

Verification of Identity in Respect of Property Ownership

Duty of Care by Attorneys-at-law and Attesting Witnesses

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Executive Summary

Fraud and identity theft have been on the rise globally and have now reached the realm of land transactions. In recent years the Titles Office has discovered several cases in which landowners have been prejudiced by persons presenting documents which were not executed by them, for registration. In most instances, unscrupulous individuals attempt to deal with property either by using a forged document to transfer it into their own name or by impersonating the registered owner. For most of these cases the evidence suggest that due care was not exercised by the attesting witnesses or by the attorney-at-law carrying out the transaction.

Within the last decade, negligence has been held to be a valid cause of action against an attorney or Justice of the Peace in circumstances where that person attested to the forged signature of a registered proprietor. Damages were awarded in those cases where the loss sustained by the registered proprietor was identifiable and measurable.

It has therefore become necessary to ensure that landowners are properly identified in order to manage the risk of improper dealings in land transactions and that the duty of care in witnessing documents is strengthened. It is against this background that the National Land Agency proposes to establish new regulations under the Registration of Titles Act and the Land Valuation Act, which will require

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persons to submit certified copies of a government issued photographic identification when lodging documents at the Titles Office.

A standard for the verification of identity as exists in other Torrens Jurisdictions such as Australia and the United Kingdom is an attempt to reduce the incidents of fraud before they occur. These measures have become necessary to protect the rightful interests of landowners.

Introduction

Real Property is undoubtedly one of the most valuable asset any one will ever own. It can be sold and mortgaged to raise money and can therefore be attractive targets for fraudsters.

Over the past three years the National Land Agency (NLA) has discovered several cases in which landowners have been prejudiced by unscrupulous persons presenting documents which were not executed by them, for registration at the Titles Office or for recording on the Valuation Roll at the Land Valuation Division. These documents were often witnessed before one of the functionaries listed in the Registration of Titles Act (RTA)² and the Land Valuation Act (LVA), such as, a Justice of the Peace, Notary Public or an Attorney-at-Law. In most of these instances the evidence suggest that due care was not exercised by the attesting witnesses or by the attorney-at-law carrying out the transaction.

The proper witnessing of land registration documents has come under scrutiny when in some instances landowners question the authenticity of the documents. It has therefore become necessary to ensure that landowners are properly identified in order to manage the risk of improper dealings in land transactions and that the duty of care in witnessing documents is strengthened.

Several matters currently before the Supreme Court, should be of particular interest to attorneys-at-law, who in their capacity present documents for registration and to Justices of the Peace and Notaries Public who are attesting witnesses to these transactions.

²Instruments appear to be duly signed by a registered proprietor and witnessed in accordance with Section 152 of the RTA.

Issues

Globally the issues of fraud and identity theft have been on the rise in recent years and have affected from finance and credit to land transactions. Fraud and corruption will hinder growth and productivity particularly in developing states like Jamaica.

A standard to verify identity is an essential safeguard against identity theft/fraud in conveyancing transactions as loss of property can expose the Government to pay out substantial claims in compensation. The NLA has a responsibility to ensure that the rights of landowners are secure and that the transactions are authorized by the proper parties. The continued increase in the number of cases brought to the attention of the Fraud Squad by the NLA must be abated immediately. This will lend confidence to the system of registration.

Fraudsters often target properties where there is no mortgage or the owner resides elsewhere. Specifically, there is an increased risk of fraud when:

- a property is empty;
- an owner is spending time abroad or is absent from Jamaica;
- the owner is infirm or in a nursing home; and
- a relationship breaks down or there is a family dispute.

Whilst identify theft is not a new phenomenon, its invasion into the realm of land registration is serious cause for concern. Unscrupulous individuals may attempt to deal with a property either by using a forged document to transfer it into their own name or by impersonating the registered owner. Possession of a Certificate of Title for a parcel of land is not of itself sufficient to prove that a person is the owner of that land or is otherwise entitled to deal with it. The increasing incidence of identity theft and associated fraud, including mortgage fraud, means that all parties to land transactions and their agents must exercise due diligence in verifying the identity of persons claiming a right to deal in land.

