

Vendor Paid VOI / AML Compliance Costs

Guidance for Victorian Estate Agents

REIV understands that some agencies are considering whether costs associated with verification of identity (VOI), anti-money laundering (AML), customer due diligence (CDD) and related compliance activities may be charged to clients as part of an agency engagement.

REIV's view is that VOI/AML compliance costs may be charged to clients where the charge is:

- transparently disclosed;
- agreed in writing with the client;
- reasonable and justifiable; and
- properly described in the agency authority or engagement documentation.

Depending on how the charge is structured, it may be characterised as:

1. a fee for VOI/AML compliance or verification services; or
2. reimbursement of a third-party expense incurred by the agency.

Relevant Victorian Legislative Considerations

Estate Agents Act 1980 (Vic)

Section 49A of the *Estate Agents Act 1980 (Vic)* is the primary provision relevant to charging VOI/AML related fees or expenses.

Section 49A provides that an estate agent must not obtain or seek to obtain payment for:

- *work performed by the agent; or*
- *outgoings incurred by the agent,*

unless statutory disclosure requirements are met, including that the client signs a written engagement containing details of the commission and outgoings agreed.

REIV's view is that properly disclosed VOI/AML verification expenses may fall within the category of "outgoings incurred by the agent" for the purposes of section 49A.



Sections 48A and 48B of the *Estate Agents Act 1980 (Vic)* are also relevant where reimbursement of third-party costs is sought. In summary, agents must not improperly retain rebate connected client expenses or charge more than the amount paid or payable for those expenses.

Accordingly:

- *where the charge is represented as reimbursement of a third-party VOI/AML expense, the amount charged should reflect the actual cost incurred; and*
- *agencies should retain records supporting the amount charged.*

Agencies should exercise caution before charging any separate compliance or administration fee in addition to reimbursement of actual VOI/AML related outgoings incurred.

Estate Agents (Professional Conduct) Regulations 2018 (Vic)

The Estate Agents (Professional Conduct) Regulations 2018 (Vic) require estate agents to act fairly, honestly, in the client's best interests and without misleading or deceptive conduct.

Accordingly, whether acting for a vendor or purchaser, agents should ensure that any VOI/AML fee:

- is disclosed upfront;
- is clearly described;
- distinguishes between service fees and reimbursements;
- is reasonable and justifiable; and
- is supported by appropriate records.

Agencies should avoid:

- charging undisclosed VOI/AML fees;
- describing internal compliance costs as pure third-party disbursements where this is inaccurate;
- charging variable amounts without explaining the basis for calculation; or
- charging amounts exceeding those agreed with the client.



Estimated VOI/AML Disbursements

In some circumstances, the actual cost of VOI/AML related disbursements may not be known at the time the agency appointment is entered into. This may arise where the extent of customer due diligence required depends on factors that cannot be determined in advance, including whether the customer is acting through a company, trust or other complex ownership structure where enhanced due diligence may be required or additional verification services must be obtained.

Where the actual amount is not known when the authority is signed, members may wish to disclose a reasonable estimate of the anticipated VOI/AML disbursement together with a brief description of how the estimate has been calculated.

Any estimate should be reasonable, made in good faith and based on the information available at the time. Members should avoid using estimates that are arbitrary, inflated or misleading.

Where the actual disbursement differs from the estimate, the amount recovered should reflect the actual cost incurred and be supported by appropriate records.

Conclusion

REIV's view is that agents may recover properly disclosed VOI/AML verification expenses actually incurred on behalf of a client, provided the costs are agreed in writing and comply with sections 49A, 48A and 48B of the Estate Agents Act 1980 (Vic).

Members should exercise caution before charging additional compliance, administration or service fees about the actual outgoing incurred, as the Act does not expressly address or authorise separate AML service fees.

Accordingly, REIV recommends that any VOI/AML related charge:

- be clearly disclosed in the authority;
- accurately describe the nature of the expense being recovered;
- reflect the actual cost incurred where charged as a reimbursement;
- be supported by appropriate records; and
- be implemented consistently with broader professional conduct and consumer law obligations.



Disclaimer:

This information sheet is intended as general industry guidance only and does not constitute legal advice. Legislative requirements and regulatory interpretations may change, including in relation to AML/CTF reforms and consumer protection obligations.

REIV recommends that members obtain their own independent legal, accounting and compliance advice regarding:

- the structure of the any VOI/AML related fee;
- agency authority wording;
- the disclosure of estimated VOI/AML outgoings where the actual cost is not known at the time of appointment and any subsequent variations to those estimates;
- disclosure obligations; and
- compliance with applicable legislation and professional obligations.