**DEPARTMENT OF COMMERCE - Property Industries Directorate, Consumer Protection**

**PAST PUBLICATIONS – ARCHIVE LIST:- “SETTLEMENT AGENTS NEWS”**

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| **DATE / NO.** | **ISSUE / TITLE** | **CONTENT SUMMARY** |
| **December 2013**  **No. 8** | 1. **Changes to licence application forms** 2. **Insurance for settlement agents.** 3. **Updated Professional Indemnity Insurance Master Policy** 4. **Change in qualifications for settlement agent licences** 5. **Acting expeditiously after instructions to act are received** 6. ***Remuneration Notice 2013* for settlement transactions** 7. **CPD Reminder** 8. **Recognition of prior learning** 9. **ASIC’s small business booklet** 10. **Proactive compliance visits** | 1. Bring forms in line with current policies under the *SA Act 1981,* reduce red tape for business and streamline processing. 2. Commissioner may enter into a Master Policy Agreement with an appointed Insurer under the *SA Act 1981* providing arrangements for fidelity insurance and professional indemnity insurance for licensees on such terms and conditions as the Commissioner thinks fit. 3. Updated version in the Govt Gazette on 16/10/2013 - available on the State Law Publisher’s website. 4. *Diploma of Financial Services (Conveyancing)* and the two previously required units, *‘Obtain and analyse all information for the transaction’* and *‘Negotiate to achieve goals and manage disputes’*, superseded by the *Diploma of Conveyancing* at the national level. Dept. will continue to accept a *Diploma of Financial Services (Conveyancing)* with additional units as meeting the qualification requirement for a real estate settlement licence until 30/6/2014. 5. Department reminds agents of their duties once instructions to act are received. Ss. 10, 15 and 18 of the SA Code of Conduct 1982 (the Code) are explicit on what is expected of agents. 6. Minister for Commerce approved a *Remuneration Notice 2013* prescribing the maximum remuneration settlement agents can receive when carrying out real estate settlement transactions and business settlement transactions. (Govt. Gazette 17/9/2013; effective from 1/10/2013). 7. CPD program part of the licensing framework requiring all settlement agents to comply with the requirements of the program as prescribed by the licensing legislation. 8. Outlines process by which the public can obtain recognition of prior learning as qualification for prescribed for licensing purposes. 9. Booklet to help small businesses know and understand their compliance obligations. 10. Following recent feedback from industry members, the Department would like to re-emphasise the goals and objectives of proactive. |

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| **DATE / NO.** | **ISSUE / TITLE** | **CONTENT SUMMARY** |
| **September 2013**  **No. 7** | 1. **Tenanted Residential Properties** 2. **Important charges to water billing from 1 July 2013** 3. **Water consumption and tenanted properties** 4. **Recommending clients seek legal advice** 5. **Ballajura settlement agent fined $8,000 over misuse of funds** 6. **The small business ACL checklist** 7. **Settlement agent fined for misleading her clients** 8. **Unfair contract terms** 9. **Supreme Court decision relating to memorials on titles** | 1. Extra attention required for settlement of tenanted residential properties to ensure correct information is delivered to the buyer prior to settlement. Once the buyer’s agent becomes aware a residential property is tenanted, they should contact the seller/managing agent to obtain information about the tenancy. Acquiring this material is a key part of an agent acting in their client’s best interests. 2. From July 2013, the Water Corporation implemented combined billing for water use and service charges on a two-monthly basis . This replaces previous process of billing service charges for a full year in advance, and water use twice per year in the metropolitan area and three times per year in regional areas. 3. Agents reminded that sellers are responsible for the payment of all outgoings up to the date of settlement, even if a property is tenanted. 4. Agents urged to exercise caution in situations involving uncertainty. Includes advising clients to seek legal advice when prudent to do so. 5. Ballajura settlement agent, Natalie Jane Briggs t/as Frontline Settlements surrendered her licence, and has been fined $8,000 by the Midland Magistrates Court. She pleaded guilty on 20/6/2013 to 13 charges related to inability to finalise the settlement of four property transactions due to the agent’s misuse of trust money. 6. ACL came into effect on 1/1/2011. The small business ACL checklist has been designed to help them self-assess their operations and identify which of their activities are regulated under the ACL. 7. A Karrinyup settlement agent who represented she was a licensed settlement agent after her triennial certificate had lapsed, has been fined $4,000 by the Perth Magistrates Court. Michelle Louise Owen, trading as Swan River Conveyancing, pleaded guilty on 5 April 2013 to eleven charges relating to misrepresentations made during the settlement of three properties. Court costs of $275. 8. ACCC recently conducted a review of standard form consumer contracts in order to identify unfair contract terms and related practices. ACL incorporates various provisions targeting specific consumer issues, including provisions which render unfair terms void in standard form consumer contracts. 9. Supreme Court ruling 31 May 2013 on retirement village memorials recorded against land. The decision held that the owner of land, upon which a retirement village was situated, could not have the ‘retirement village scheme’ altered and the memorial lifted from a portion of the land so as to permit the use of the other portion free from the statutory charge over the land in favour of residents. (Reference: *Retirement Care Australia (Hollywood) Pty Ltd v Commissioner for Consumer Protection and Ors [2013] WASC 219*). While the Court’s ruling was complex and technical, in short, the *Retirement Villages Act (1992)* does not contain any provision which permits the owner of a retirement village to cancel a memorial over a part of the land in order to excise that land from the retirement village. Landgate is the statutory authority. |

