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Real estate agents and Landgate's new Property Interest report

Section 9 of the *Code of Conduct for Agents and Sales Representatives 2011* (the Code) requires an agent to exercise due skill, care and diligence.

Section 10 of the Code requires that prior to the execution of a contract; an agent must make all reasonable efforts to ascertain or verify facts material to a transaction, that a prudent agent would have ascertained, and to promptly communicate that fact to any person affected by it.

The Department of Commerce's view is that a prudent agent should use Landgate's new Property Interest report (PI report) as a central tool in informing prospective buyers about matters affecting a property. In seeking to ensure buyers are alert to material facts that might affect them, giving copies of this report to all serious prospective buyers will assist in complying with the obligations of the Code and lessen the prospect of misrepresentations that breach the Australian Consumer Law (WA).

In Western Australia there are up to 100 interests, restrictions or responsibilities that may affect an owner's use or enjoyment of the land that are not listed on a Certificate of Title (CoT). The PI report will access information about 44 interests, restrictions and responsibilities that may affect an owner's use or enjoyment of the land (this number will increase over time).

To satisfy the requirements in sections 9 and 10 of the Code, agents must give careful consideration prior to marketing and during the course of marketing the property to types of information that must be disclosed to prospective buyers. The Department's view is that an easy and comprehensive way for agents to comply with obligations of disclosure will be to obtain a PI report when a property is listed for sale or, as a minimum, prior to any offer being made, for all property sales.

In addition to the PI report there will be other material pieces of information relevant to the prospective buyer. This may include information on the CoT (including a range of encumbrances) as well as other information about the building structure and characteristics of the property. While the PI report will bring together a wide range of relevant information, there will continue to be other information obligations that a prudent agent may need to assess and convey, or suggest that the buyer further investigate. Agents should seek independent legal advice if they are unsure about their obligations of disclosure under the Code.

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As best practice, selling agents should consider having prospective buyers sign and date an acknowledgement when they have received a copy of the PI report. A copy of the acknowledgement can then be forwarded to the buyer's settlement agent, with the original being retained in the agent's sales file.

If a buyer raises any queries about the content of the PI report that are unknown to the agent, they should be advised to contact the agency with responsibility for that interest or seek their own independent legal advice.

Landgate

The PI report will be launched by Landgate on 1 November 2013. It will replace the current summary and detailed interest reports. A test sample is attached to this email and PI reports will be available for purchase online for \$54.95.

Landgate will be running a series of information sessions on the PI report from October to December. The information sessions will focus on how the report can be used to better inform your clients on potential interests, while mitigating any risks associated with the sale of a property. A guest panel of representatives from key Government agencies will be there to take questions from the audience.

Landgate will also be writing to all agents at a later date, and will include copies of a brochure on the PI report that can be provided to clients. Additional copies of the brochure will also be available from Landgate.

Compulsory Professional Development will also cover this topic in 2014.

Landgate PI report Information Sessions – Date and Time

The first five sessions from 24 October 2013 to 28 November 2013 are full. Please note there is no capacity to accept anyone additional to a registered person, though substitution may be possible. These sessions will be held at Landgate's Cloisters' Office, at 200 St Georges Terrace, Perth.

Three additional sessions will take place Monday 2 December 2013. Please note the venue for these sessions is:

The Atrium Theatre – 4th floor
168 St George's Terrace, Perth.

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Monday	2 December 2013	8:15am – 10:00am
		10:45am – 12:30pm
		1:15pm – 3:00pm

To book your place, or to discuss your booking for the full sessions, please email marketing@landgate.wa.gov.au. Please do not contact the Department of Commerce in relation to bookings.

For agents who cannot attend an information session, a copy of the presentation will be made available through Landgate in November. For more details on Interest Enquiry reports visit www.landgate.wa.gov.au or call 08 9273-7341.