Section 152 Registration of Titles Act

The duty of care owed in witnessing signatures is supported by Section 152 of the Registration of Titles Act (RTA). An individual signing a document must do so before one of the functionaries prescribed under that Section. The purpose of this is that someone independently can witness the act of signing and thereby acts as some form of validity that the documents were properly signed by the named individual.

For documents executed **within the island of Jamaica** these documents must be witnessed before:

1. A Justice of the Peace
2. A Judge of the Supreme Court
3. The Registrar of Titles
4. A Notary Public
5. The Governor-General
6. An Attorney-at-law

For documents signed in **Great Britain or Northern Island**:

1. The Mayor or Deputy Mayor
2. The Chief Magistrate or Deputy Magistrate Chief Magistrate
3. A Notary Public

For documents signed in any other **Commonwealth country**:

1. The Governor
2. The Commander-in-chief
3. A Judge of any court
4. The Mayor or Chief Magistrate
5. A Notary Public

For documents signed in a **foreign country or state**

1. The Jamaican or British Consular Officer
2. A Notary Public.³

Any other person or individual can be a witness, within the Island or outside of the Island, but in this case the witness shall appear before one of the functionaries aforesaid who after making due enquiries of such witness, and shall endorse on the same instrument a form prescribed by the Act. This shall be sufficient proof of the due signing of the document. The jurat should contain the date when and the place where the probate clause is taken, among other things.

Remedies

The cancellation of the relevant instrument by the Registrar of Titles **pursuant to a Court Order** and Section 158 of the RTA is a well-known remedy. Under Section 158 of the Registration of Titles Act the Court may direct the Registrar of Titles to:

- (a) Cancel/amend any Certificate of Title or instrument or any entry in the Register Book;
- (b) To issue a new Certificate of Title in the name of specified persons or substitute such title, instrument or entry.

Many persons are however unaware that the registered proprietor has an additional remedy available to him in the form of an action of negligence against the person who purported to witness his signature or the attorney-at-law who had conduct of the transaction.

³ Where an instrument is witnessed by a **Notary Public in a Foreign State or Country** certification from the appropriate officer within that country or state that the Notary Public is duly commissioned and practicing in such State or Country and that full faith or credit can be given to his acts.

Within the last decade, negligence has been held to be a valid cause of action against an attorney-at-law or Justice of the Peace in circumstances where that person attested to the forged signature of a registered proprietor. Damages were awarded in those cases where the loss sustained by the registered proprietor was identifiable and measurable.

Graham v Hall⁴ should be of particular interest to those who by virtue of their status, are asked to witness documents. In that case Mr. and Mrs. Hall were the joint owners of the family home. Mr. Hall found himself in financial trouble and in order to pay off his debts, he decided to mortgage the family home. However, Mrs. Hall was not aware of his financial situation.

In 2001, Mr. Hall instructed Mr. Gelin, a solicitor, to act for both him and Mrs. Hall in effecting and registering a mortgage, using the home as collateral. Mr. Hall told Mr. Gelin that Mrs. Hall was dying of cancer and therefore Mr. Gelin could not see or visit her. Mr. Hall indicated that he would take the documents to Mrs. Hall and arrange for her to sign them. Mr. Hall visited Mr. Graham, a Justice of the Peace, with the document purportedly signed by Mrs. Hall. This signature was in fact a forgery. Mr. Graham attested Mrs. Hall's signature by signing his name under an attestation clause that recorded the mortgage was "signed in my presence by the Mortgagor who is personally known to me." In fact Mrs. Hall had not been in Mr. Graham's presence and was not personally known to him. They had never met.

In fact, Mrs. Hall did not have cancer and was not aware of the financial difficulties her husband was in, nor was she aware of the mortgage.

