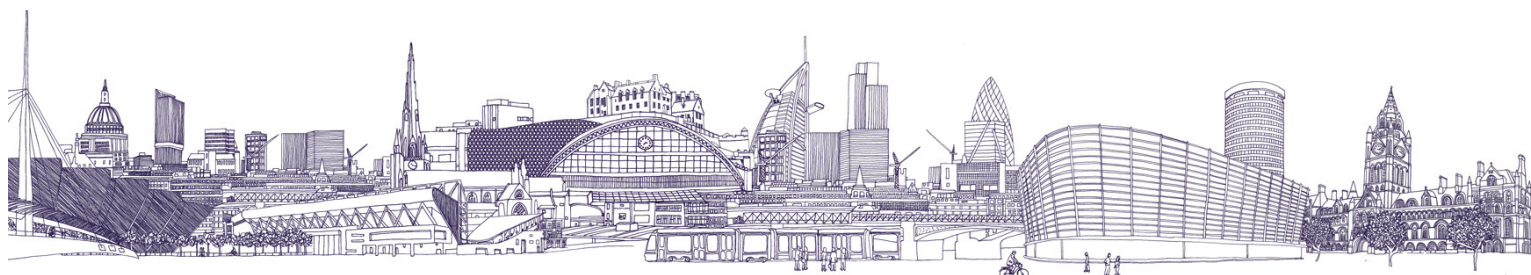
The Land Registry's identification rules were introduced in November 2008 to help combat fraud in respect of property transactions. They were primarily aimed at the day to day domestic conveyancing market. The procedures are relatively simple in that a buyer's solicitor must state which solicitor represents each party, and provided all parties are represented then the Land Registry will assume that the solicitors concerned have properly checked the identity of their respective clients.

Even where a party has acted by an attorney, this has caused no difficulty if that party was represented by a solicitor. The Land Registry has not required the attorney's identity to be checked (beyond providing a certified copy of the power of attorney).

However, this has changed. The Land Registry's precise requirements have yet to be published in a revised Practice Guide 67, due in August of this year, but indications are that it will be correcting the original interpretation of the rules and insisting on proof of identity of each attorney on every transaction. Its own internal guidance has been changed to require that all attorneys involved in registrable transactions must be identified under the rules.

The problem is compounded because the attorney is not actually "represented" by the solicitors working on any given transaction. None of the acting solicitors will therefore be able to certify that they are satisfied as to the attorney's identity. The Land Registry therefore takes the view that the attorney is an unrepresented party (although arguably, the attorney is not a "party" at all) and as such will from now on insist upon a separate identity form to be completed by each attorney, to be sworn before a solicitor unconnected with the transaction. If a developer has not devised and implemented an effective procedure to enable its solicitors to provide appropriate proof of the attorneys' identities then it risks delay and additional costs in resolving the resulting problems.

The need for such steps is puzzling, not least because it makes an artificial distinction between attorneys signing on behalf of a company and a director or company secretary signing on behalf of a company. Solicitors are not required to look into the identity of such officers.



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The Land Registry has conceded that this is aimed primarily at the domestic conveyancing market and that they had not anticipated the difficulties it will cause in the development, commercial and banking sectors where attorneys are employed as a matter of course for very practical reasons.

Prudent solicitors acting for, say, plot purchasers are now likely to enquire whether an attorney will be used by a developer (or its bank if a charge is to be redeemed) and are even more likely to insist on seeing evidence of an attorney's identity either prior to exchange or as a contractual obligation.

Similarly, solicitors acting for a developer on any land acquisition should enquire how the seller will execute the transfer and ensure that appropriate steps to obtain evidence of identity are built into the contract.

Developers should take steps immediately to devise and implement a procedure to deal with this issue, failing which significant man hours, wasted costs and delays will inevitably arise.

If you would like to discuss any of the issues raised in this update, please contact:



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