



# REBA NEWS

A newsletter from the Real Estate and Business Agents Supervisory Board | Issue No.62 Autumn 2011 Edition

## IN THIS ISSUE...

Introduction of the Australian Consumer Law ..... 1

Is your appointment to act valid? ... 2

RCDs – What you need to know.... 3

CPD Category 4 point restriction ... 4

CPD Mandatory course date for April 2011..... 5

Compulsory Professional Development in 2011 ..... 6

## Introduction of the Australian Consumer Law

**As of 1 January 2011 all States and Territories have passed legislation to apply the new Australian Consumer Law. Consumer protection law is now uniform at a Commonwealth, State and Territory level ensuring customers have the same rights across the country.**

The national law will mean a greater opportunity for consumer agencies in Australia to work together, particularly in developing and implementing consumer and trader educational programs.

For transactions that occurred up to 31 December 2010, the previous national, State and Territory consumer laws will continue to apply.

Also as of January, the *Fair Trading Act 2010* (new Fair Trading Act) came into effect. In Western Australia the new Fair Trading Act applies the Commonwealth's Australian Consumer Law as a law of Western Australia and is referred to as the Australian Consumer Law (WA).

Many of the consumer protection provisions contained in the Australian Consumer Law are substantially the same as those that existed in Western Australia's *Fair Trading Act 1987*, including the regulation of misleading and deceptive advertising, and unconscionable conduct.

However, the Australian Consumer Law contains some significant new provisions including:

- regulation of unfair contract terms in standard form consumer contracts;
- introduction of a new scheme of statutory consumer guarantees for consumers acquiring goods or services;
- regulation of unsolicited consumer agreements made as a result of telemarketing;
- introduction of a new regulatory regime for product safety; and
- introduction of a range of miscellaneous consumer protections that reflect best practice from other jurisdictions (such as the regulation of lay-by sales, a new requirement to give consumers receipts for purchases and the right to request detailed invoices for services).

Detailed guides for each of these new provisions are downloadable from the Department of Commerce website at [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au).



# Is your appointment to act valid?

The Proactive Compliance team has reported many incidences of non-compliance with the requirement for valid appointments to act.



## These include:

- failure by the agent to sign the document;
- failure to secure initials to the amounts of commission and the expenses that may be incurred;
- failure to specify a definite period of the agency;
- failure to obtain the signatures/initials of all co-owners;
- failure to clearly identify the property;
- failure to obtain signatures confirming receipt of a copy of the appoint to act;
- failure to accurately specify the vendors liability to pay commission in the event of a sale by the vendor during or after the exclusive agency period where the ultimate purchases was introduced to the property by the agent; and
- failure to provide the principal with a copy of the document immediately after signing thereof.

## What else do I need to know?

- The agency must be properly described in the appointment to act. The licensed entity, as it appears on the licence and triennial certificate, must be stated in addition to any business name under which it trades, according to section 41(2) of the *Real Estate and Business Agents Act 1978* (the Act). This includes listing the business physical address, not a PO Box address. The penalty for non-compliance is \$2000.
- The appointment to act must comply with Regulations 6BA of the Real Estate and Business Agents (General) Regulations 1979, so that where any commission is expressed as a percentage or hourly rate, a maximum monetary amount must be given. This point will not affect the validity of an appointment to act but will affect the capacity to claim commission.

- If expenses are to be recovered the nature of those expenses must be specified and as well as the method by which the expenses will be calculated. Also, the client must agree to the expenses and initial this on the document.
- Section 60(1) of the Act stipulates that commission cannot be received without a valid appointment to act. Further, if reward or further compensation is demanded without one, sections 60(1) and 60(4) allow the State Administrative Tribunal to impose a \$5000 fine and may order the commission to be repaid.

In the interest of ensuring agents are properly rewarded for their services the Proactive Compliance team is happy to provide further information. They can be contacted by phoning 9282 0843 or by emailing [contactus@reba.wa.gov.au](mailto:contactus@reba.wa.gov.au).

## RCDs – What you need to know

According to EnergySafety, in the past 17 years, 29 people including eight children have been electrocuted in homes in Western Australia. Twenty-three of these deaths could have been prevented if Residual Current Devices (RCDs) had been fitted to the power and lighting circuits.

Installing at least two RCDs in the meter box or distribution board and testing them regularly is a small investment in money and time and will provide long term protection against serious injury and death.

Real estate agents should inform potential sellers that RCDs must be installed prior to the transfer of ownership of the property.