The mortgage was subsequently registered in 2001; Mr. Hall died in 2003 and Mrs. Hall discovered the existence of the mortgage. The trial judge held that both Mr. Gelin and Mr. Graham were negligent and were liable to Mrs. Hall and apportioned the liability 60% against Mr. Gelin (primary responsibility) and 40% against Mr. Graham. They both appealed.

The Court of Appeal held that in a case involving economic loss it is appropriate to

⁴ [2006] NSWCA 208.

first identify the interest for which the party seeks protection.⁵ Mrs. Hall's interest was as a joint owner of the family home. Her interest must have been obvious to Mr. Graham when he attested her purported signature as a mortgagor on the mortgage document.

Secondly, the risk of harm to Mrs. Hall's interest in the property, resulting from the signature in question not being hers, was a real one as the falsely attested mortgage was likely to be registered. The risk was not only foreseeable but self-evident.

The Court of Appeal further stated that the system of transmission of property interest recognizes the vulnerability of owners of property to fraud. To refrain from imposing a duty of care on a witness who falsely attests a dealing, would impair the reliability of the system of registration of real property. Mr. Graham owed a duty of care to Mrs. Hall in attesting the signature on the mortgage and in representing that the signature to be that of Mrs. Hall and was placed on the mortgage documents in his presence and that Mrs. Hall was personally known to him. **The duty arose irrespective of whether Mr. Graham acted as a Justice of the Peace or as an ordinary witness.** Accordingly, Mr. Graham breached the duty of care he owed Mrs. Hall.

Justices of the Peace, who sign attestation clauses that the Declarants have made and subscribed the declaration before them when that is not true, commit an act that is the antithesis of their function. Such an act strikes at the heart of the system they are charged to protect. It constitutes dishonesty and it is an act done maliciously.

Duty of Care

The fact that the registered proprietor is a stranger to the attesting witness does not negate the duty of care owed by the attesting witness. The Court likened these circumstances to the duty of care owed by an attorney to a beneficiary of an estate

⁵ Perre v Apand Pty Limited (1999) 198 CLR 180, Hawkins v Clayton (1988) 164 CLR 539

when preparing a will, though the beneficiary and the attorney may never have met.⁶

It is also apparent from the Court's treatment of the facts in *Graham v Hall*⁷ that the circumstances surrounding the attestation of the signature will not be heavily scrutinized. The facts of the case were unclear as to whether:

- (a) the documents were presented to Mr. Graham already signed, or
- (b) Mr. Hall wrote Mrs. Hall's signature in the presence of Mr. Graham, or
- (c) a person purporting to be Mrs. Hall signed the instrument in Mr. Graham's presence.

Mr. Graham was found to have breached his duty of care regardless of which scenario had actually taken place.

An attorney is also liable for breach of a duty of care when, having conduct of a matter, he fails to ensure the proper witnessing of a document. Mr. Gelin was not seen to have played a role in the improper witnessing of the documents. Nevertheless he was held liable for not exercising a duty of care owed to Mrs. Hall when causing the instrument to be lodged for registration. In fact, his proportion of liability was found to be greater than that of the attesting witness.

In Ginnelle Finance v. Michael Diakakis,⁸ in early 2000, Michael Diakakis entered in a mortgage for \$55,000 for the benefit of his son and daughter-in-law. During that transaction Diakakis saw Peter Cassimatis, a solicitor who explained the mortgage documents to him and Diakakis executed the mortgage documents before him. Throughout 2000 Diakakis entered into other mortgage loans and he retained Cassimatis for all but one of the transactions. For that loan another solicitor, D. Grogan, explained the transaction to Diakakis. In 2001 two further transactions were entered into and it was later held that Diakakis knew nothing of these transactions and his signature on the loan documents were forged. Again in 2001 two further transactions were entered into and again Diakakis was not aware of

⁶ Hill v Van Erp (1997) 188 CLR 159 (owed by a solicitor to a disappointed beneficiary).

⁷ *Supra*.