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| **April 2013**  **No. 6** | 1. **~~New Minister for Commerce~~** 2. **High alert after more fraud attempts** 3. **Shoalwater Settlements** 4. **Verifying client identity – an important reminder** 5. **Original documents.** 6. **Obtaining consent when using a sub-agent** 7. **Building regulation** 8. **Advertising the price of a service** | 1. The property industry in Western Australia has been warned to remain on high alert after recent attempts by overseas criminals to fraudulently sell two Perth homes. The WA Police Major Fraud Squad is investigating both incidents. 2. Given the recent property fraud attempts, it is important settlement agents are reminded of their obligations regarding the verification of client identity. 3. During the course of a transaction, agencies receive a number of original documents such as declarations, plans, applications and transfers. These are lodged with the relevant authorities, usually the Office of State Revenue and Landgate. 4. Agents who use sub-agents to attend settlement on their behalf need to obtain the informed consent of their client in writing before doing so. Before using a subagent, it is also important to ensure they are licensed and the holder of a current triennial certificate, or a legal practice certificate. 5. New Building regulations introduced in Western Australia from April 2012 have made several changes to the approvals process for a number of projects around residential properties. 6. When advertising the price of a service, agents are reminded they must prominently display the total amount they wish to charge consumers for their good or services. |

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| **DATE / NO.** | **ISSUE / TITLE** | **CONTENT SUMMARY** |
| **January 2013**  **No. 5** | 1. **Settlement agents, strata developments and trust accounts** 2. **Disputed funds in an interest bearing trust account post-settlement** 3. **Dealing with interest bearing trust accounts** 4. **The Department’s website** 5. **Titling documents correctly** 6. **Preparing tax invoices at time of settlement** 7. **Online licence search** | 1. In light of a recent State Administrative Tribunal decision in the matter of Wilson and Commissioner for Consumer Protection [2012] WASAT 200, the Commissioner for Consumer Protection reminds agents dealing with strata developments that they must hold deposit moneys in a trust account and comply with the protections afforded to purchasers by the Strata Titles Act 1985. 2. Department reminds agents that disputed funds retained after settlement can only be kept in the general trust account and not in an interest bearing trust accounts. 3. Settlement agents need to be aware of issues surrounding interest bearing trust accounts. Agents are required to open separate interest bearing trust accounts for a client if a written request is received from that individual for an amount in excess of $20,000, or for money needed for a transaction that will not be settled within 60 days. 4. Department’s website is an integral tool in assisting to conduct and promote education and provide advisory services to industry participants and the public. 5. The settlement industry has kept pace with many technological innovations since the implementation of the *Settlement Agents Act 1981* (the Act), the most obvious being the widespread use of emails and website. 6. Department wishes to reiterate that the *Settlement Agents Act 1981* does not authorise settlement agents to prepare tax invoices on behalf of the seller. 7. Department of Commerce’s online licence search facility is a quick and easy way to check whether an individual, partnership or company is licensed or registered in WA. This applies to all settlement agents, real estate and business agents and sales representatives. |

