



Amendments to the Code of Conduct for Agents and Sales Representatives

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Amendments to the Code of Conduct for Real Estate Agents and Sales Representatives requiring mandatory identification checks (by agents) of all people wishing to sell their property, are being gazetted today 21 October 2011 and will take effect from 1 November 2011. These changes are being implemented to better protect WA property owners following the recent fraudulent sale of two Perth properties. Similar changes are also being made to the Settlement Agents Code of Conduct.

The below information has also been sent in hard copy form to all licensed agents and should be arriving in mailboxes over the coming days.

These changes reflect recommended practice by industry and government alike, and have been formulated in consultation with the Real Estate Institute of Western Australia, the Australian Institute of Conveyancers (WA) and Landgate.

IDENTIFICATION CHECKS

Effective 1 November 2011, the Code of Conduct for Agents and Sales Representatives will require all agents and sales representatives to undertake client identification verification for all persons wishing to sell their property (ie all persons listed on the Certificate of Title, or their properly appointed representative) (new Articles 10(3) and 10(4)). This means as soon as practicable on or after taking a listing, and prior to sale, an agent or sales representative should confirm the identity of each proprietor of the property (ordinarily through a 100 point check). For each proprietor, identity documents need to be viewed and copies of these held at the real estate agency, for the period applying to retention of all other sales documents. The requirement applies for any offers written on, or after, 1 November 2011.

Details about the processes required to confirm the identity of property sellers are contained in a set of Guidance Notes. These can be viewed on the Consumer Protection website at www.commerce.wa.gov.au/ConsumerProtection/RealEstateGuidanceNotes.

Documents needed to meet the 100 point verification check are also attached at this site.

OTHER CHANGES TO THE REAL ESTATE AND SALES REPRESENTATIVES CODE

A small number of other changes have been made to the Code. They are as follows:

- The Code has been reprinted in its entirety to improve the set out of the document and bring it into line with other similar regulations.
- To meet standard conventions for regulations, two new articles have been added at the beginning for citation and date of commencement. These have the effect of altering the numbering of previous articles.

...continued on page 2



continued from page one

- Minor amendments have also been made to the wording of Article 9 (previously Article 7) of the Code to require '**due**' skill, care and diligence. The addition of "due" brings this article more into line with the Australian Consumer Law.
- Additionally, Article 8(4) (previously 6(4)) has been deleted from the Code following legal advice that this provision may overreach the scope of the *Real Estate and Business Agents Act 1978* (the Act). This removes the onus of proof of bona fide control, from the agent.

All agents and sales representatives should note and print a copy of the amended Code. It will be available at the Consumer Protection website at www.commerce.wa.gov.au/ConsumerProtection/Real_Estate_Legislation in the coming days.

Non adherence to the above legislation can attract penalties ranging from monetary fines to disciplinary action.

IMPLEMENTATION ARRANGEMENTS

It is expected that these amendments will be gazetted on 21 October 2011. The Code includes a commencement date of 1 November 2011.

It is recognised that most agents will already have implemented client identification processes in response to the repeated recommendations issued by REIWA, the former Real Estate and Business Agents Supervisory Board and Consumer Protection. If not already in place and to ensure all future transactions are as secure as possible, all agencies should immediately introduce business practices to ensure that identity checks are being undertaken for all listed properties, so that there are no delays for offers written up after 1 November 2011.

If you would like further information or have any enquiries regarding any of the above, please call the Consumer Protection Contact Centre on 1300 30 40 54.