⁸ [2007] NSWSC 60.

these loans and his signature had been forged. No payments were made on these final loans and Ginelle Finance Pty Ltd foreclosed on the property and it was sold. The Diakakis family (in particular the daughter-in-law) who had the benefit of the money were nowhere to be found.

The case against Cassimatis was that he falsely represented that Diakakis had signed the loan documents in his presence and that he falsely explained the loans to Diakakis. It would appear that in 2000 Diakakis met with Cassimatis several times. However in 2001, Jenny Diakakis, his daughter-in-law, brought the loan documents to Cassimatis with what appeared to be Diakakis' signature on them. Cassimatis signed those documents as a witness. In doing so, Cassimatis falsely attested that Diakakis had signed them in his presence and that he explained the documents to Diakakis. It was speculated Cassimatis may have been assumed that since the earlier transactions had been approved by Diakakis the later transactions were also genuine. Irrespective of those consideration the Court held that Cassimatis liability was clear. They relied on *Graham v Hall* in finding that Cassimatis clearly owed a duty of care in the circumstances given that it was obvious that the interest of the mortgagor is put at risk when a signature is falsely attested, that he was in a breach of his duty, and that his action made a significant and materially contribution to the completion of the transaction and hence was a cause of Diakakis loss. Cassimatis was therefore liable to Diakakis in negligence for his loss suffered as a result of the transactions.

The case against Grogan was in some ways similar in that the solicitor did explain the first loan and Diakakis signed in his presence. His second retainer however, the daughter-in-law contacted him and by this stage the previous loans were already in default. All communication happened through the daughter-in-law. At no time did Grogan have personal contact with his client Diakakis either by telephone or conference. The Courts held that Grogan had a duty of care to take reasonable steps to protect his interests and thus to satisfy himself that Diakakis consented and understood the transactions.

Hoeben J, in his reasoning cited *Rodrick's "Forgeries False Attestation and Impostors: Torrens System, Mortgages and the Fraud Exception to Indefeasibility"* 2002 which states:

" A false attestation constitutes a violation of the Registrar's right to take the mortgage document at its word when it states that the mortgagor signed in the presence of an attesting witness, and to proceed on the assumption that the mortgage document was properly executed and can be safely registered. A false attestation is therefore an attack on the integrity and reliability of the registration system; the false witness has not acted to quell potential scams by properly employing the protections that have been built into the system."

Liability was apportioned 25% to Grogan and 75% to Cassimatis.

It is clear from both cases that where the primary wrongdoers are nowhere to be found, that Attorneys-at-law, Justices of the Peace and Notaries Public who either falsely attest to witnessing documents, or provide an independent certification, are liable to third parties when their behaviour causes the third party loss.

In ***Chandra & Anor v Perpetual Trustees Victoria Ltd. & Ors***,⁹ an attorney-at-law was held liable for negligence where he had conduct of a lost title application and the subsequent mortgaging of the lands. The signatures of the registered proprietors were forged and improperly witnessed by a Justice of the Peace. The Court held that, apart from the implied contractual duties arising between an attorney-at-law and his client, there was a duty of care owed by the attorney to the registered proprietor.

It was further held that it should have been obvious to a reasonable person acting as an attorney-at-law that there were risks of identity fraud associated with lost title applications and that an attorney-at-law is therefore called upon to be vigilant in handling the documents of a client.

⁹ [2007] NSWSC 694

The matter revolved around the validity of the mortgage document, however, it is noteworthy that Justice Bryson stated even if the owners had suffered loss or damage, they would not have been entitled to recover from the Torrens Assurance Fund as the loss or damage would have been caused by the negligence of the solicitor, who was found to have been in breach of the duty of care he owed to the owners.

Proposed Solution

Having regard to the increasing number of fraudulent cases emerging in relation to land transactions, the problem has created the need for immediate action to be taken.

The National Land Agency is proposing that under the RTA and the LVA, Section 171 and Section 41, respectively, that new regulations be issued for regulating the practice and procedure under these Acts. Accordingly, it is proposed to develop regulations, which will require persons to submit certified copies of a government issued photographic identification when lodging documents at the Titles Office.