Property managers should check their residential rental properties to ensure that at least two RCDs are fitted to protect all power and lighting circuits in the residence. At least one RCD is to be fitted to power and lighting circuits in common areas of strata units.

If RCDs are not fitted, property managers should advise the owner to have the RCDs fitted. The regulations require all residential homes to be fitted with two RCDs protecting all power and lighting circuits for new tenancy agreements made after 8 August 2009 and by 8 August 2011 for continuing tenancies.

It is also recommended that the tenant be reminded to test the RCDs every three months and inform the property manager if the RCD does not operate. This test resets the reliability of the RCD, ensuring that it is ready to protect the occupants of the house from electrocution.




For more information on RCD obligations and installation visit the EnergySafety website at [www.energysafety.wa.gov.au/RCD](http://www.energysafety.wa.gov.au/RCD).

### No RCD means no second chance.

The best way to protect your family from fatal electrical accidents is to install Residual Current Devices (RCDs) and test them regularly. An RCD will instantly cut the electrical current, it can be the difference between life and death. WA Seniors Card holders may be eligible for a rebate of up to \$200 for the purchase and installation of RCDs. Visit [energysafety.wa.gov.au](http://energysafety.wa.gov.au) for more information and get your RCDs installed.

Install. Test. Survive.  
[energysafety.wa.gov.au](http://energysafety.wa.gov.au)

 Government of Western Australia  
Department of Commerce  
EnergySafety

# CPD Category 4 point restriction

The Board takes this opportunity to remind all CPD participants of the restrictions on the number of elective points that an individual may accrue each year from activities which fall under Learning Category 4.

The restriction stipulates that, in each calendar year, metropolitan and regional participants are only permitted to have three elective points from Learning Category 4 activities counted towards the seven which are deemed necessary to be compliant with the CPD program requirements. Remote participants are allowed to claim six elective points per year from Learning Category 4 activities. Remote participants are those whose principal

place of business lies outside a 100km radius of Perth, Kalgoorlie, Geraldton, Busselton, Bunbury, Port Hedland, Broome, Karratha, Northam, Margaret River or Albany.

This restriction has been in place since the program's inception in 2007 and is detailed in *A guide to the Compulsory Professional Development program for the real estate and business broking industries in Western Australia*.

## CPD POINT ENTITLEMENT

Real estate and business broking agents and those holding certificates of registration are required to accumulate three mandatory and a minimum of seven elective CPD points each calendar year. The table below sets out how the Board allocates points attached to the various forms of CPD activity. Full details of the number of points awarded to each approved elective CPD activity are available on the Board's website.

<b>Elective Learning Category One:</b> A training activity aligned with a National Training Package	Activities must be provided by an RTO, and must have an assessable component.	One CPD point per hour spent on the activity (to a maximum of seven per activity).	Statement of Attainment issued by the RTO.
<b>Elective Learning Category Two:</b> A training activity tailored to the real estate industry	Activities must be provided by an RTO, or by a professional (i.e. lawyer, accountant) engaged by an RTO to conduct the training.	One CPD point per hour spent on the activity (to a maximum of seven per activity).	Certificate of Attendance, or a Record of Completion if an assessable component is included.
<b>Elective Learning Category Three:</b> REBA delivered training	This category encompasses seminars run by REBA's Proactive Compliance team, other than mandatory CPD activities.	One CPD point per hour spent on the activity (to a maximum of seven per activity).	Certificate of Attendance issued by REBA.
<b>Elective Learning Category Four:</b> Formal industry related training or other approved activity by Non-RTOs.	CPD points may be claimed for taking part in an agency's (REBA approved) in-house training activities, and through participation in REBA approved seminars and distance learning. This category may also include viewing REBA approved videos, DVDs, multi-media training, online learning, or taking part in correspondence courses.	One half of one CPD point per hour spent on the activity (to a maximum of three per activity). <b>Metropolitan and regional participants</b> can claim up to a maximum of three CPD points per year from this category. <b>Remote participants</b> can claim up to a maximum of six CPD points per year from this category.	Records or receipts of activities undertaken. Notes on approved videos, DVDs or multimedia programs.

The list of approved elective activities on the Board's website includes the learning category that each activity falls under. If there are any doubts participants should confirm the learning category with the course provider prior to enrolling. If you require further information on or clarification of the Learning Category 4 restriction, or any other matter relating to CPD, please visit the Board's website [www.reba.wa.gov.au](http://www.reba.wa.gov.au). The CPD team can also be contacted directly on (08) 9282 0584 or through the Real Estate and Settlements Advice Line on 1300 30 40 64, or by emailing [cpd@reba.wa.gov.au](mailto:cpd@reba.wa.gov.au).

