

Title Verification – A Guide for Accountants and Financial Planners.

Research indicates that not all accountants, financial planners and SMSF auditors verify their clients' assertions of property ownership and title details - even though it takes only a few minutes online by conducting a Title Search. But what if a client makes a mistake?

A Certificate of Title contains guaranteed information, as at date of Title Search, including the legal owner and all registered encumbrances affecting a defined parcel of freehold land.

A [Title Search](#) can avoid mistakes caused by client assertions of property ownership and title details. Mistakes can lead to non-compliance of the *Know Your Client* provisions of the *Corporations Code* and the *SMSF Audit Standards* of the principle *Duty of Care*. Other implications are :

- Incorrect tax records going back years;
- Wealth strategies being without solid foundations;
- SMSF earnings treated as individual earnings;
- Encumbered SMSF assets;
- Inadequately protected SMSF beneficiaries;
- Incorrectly represented business balance sheets;
- Flawed accounts prepared by your firm;
- Risk assessment (insurance) strategies based on impinged assets.

The following is a guide to Title Verification requirements which may vary according to your industry:

[Tax returns and tax planning](#)

[SMSF establishment, administration and audit](#)

[Mortgages or wealth strategy considerations and Statements of Advice](#)

[Annual reviews of wealth strategies](#)

[Risk assessment and coverage considerations](#)

[Financial accounts preparation](#)

[Estate planning and Enduring Power of Attorney](#)

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[Tax returns and tax planning](#)

We recommend that when an accounting practice enlists a new client who has investment property assets, a [title search](#) is undertaken to ensure that the properties are in the name of the tax payer.

There have been instances where a property has been assumed to be in the name of the tax payer, when in fact the client has been mistaken.

We also recommend that a periodic [title search](#) is made of the property assets to ensure that the title still resides with the tax payer who is claiming tax deductions against the property.

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[SMSF establishment, administration and audit](#)

The Australian Taxation Office (ATO) has a stated focus on the complex area of Self Managed Superannuation Funds which are experiencing explosive growth. Recent advice from the ATO indicates that SMSF clients should expect to be audited. The ATO is checking for compliance with the relevant legislation so that beneficiaries are protected.

Property assets held in an SMSF must be unencumbered. The way to verify clear title to the

asset is to conduct a [title search](#) and check for [caveats](#) lodged by lenders or others who believe they have some economic benefit in the asset.

A trust cannot appear as the title holder on a title. As a result most trustees register themselves as the title holder. To protect the beneficiaries of the trust, we recommend that a [caveat](#) be placed on the title by the beneficiaries to protect their position. Alternatively, the beneficiaries can lodge a [Declaration of Trust](#) which will result in a registrar's caveat being placed on the title.

These beneficiary requested caveats not only protect the beneficiaries but also serve to inform the market that the title holder (the name appearing on the title deed) cannot use the property as security for borrowings – thus assisting to protect third party creditors.

The Australian audit standards dictate that a [title search](#) be conducted annually. This ongoing annual review serves to protect the beneficiaries from unscrupulous behaviour such as borrowing against the asset.

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Mortgages or Wealth strategy considerations and Statements of Advice

“The ‘know your client rule’ is a cornerstone of financial planning. You must ‘know your client’ in order to be able to act in their best interests and to tailor your financial product advice to suit their individual circumstances.” (Financial Planning Association of Australia Limited)

Section 945a of the *Corporations Act* sets out the requirement for financial professionals to “know your client” before acting for them or advising them. This precept is a non-negotiable requirement of prudent and professional practice.

When developing wealth strategies it is incumbent on financial planners to verify that material assets are titled as per a client's assertions. Should the client be mistaken then it is highly probable that the resulting wealth strategy is fundamentally flawed. For example property tax deductions are in an incorrect name or an asset is unknowingly encumbered.

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Annual reviews of wealth strategies

When a financial planner has established and implemented a client wealth strategy, we recommend that recommended an annual review process is undertaken to ensure the ongoing appropriateness of the wealth creation structures and plans.

The annual review process should include a [title search](#) of the key relevant property assets to ensure that unforeseen encumbrances have not been lodged against them. This is particularly important in the case of SMSFs holding property assets.

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Risk assessment and coverage considerations

A client's asset base can be a key determinate in the level of personal risk coverage (insurance) a client may need. That is, if the client has an asset which they are prepared to liquidate in the event they cannot work, or they have relied on an asset to provide funds for their family on death, then the title to those assets becomes a critical factor in risk coverage considerations.

For instance, if the property assets are either not in the assumed name, or the title is

encumbered, then the available funds to cover the risk event may be materially different from what is assumed by the client.

Take for example a property with an estimated value of \$1M. If the title deed indicates that the property has a caveat on it, the property cannot be transacted upon until the [caveat has been lifted](#) and access to the full \$1M may be impinged.

We recommend that financial planners who provide personal risk assessment and coverage (for example death, TPD, income protection, trauma insurance) verify the title to property that forms a part of the client's asset base. It is prudent practice to check and verify title when conducting an annual review of the adequacy of personal insurance to ensure key assets have not become encumbered.

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Financial accounts preparation

The accounting profession plays a pivotal role in the economy by assisting with compliance and providing accurate and timely financial statements upon which proprietors, investors, creditors and employees may rely.

One of the fundamental precepts of accurate financial statements is the valid valuation and representation of balance sheet items. The title to key material assets should not be assumed.

We recommend that accountants who prepare financial accounts ensure the validity of title to property assets. Especially when the accounts may be relied upon by third parties such as financiers and creditors. It may not be prudent practice to rely solely on client assertion regarding accurate and unencumbered title.

A major property asset recorded in an enterprise's books which is *not* titled accurately will lead to the entire set of financial statements being a nonsense.

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Estate planning and Enduring Power of Attorney

The inter-generational transition of wealth in Australia over the next twenty years will be of an unprecedented magnitude. A vast proportion of this wealth will be represented by property assets.

When a client requests assistance with estate planning, the cautious and prudent financial planner is recommended to verify the title to the property assets. *If you don't own it, you can't sell it (...and nor can you bequeath it!)*

Concurrently, the financial planner should review and consider any caveats or encumbrances on the property as these may have the impact of materially diluting the net benefit to the beneficiaries.

When a [Power of Attorney](#) agreement is prepared for a client who owns property assets, the resulting documents should be lodged on Landgate's Power of Attorney register. Having lodged the agreement then, in the event that the Attorney needs to deal on the asset, he or she will be in a position to do so.

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Disclaimer Statement

Accountants and financial planners should use their own skill and judgement in deciding what forms of title verification services should be undertaken for their clients. Information contained on the Landgate web site is for reference purposes only and should not be considered exhaustive. Individual personal circumstances have not been considered. Legal advice should be obtained by accountants and financial advisers to ensure compliance with regulations and professional standards