Attorneys-at-Law or other functionaries who are confident as to the identity of a registered proprietor on the basis of their own personal knowledge may choose to dispense the requirements set out and attest to their personal knowledge of the registered proprietor. There is no intention that an Attorney-at-Law, or attesting witness should be expected to go to unreasonable lengths to confirm their client's identity. This would be just an added assurance as to the identity of the registered owner.

This standard aims to ensure that landowners are properly identified to manage the risk of fraud or improper dealing in transactions with land. This accords with the NLA's Mission Statement to ensure that Jamaica has an efficient and transparent land titling system that guarantees security of tenure.

The purpose of this is to reduce the risk of land title fraud and other improper land title dealings. This reduction in risk strengthens the security, certainty and integrity

of the Torrens land title system. It also reduces the risk of successful claims for compensation against industry participants and against the State under the RTA.

It is designed to assist those in the property industry to discharge their duty of care to those holding and acquiring interests in land. A vigilant, responsive and co-operative property industry as a whole is needed to successfully combat fraud. The best opportunity to prevent fraud is before documents affecting land titles are executed and lodged at Titles Office.

The Registrar of Titles registers a change in property ownership at the end of the sale process, sometimes following financial settlement. Where a mortgage is granted, the Registrar of Titles registers a mortgage against the property quite often after funds have been advanced. This means that the greatest opportunity to prevent title fraud is before payment of the balance of the purchase price and before mortgage funds are advanced.

Recommended Course of Action in Discharging Duties

When witnessing any documents for registration at the Titles Office for an individual, a JP, Notary Public or an Attorney-at-law has an obligation to ensure that:

1. the person is entitled to sign the form,
2. the person signs the form in their presence and,
3. the witness is not a party to the form.

These legal obligations, which help to streamline the conveyancing process and safeguard against identity fraud, are discussed in detail below.

1: Ensure that the person is entitled to sign the document

The functionaries have a legal responsibility to take reasonable steps (those that an ordinary person would consider prudent and fair in the circumstances) to ensure that the person signing the document is entitled to do so.

They must therefore ensure that the person **is** the holder (registered proprietor), or is **about to become** the holder of the relevant interest in land.

They must also be satisfied as to the identity of the person signing the form. Though they are free to decide what proof of identification they require, photographic identification, such as a driver's licence or passport, is usually the most reliable. They should witness the signature only **after** the applicant has satisfactorily proved their identity.

Before witnessing their signature, they may also question the person signing the form to confirm that they understand its nature and effect. If they are not satisfied that the signatory has this understanding, they should decline to witness.

2: Ensure that the form is executed in their presence

This obligation is self-explanatory. A form provides spaces for each person to sign separately. There should be only one signature per space, and each signature must be witnessed separately. The date of execution must also be included in the space provided.

3: Ensure that the witness is not a party to the form

Any person with a vested interest in the transaction cannot also be a witness to its execution (signing). For example, if A and B own land together and A is a JP, A cannot witness B's signature if they are both signing a Land Titles form.

Care should also be taken when someone is signing under a power of attorney. For example, where A and B own the land together and C is both an attorney for B and a JP. If A signs in their own right and C signs on behalf of B, C cannot then witness either signature as he or she is involved in the transaction.

These recommended courses of action, in relation to the Justice of the Peace and the Notary Public, apply with even more force to an attorney-at-law who is an officer of the Court.

Other witnessing requirements

When witnessing documents for registration, the witnesses should follow the general requirements and practices that apply to their duties. These include ensuring that:

- the signatures of all parties are in original handwriting in dense black or blue ink. Signatures made by stamps are not acceptable.
- the witness' full name is clearly printed on the document where he/she has signed as a witness. Initials are not acceptable.
- all items on the form have been completed before it is witnessed. Any alterations to the information on the form should be initialed by all the parties involved.
- the Justices of the Peace, Notaries Public and Attorneys' identification number and corresponding seals are affixed on the document.

