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Jul 24 2016 at 4:33 PM | Updated Jul 24 2016 at 4:33 PM

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Who's the buyer? Verifying overseas purchasers a risk in conveyancing

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Who's the buyer? New rules designed to verify the identity of overseas buyers of property are open to interpretation by conveyancers and that brings risks, lawyers say.



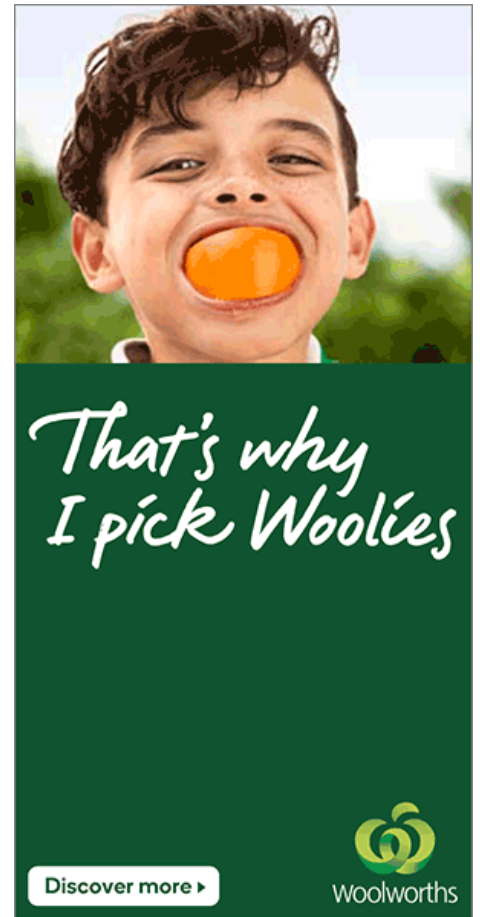
by [Michael Bleby](#)

Skype calls and passports being held up to a screen are some of the methods conveyancers are using to verify overseas buyers of Australian property.

While face-to-face interview and original documents are routinely used to verify parties in transactions between locals, the ad-hoc processes conveyancers are using to check the identity of offshore clients raises risks that buyers may not be who they say they are.

New rules for the first time require lawyers and conveyancers to take "reasonable steps" to verify the identity of a buyer, similar to the 100-point check banks conduct. Many law firms say that means a face-to-face interview and sighting of original documents.

For overseas-based clients, however, such as China-based investors, it's harder. In theory, clients have to visit an Australian consulate to verify their identity, but with only a handful of those – in Beijing, Shanghai, Chengdu, Guangzhou and Hong Kong –



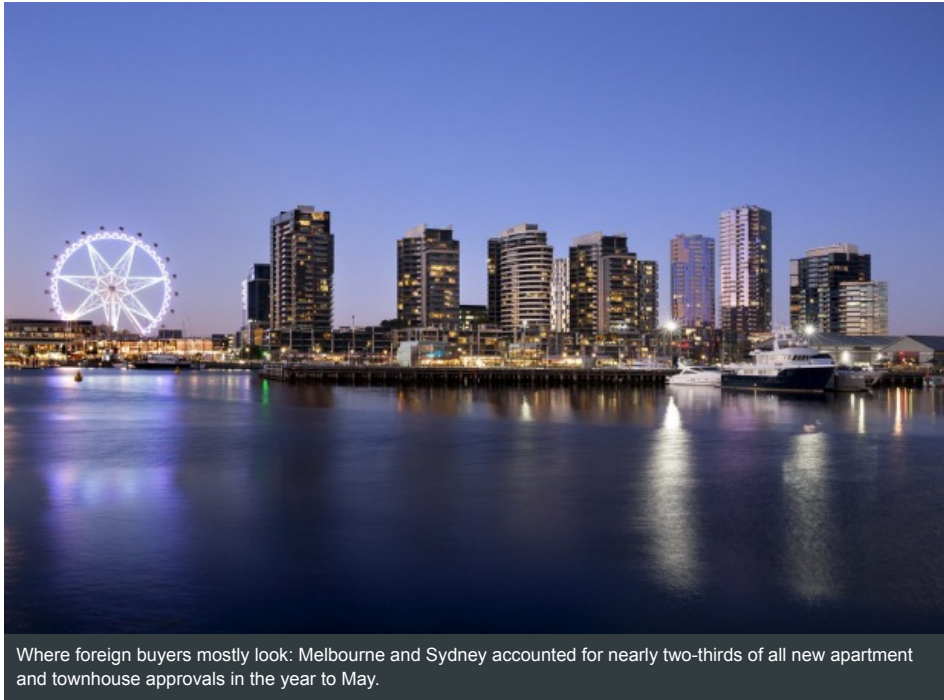
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it's not an option for all buyers. So they go down the easier route.