# CPD Mandatory course date for April 2011

Please note that the following dates are subject to change and it is advisable to check the providers' website to confirm.

If you have specific queries relating to your CPD obligations please contact the CPD team on 08 9282 0584. Alternatively you can email [cpd@reba.wa.gov.au](mailto:cpd@reba.wa.gov.au) or phone the Real Estate and Settlement Advice Line on 1300 30 40 64 (for the cost of a local call state-wide) 8.30am – 5.00pm weekdays.

## West Coast Property Training

DATE	TIME	LOCATION	CATEGORY
6 April	9.00am-12.15pm	Rockingham	Sales reps
13 April	9.00am-12.15pm	Rockingham	Agents
20 April	9.00am-12.15pm	Rockingham	Prop mgmt
20 April	1.15pm-4.30pm	Rockingham	Sales reps

For more information contact West Coast Property Training on 08 9300 0000 or email [cpd@wcpt.com.au](mailto:cpd@wcpt.com.au) or information can be found on their website at [www.wcpt.com.au](http://www.wcpt.com.au).

## Kaplan Professional

DATE	TIME	LOCATION	CATEGORY
5 April	9.00am-12.30pm	Fremantle	Agents
14 April	9.00am-12.30pm	Midland	Prop mgmt
19 April	9.00am-12.30pm	Fremantle	Sales reps

For more information contact Kaplan on 1300 798 006 or email [realestate@kaplan.edu.au](mailto:realestate@kaplan.edu.au) or information can be found on their website at [www.kaplanprofessional.edu.au](http://www.kaplanprofessional.edu.au).

## REIWA

DATE	TIME	LOCATION	CATEGORY
6 April	8.30am-12.00pm	Mandurah	Agents
6 April	12.30pm-4.00pm	Mandurah	Sales reps
6 April	5.00pm-8.30pm	Mandurah	Prop mgmt

For more information contact REIWA on 08 9388 8155 or email [learning@reiwa.com.au](mailto:learning@reiwa.com.au) or information can be found on their website at [www.reiwalearning.com.au](http://www.reiwalearning.com.au).



# Compulsory Professional Development in 2011

For 2011 the Board has prescribed the same subjects for agents and sales representatives, though the content will be different for the two categories of licence or registration. There are separate subjects for sales representatives whose certificate is restricted to property management.

The following subjects have been prescribed for agents and sales representatives in 2011:

- Strata Titles;
- Legislation Supporting the Real Estate Industry; and
- Writing Conditions

For property managers the 2011 subjects are:

- Equal Opportunity;
- Property Management Case Studies; and
- Obligation Between Tenant and Landlord (Under *Residential Tenancies Act 1987/Code of Conduct*)

The Board has also reviewed its contract with the three current training providers (REIWA Learning, West Coast Property Training and Kaplan) for the delivery of mandatory CPD activities, and has renewed its contract with the same three training providers for 2011.

It is important that the mandatory session you attend matches your licence or certificate category. Licensed agents with a current triennial certificate will only be funded to attend the mandatory activity for licensed real estate and business broking agents; sales representatives with an unrestricted registration will only be funded once to attend either the sales representatives mandatory activity or the property managers mandatory activity; and sales representatives whose registration restricts them to performing property management transactions will only be funded to attend the property managers mandatory activity.

If you attend the incorrect session for your status, your attendance will not be funded by the Board and can only count as elective points. It is the responsibility of the individual to pay for their attendance.

The CPD requirements for 2011 remain the same with agents and sales representatives requiring three mandatory and seven elective points.



This newsletter contains general information that was current at the time of publication. If you have specific enquiries arising from any material in this publication, you should write to the Registrar of the Real Estate and Business Agents Supervisory Board, or seek independent professional advice. The producers of this publication expressly disclaim any liability arising out of a reader's reliance on information in this publication.

THIS PUBLICATION WAS ISSUED BY THE REAL ESTATE AND BUSINESS AGENTS SUPERVISORY BOARD.

## Real Estate and Business Agents Supervisory Board

The Forrest Centre, Level 6, 219 St Georges Terrace, Perth, Western Australia 6000

Locked Bag 14, Cloisters Square 6850 | Admin: (08) 9282 0843

Real Estate and Settlement Advice Line: 1300 30 40 64

[contactus@reba.wa.gov.au](mailto:contactus@reba.wa.gov.au)

[www.reba.wa.gov.au](http://www.reba.wa.gov.au)