Recordkeeping

The Registrar of Titles has extensive powers of formal inquiry and may require witnesses to produce records relating to forms lodged for registration that they have witnessed.

JPs, Attorneys-at-law and Notaries Public should therefore record the details of any relevant information and documentation which was supplied as proof of identity and evidence of the signatory's entitlement to sign. This could include such items as:

- title reference
- property description
- names of parties
- type of transaction.

They should also record relevant information when they decline to witness a form. If the circumstances warrant it, they may consider advising the Registrar of Titles of this information.

Case Studies

A standard to verify identity is not unique to Jamaica. Other Torrens based systems such as Australia, New Zealand and the United Kingdom require verification of identity due to the incidence of fraudulent transactions in their land registries for which they have paid compensation.

1. Western Australia

Since July 1, 2012 the standard of verification of identity required has two base requirements:

- (a) Identity Document Production: Production of current, original identity documents from the categories in Table 1 or Table 2; and
- (b) Visual Verification of Identity: A visual "face to face", comparing the photograph on the current original identity documents with the person being identified.

The highest category of identity documents specified in Table 1 and 2 should be produced first, with category 1 being the highest.

A different standard applies to documents executed outside of Australia. Verification of identity performed outside of Australia must be undertaken by an Australian Consular Officer using the documents set out in Table 2. An Australian Consular Officer must also witness the execution of the document.

To satisfy the Visual Verification of Identity standard of this Practice, inside and outside Australia, the person who is being identified should present themselves in person to the Identifier.

Table 1 – Verification conducted Inside Australia

*To satisfy the Identity Document Production requirement, the person whose identity is being verified is to produce **original current** documents in one of the following categories starting with Category 1 as the highest standard:*

Category Minimum Document Requirements

- 1 Australian Passport plus Australian Drivers Licence or Australian Proof of Age Card with Photo**
- 2 Australian Passport plus Birth, Citizenship, Descent Certificate or Resident Visa (with change of name or marriage certificate if necessary) plus Medicare, Centrelink or Department of Veterans Affairs (DVA) Card**
- 3 Australian Drivers Licence or Australian Proof of Age Card with Photo plus Birth, Citizenship, Descent Certificate or Resident Visa (with change of name or marriage certificate if necessary) plus Medicare, Centrelink or DVA Card**
- 4 Declaration of Identity plus Birth, Citizenship, Descent Certificate or Resident Visa (with change of name or marriage certificate if necessary) plus Medicare, Centrelink or DVA Card**
- 5 Foreign Passport plus Visa plus current rates notice for the property¹⁰ issued by the local government and drivers licence (if verification conducted in Australia)**

Table 2 – Verification conducted Outside Australia

*To satisfy the Identity Document Production requirement, the person whose identity is being verified is to produce **original current** documents in one of the following categories starting with Category 1 as the highest standard:*

:

Category Minimum Document Requirements

- 1 Australian or Foreign Passport PLUS Drivers Licence or other equivalent Photo identification issued by a Government body plus current Rates notice for the property issued by the local government**
- 2 Australian or Foreign Passport OR Birth Certificate if a Passport has not been issued PLUS Drivers Licence or (or other equivalent Photo identification issued by a Government body) PLUS current Rates notice for the property issued by the local government¹⁰**

2. New Zealand

The following documents must be examined and copied to verify the identity of a person other than a Public Corporate who is signing or giving authority to lodge an instrument for the purposes of the registration:

- (i) original government-issued photographic ID, for example passport, driver's licence or firearms licence, and
- (ii) in the case of a landowner transferring or mortgaging, a document showing the landowner's name and the physical address of the property, for example rates demand, bank statement, or utility account.

¹⁰ Western Australia Registrar and Commissioner of Titles Joint Practice – Verification of Identity, June 2012.

(b) If a conveyancer knows a landowner personally and can vouch for their identity, the requirement in (a)(ii) may not be necessary.