The insecure practices are well known throughout the industry.

'That's foolish'

"A Skype conversion with a foreign person you've never met holding up a passport that could have been manufactured for the purpose of defrauding a property transaction can be facilitated," said Scott Talbot, a Hong Kong-based property marketer who until recently lived in Beijing. "That is not reasonable steps. That's foolish."

The growth of [electronic conveyancing](#), particularly through the [PEXA](#) system in Australia, makes it crucial to have commonly accepted standards of verification, said Darren Marx, a property partner at commercial law firm Rigby Cooke Lawyers.

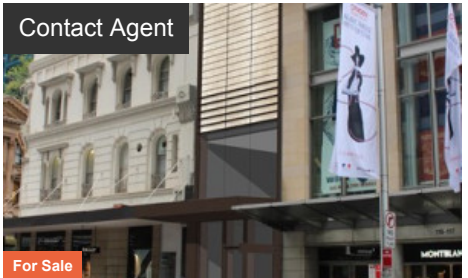
"As more legal transactions move online, there will be less physical presence of documents," Mr Marx said. "There is a real risk that if stringent verification policies are not put in place and, more importantly, that they aren't adhered to, that properties may be fraudulently [knowingly or unknowingly] transferred to third parties".

Nor is it just a Victorian issue. Similar rules are due to come in around paper-based conveyancing transactions in NSW. The two states together accounted for almost two-thirds of the 116,650 new apartments – the housing type favoured by overseas investors – approved in the year to May.

In the low-margin, high-volume business of conveyancing this is a dilemma and some were apparently altering their requirements.

In an email to a potential client seen by *The Australian Financial Review*, lawyer Jordana Cawood from firm 123conveyancing said the company required copies of a passport, driver's licence or full birth certificate and a foreign government-issued identity document.

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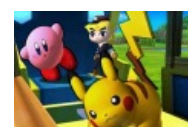


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"We can arrange for a Skype interview to verify the client's identification with the above provided documents," she wrote.

Contacted by the *Financial Review*, however, Ms Cawood said the firm only did VOI in person.

"We need the documents and it has to be a face-to-face meeting," she said.

When the *Financial Review* pointed out her email had not said that, Ms Cawood said the email wasn't correct.

"That wasn't articulated correctly in the email," she said. "That would be a first step. I had understood they would be coming to Australia anyway so we would have done interviews then, face to face."

Other conveyancers openly say they conduct Skype calls as they have no other way.

"It's a real nightmare the way the government's got it at the moment," said Ashley Clarke, the director of Low Cost Conveyancing Services. "At the moment there's no clear alternative for anything outside of an Australian consulate. The government haven't made it clear what's reasonable in the circumstances."

Mr Clarke's firm requests certified copies of a buyer's identity documents and then conducts a Skype call.

"Reasonable in the circumstances to us is Skyping with somebody," he said. "Once we've got copies of [the documents], we then have to Skype with them, to see that that person is the same person in the written documentation."

For face-to-face verification, conveyancers can do the check themselves or use third-party agencies such as Australia Post or Zip ID to do it. It costs more, however.

Foreigner surcharges [on property sales in NSW](#), [Queensland](#) and [Victoria](#) could also prompt unscrupulous buyers to use the identity of a resident or citizen to avoid those charges, Mr Marx said.

Victoria's Registrar of Titles office said it could not provide specific comment as the definition of reasonable steps was on a case by case basis. Other legal authorities, however, said the rules were open to interpretation.

"The obligation under the rules is to take reasonable steps, and what is reasonable will very much depend on the circumstances at hand, including whether the client is an existing client known to the practitioner or is a new client," said Justin Toohey, the deputy chief executive of Victoria's Legal Practitioners' Liability Committee.

Electronic and online meetings are growing in acceptance, but there is little agreement on what standards are acceptable across the legal industry.

"Whilst there may be a technical argument that Skype may satisfy the requirement of a 'face-to-face' interview, we would be very surprised if this practice is allowed to continue unchecked," said Jodie Masson, a partner of Sydney property law firm Massons. "It seems like a broad and risky interpretation of the terms 'face-to-face' and 'in-person'."

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Technology is trying to catch up. Melbourne firm P&B Law uses the app-based IDfy service that provider InfoTrack says complies with the requirements of the intergovernmental Australian Registrars National Electronic Conveyancing Council, but a lot is still left up to individual firms, P&B Law's Grace Eidelson said.

"With the titles office, it's not clear what they require," she said.



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