

On November 24, 2006 Bar Council approved revisions to the Professional Standards: Real Property Transactions in Nova Scotia [<http://www.nsblcf.ca/Standards/profstand.html>] and approved a new Standard.

**Standards 1.5 Documentation of Advice and Instruction, and 2.3 Access** were revised; **Standard 4.4 Identification** was approved as a new standard.

#### NEW STANDARD

**Standard 4.4 Identification** requires that you must take reasonable steps to confirm the identity of a person who:

- (a) signs a document in a transaction where the lawyer is responsible for the proper execution of the document;
- (b) executes a document the lawyer witnesses;
- (c) swears an affidavit before the lawyer; or
- (d) gives a solemn declaration to the lawyer.

You must also take reasonable steps to document the confirmation in your file or by other means.

I expect that many of you are already documenting proof of your client's identification as this has become a routine requirement of most lending institutions. However, because this is now a Practice Standard, it must be part of your office procedure when documentation is being signed, witnessed, sworn or declared before you.

This Standard extends to work by your legal assistants. See: *Legal Ethics and Professional Conduct Handbook Commentaries 19.4 [ensuring work done by qualified lawyer], 19.6 [work by legal assistant], 19.7 [supervision and education of legal assistant]* [<http://www.nsblcf.ca/Standards/stand44.html>] See also *Yamada v. Mock; Miller et al., Third Parties (1996), 29 O.R. (3d) 731. Supervision of employees*

#### Client Identification (Sample Wording)

To comply with **Standard 4.4 Identification** I suggest that you include in your opening purchase, sale or refinance letter to your client, a paragraph outlining what you will require for valid proof of identification. The following wording is one example to consider:

Prior to you signing your documentation you must provide me with satisfactory documentation confirming your identity. For confirmation of your identity please provide your original permanent drivers license issued in Canada, as well as another piece of signed original ID, such as a passport, provincial health insurance card, Canadian Firearms License or an employee photo ID card issued by an employer that is well known in the community.

I am required by the Nova Scotia Barristers' Society to take reasonable steps to document confirmation of your identification in my file, or by other means. I propose to do so by maintaining a copy of your identification documentation in your file. If you are placing a mortgage on your property, your lender will likely require that I provide copies of this documentation to it before your mortgage funds are released to me.

Without satisfactory confirmation of your identity, I will not complete your mortgage transaction, your sale, or witness any property documentation for you.

## REVISIONS

The revision to **Standard 1.5** is minor. The title changed to **Documentation of Advice and Instruction** from **Documentation of Advice**.

This Standard extends to work by your legal assistants. See: *Legal Ethics and Professional Conduct Handbook Commentaries 19.4 (ensuring work done by qualified lawyer), 19.6 (work by legal assistant), 19.7 (supervision and education of legal assistant)* [<http://www.nsbicf.ca/Standards/stand44.html>] See also *Yamada v. Mack; Miller et al., Third Parties (1996), 29 O.R. (3d) 731. Supervision of employees*

### **Standard 2.3 – Access** - now reads:

A lawyer who prepares an opinion of title must confirm the nature of the access, if any, to the parcel and whether the access is public or private.

If the lawyer determines the access to be private, the lawyer must determine whether the access has been granted.

If the lawyer determines the access to be private and granted, the lawyer must ensure that there is marketable title for the grant of easement to the parcel. If access is referenced for the whole of the marketable title time frame, the grant may be presumed.

If the lawyer determines the access to be private and not granted, the lawyer must be satisfied that there is authority for its continued use in conjunction with the parcel. Authority for continued use must be based on a factual foundation as documented on record.

A lawyer should consider the implications of the legal description of a servient parcel that does not reference a private access to which it is subject.

A lawyer should examine plans arising from the search and survey information affecting the parcel to ascertain whether the access granted and the actual travelled way correlate, and advise the client with regard to any material discrepancies.

A lawyer must explain to the client any limitation associated with a private right of way access and confirm the client's instructions prior to closing.

## **PROFESSIONAL STANDARDS: REAL PROPERTY TRANSACTIONS IN NOVA SCOTIA**

Take the time to review the Professional Standards: Real Property Transactions in Nova Scotia [<http://www.nsbicf.ca/Standards/profstand.html>] in their entirety and to educate your legal staff on them. Complying with the Standards can help you avoid an errors and omissions claim. As well be mindful of **Regulations 8.2.1 and**

8.2.2 and of our *Legal Profession Act*<sup>1</sup> which state:

- 8.2.1 Members practicing an area of law shall comply with the standards of practice applicable to that area of law.
- 8.2.2 In particular members practising real estate law shall comply with the standards of practice applicable to real estate law, including those set out in *Professional Standards: Real Property Transactions in Nova Scotia (2002)* as amended [Reg 68]

As stated in its Preface, the Standards provide guidance and clarification to property practitioners of principal elements inherent in the exercise of professional judgment. The words “must” “should” and “may” are used throughout the Standards.

The Introduction to the Standards [[http://www.nsblcf.ca/Standards/stand\\_intro.htm](http://www.nsblcf.ca/Standards/stand_intro.htm)] outlines the interpretation of “must” “should” and “may” in part as follows:

- (e) “must” means that the lawyer is required to follow the Standard. There is a legal [common law, statutory or regulatory] requirement relating to the Standard. . .
- (f) “should” means that the lawyer is required to follow the Standard; however, if the lawyer determines, in the exercise of professional judgment, that compliance is not appropriate under the circumstances, that decision rests with the lawyer; and,
- (g) “may” means that it is an acceptable standard for the lawyer to follow, subject to the lawyer determining that compliance is an appropriate exercise of professional judgment.

Read the full text of the **Introduction** at [[http://www.nsblcf.ca/Standards/stand\\_intro.htm](http://www.nsblcf.ca/Standards/stand_intro.htm)]

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**If you have any questions on this or any other Risk or Practice Management issue do not hesitate to contact me, Deborah E. Gillis, Q.C., Risk and Practice Management Advisor for LIANS. I can be reached at 423-1300 ext. 345 or at <mailto:dgillis@lians.ca>**

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<sup>1</sup>Legal Profession Act, S.N.S., 2004, c.28