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| **DATE / NO.** | **ISSUE / TITLE** | **CONTENT SUMMARY** |
| **October 2012**  **No. 4** | 1. **Renewal applications now to be lodged at Department of Commerce** 2. **Code of Conduct reviews** 3. **Review of maximum remuneration fees for settlement agents** 4. **Disbursement Costs** 5. **Insurance for settlement agents**   **7) Proactive Compliance visits**   1. **8) Are you settling the sale of an owner-built property?** | 1) Based on industry feedback and after its own internal investigations, Consumer Protection has decided to discontinue the use of Australia Post for the lodgement of renewal applications.   1. Consumer Protection has commenced a review of the property industry codes of conduct and will shortly release a Discussion Paper for comment. The review will cover the Settlement Agents’ Code of Conduct 1982 (made under the *Settlement Agents Act 1981*), the Code of Conduct for Agents and Sales Representatives 2011 (made under the *Real Estate and Business Agents Act 1978*) and the Licensed Valuers Code of Conduct (made under the *Land Valuers Licensing Act 1978*) (the Codes**).** 2. Consumer Protection is currently reviewing whether the settlement industry’s maximum remuneration fees need to be increased. The fees have not been increased since 6 May 2008. If the review finds that fee increases are warranted, they are likely to be based on the Consumer Price Index to compensate for inflation. 3. Settlement agents may often seek to recover disbursement costs incurred in the course of a settlement from their clients. 4. *Settlement Agents Act 1981 r*equires agents who carry on business to hold both professional indemnity and fidelity insurance. Jardine Lloyd Thompson (JLT) are the appointed brokers to the Settlement Agents’ Master Policy Scheme (the Policy) for professional indemnity and fidelity insurance.   7) Proactive Compliance is to assist agents in complying with legislative requirements, to identify and rectify areas of risk and provide advice to agents. This is achieved through voluntary agency visits and industry seminars.  8) The owner-builder market has expanded in recent years and this is reflected in the number of owner-built homes being sold. |

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| **Autumn 2012**  **No. 3** | 1. **New policy to counter title fraud** 2. **Caveat (Improper Dealings)** 3. **Person in bona fide control taking leave** 4. **Termination audits** 5. **Proactive compliance visits** 6. **Additional documents settlement agents can prepare** 7. **Dispute resolution service** 8. **The Contaminated Sites Act 2003 and real estate in WA** 9. **~~Easier access to Commerce web addresses~~** | 1. A new policy aimed at reducing the incidence of land title fraud and other improper dealings in Western Australia is currently being drafted by Landgate following industry submissions. 2. Landgate recently introduced a new form of caveat in order to minimise the risk of land title fraud. The purpose of the Caveat (Improper Dealings) is to stop the registration of any instruments or documents that would ordinarily need to be signed by the owner, such as, an instrument to transfer the title of a property. 3. Consumer Protection reminds agents in *bona fide* control of a settlement agency that they must obtain written approval from the Commissioner before being absent from the business for more than four continuous weeks in a calendar year. 4. Section 51 of the Settlement Agents Act 1981 (“the Act”) provides that every agent must have a termination audit of their trust accounts arranged and conducted within three months of a triennial certificate ceasing to have effect. 5. Following recent feedback from industry members, Consumer Protection would like to take this opportunity to re-emphasise the goals and objectives of proactive compliance visits. 6. Pursuant to Schedule 3 of the Settlement Agents Regulations 1982 (the Regulations), settlement agents are permitted to prepare a wide range of documents to assist their clients.      1. WA small businesses can now access a low-cost way to resolve disputes, through the introduction of a Small Business Commissioner and the Alternative Dispute Resolution (ADR) service. 2. Real estate professionals, including settlement agents and conveyancers, should conduct reasonable and timely searches of published contaminated sites information as part of any regular due diligence enquiry. |