Verification in the absence of photographic ID

- (a) Where a person does not have photographic ID, their identity may be verified by a witness.
- (b) The witness described in (a) must:
 - (i) have known the landowner for at least 12 months,
 - (ii) sign a statutory declaration verifying the landowner's identity,
 - (iii) provide a government-issued photographic ID, as verification of their own identity, to the person taking the declaration, and
 - (iv) sign a photograph of the landowner, verifying it is a true likeness of the landowner.¹¹

3. United Kingdom

Where documents are being lodged by a private individual they must appear before certain witnesses and have their identity verified. The witness must inspect

- (a) Current valid full passport,
- (b) Current United Kingdom, EU, Isle of Man, Channel Islands photocard driving licence

OR

Two of the following but no more than one of each type:

- a) Cheque guarantee card or credit card bearing the Mastercard or Visa logo, an American Express or Diners Club card, or a debit or multi-function card bearing the Maestro or Delta logo which was issued in the United Kingdom and is supported by an original account statement less than three months old*
- b) Utility bill less than three months old*
- c) Council tax bill for the current year
- d) Council rent book showing the rent paid for the last three months

¹¹ Standard for the verification of identity for registration under the Land Transfer Act 1952.

- e) Mortgage statement for the mortgage accounting year just ended*
- f) Current firearm or shotgun certificate

* **These must be postal statements; they must not be statements sent electronically.**¹²

Precautions

Attorneys-at-law and Justices of the Peace are encouraged to take note of the following suggested **precautions**:

- Establish and adhere to a **procedure** for the identification of signatories.
- Ensure that each client presents an original valid government-issued photographic identification.
- Do not accept photocopied or expired identification.
- Keep copies of the identification for your records.
- Ensure that the **signatory signs in your presence**. If for any reason he does not do so, a quick telephone call to the signatory, if the signatory is personally known, to confirm his knowledge and consent is necessary.
- Pay special attention to the transactions where the signatory's behaviour and explanations appear suspicious.
- Be vigilant where the signatory's urgency is unwarranted or where the signatory appears uninterested in the legal implications of a document or where the signatory refuses to attend to your offices to sign.
- Preserve and maintain the safe custody of the seal. Report loss or theft as soon as possible to the police and the Registrar of Titles.¹³
- Attorneys-at-law/ Justices of the Peace must pay special attention where the transaction involves **jointly owned property** and communication is predominantly with only one of the joint owners.
- Pay special attention to Lost Title Applications and Transfers.
- Attorneys-at-law / Justices of the Peace could also check the historical view of a Title to identify potential inconsistencies.

¹² Evidence of Identity for Conveyancers and Non-Conveyancers.

¹³ Justice of the Peace (Official Seals) Act 2004

- Independently obtaining contact details for the physical address of the property and contacting the land owner using those details.
- Ensure that JP's seal accords with Regulations.¹⁴
- impressed seal;
- identification number;
- parish for which the Justice of the Peace is appointed.

The legal obligation to verify identity is an essential safeguard against identity fraud in conveyancing transactions.

An attorney-at-law may discharge these obligations by personally conducting the identity checks or by delegating these functions to some other trusted person. In either case, the attorney-at-law who provides the certification has responsibility for the adequacy of the identity verification.

Conclusion

A standard for the verification of identity is a preventative approach. The final recourse for resolution of fraud caused by identity theft resides with the Courts. Whilst this remedy is available it is not preventative and it ultimately burdens valuable resources from other state agencies. Resolving identity issues through the court system creates undue pressure on the Ministry of National Security (through the Jamaica Constabulary Force) and the Ministry of Justice in preparing the case and resolving the issue in a timely manner and the Courts in general. A standard for the verification of identity will reduce the burden placed on these two entities and will allow them to utilise resources otherwise.

A standard for the verification of identity will attempt to reduce the incidents of fraud before they occur. The recommendation put forward should not be viewed as onerous or bureaucratic when compared to the benefits that can be accrued from

¹⁴ Justice of the Peace (Official Seals) Regulations 2004.

its implementation. These measures have become necessary to protect the rightful interests of landowners.