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| **DATE / NO.** | **ISSUE / TITLE** | **CONTENT SUMMARY** |
| **Summer 2012**  **No. 2** | 1. **~~A new year message from the Commissioner~~** 2. **New Seniors’ Housing Centre offers options for over 55s** 3. **Compulsory Professional Development in 2012** 4. **Landgate changes** 5. **Make sure you renew on time** 6. **Change to settlement agent triennial certificate renewal requirements** 7. **Jardine Lloyd Thompson reappointed as brokers to the Professional Indemnity Insurance Master Policy** | 1. Department of Commerce has launched the Seniors’ Housing Centre providing free information on housing options available to the over 55s, from modifying or re-developing existing homes, to moving into strata titled community housing, renting or moving into a residential park or retirement villages. 2. Industry participants reminded that the requirement to undertake Compulsory Professional Development remains unchanged for 2012. 3. Changes to *Caveat (Improper Dealings)* and *Transfer of Land Documents executed by the Transferor(s) outside of Australia*. Information sourced from Landgate Customer Information Bulletins 208 and 210. Updated CIBs are published on Landgate’s website at [www.landgate.com.au](http://www.landgate.com.au). 4. Agents should ensure that applications to renew relevant triennial certificates are lodged with Consumer Protection well before the expiry date to ensure their businesses are not at risk. 5. In response to issues raised with the Consumer Protection, a review of the settlement agent triennial certificate renewal requirements has been undertaken. 6. Master Policy for settlement agents’ Professional Indemnity and Fidelity Insurance has been renewed with Jardine Lloyd Thompson (JLT). |

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| **Spring 2011**  **No. 1** | 1. **~~A Welcome from the Commissioner~~** 2. **Landgate Interest Enquiry** 3. **New licensing fees** 4. **Property Industry Advisory Committee** 5. **New contact details, eBulletins, Newsletters** 6. **Residual Current Devices (RCDs) and smoke alarms—a timely safety reminder** 7. **Australian Consumer Law** 8. **National Occupational Licensing** 9. **Real estate scam and property fraud prevention** 10. **e-Conveyancing (NECS)** | 1. ~~With the transfer of responsibility for the regulation of several industry boards to Consumer Protection now well behind us, I thought it would be a good opportunity for me to thank those who assisted during both the transitional period and importantly the Boards themselves, that oversaw the real estate and settlement industries in Western Australia. It’s also a great opportunity for me to discuss a number of the positive changes that are occurring now and are set to occur into the future.~~ 2. Interest Enquiry service is a relatively new online search tool provided by Landgate which allows parties to obtain the details of interests that may be held on a property. A property interest is an interest that affects the use of land, is supported by legislation and has a government agency as its custodian. Examples of property interests currently held on Landgate’s system include Native Title and Indigenous Land Use Agreements, Municipal Heritage Inventory listings and Native Vegetation Conservation requirements. 3. As at 1 July 2011, fees related to new licence and registration applications and triennial certificate renewals were increased slightly to keep pace with the annual increase in the CPI. 4. As part of its reforms to the administration of licensing in the settlement and real estate industries the Government decided to establish a statutory Property Industry Advisory Committee (PIAC). 5. With the transfer of the regulatory functions to Consumer Protection it is a good time to ensure that you have all the correct and current contact details should you need to make any enquiries to the Department. 6. According to Energy Safety, 23 of the 29 people who have died as a result of electrocution in the past 17 years may have been saved if Residual Current Devices (RCDs) had been fitted to power and lighting circuits. Additionally, each year in Western Australia, structural fires result in injury and death as well as significant property damage. 7. The *Competition and Consumer Act 2010* (the Act) is the piece of legislation that dictates how businesses must undertake dealings both between themselves, and also with consumers. The Australian Consumer Law (ACL) is a schedule to the Act and creates a single, national consumer law that applies nationally. The *Fair Trading Act 2010* also references and applies the ACL as WA Law. 8. In April 2009, the Council of Australian Governments agreed to establish a national occupational licensing system for specified occupations, including the property industry, in order to streamline regulation across states. The proposed system is intended to result in a number of benefits, including improved business efficiency, productivity, and consumer confidence, while also improving labour mobility. 9. Following on from the recent property fraud scams regarding the sale of a property without the knowledge of the owner, Consumer Protection, AICWA Landgate and REIWA have been working together to define additional practices that need to be introduced in the industry to minimise the likelihood of property fraud in the future. 10. National E-Conveyancing Development Limited (NECDL), the company charged with developing a national electronic system for property exchange, has signed an agreement with technology consulting company Accenture to design and build a national e-conveyancing platform for Australia. |