



Property developers – obligations

This fact sheet has important information for people who are deemed to be developers under the Real Estate and Business Agents Act 1978.

Who is a developer?

Property developer is a broad term that includes those involved in sub-dividing land, building and selling property off-the-plan, renovating for resale or knocking down and rebuilding houses.

Under the *Real Estate and Business Agents Act 1978* (the REBA Act), a developer is a person whose business (either alone or as part of any other business) is to act on their own behalf in the sale, exchange, or other disposal of real estate.¹ A developer therefore is a person whose business is to sell, exchange or dispose of their own land or property.

Legal requirements

Property developers do not need a specific license to operate in Western Australia, unlike real estate agents and sales representatives. However, if you are undertaking a property development on a business basis you are required to do the following:

- **Register a principal place of business:**

All developers must register a principal place of business in writing with the Commissioner.² This must be done by the day of, or the day after, commencing business and the registration must be in place for as long as the business operates. The REBA Act requires developers to list a principal place of business in Western Australia; this is usually your head office or the location where your business records are maintained. If there is a change of address, written notice must be given immediately to the Commissioner.³ It is free to register and registration forms are available from the website at: www.commerce.wa.gov.au/publications/property-developer-publications-registration-principal-place-business-and-obligations

- **Keep accurate records and supply true copies:**

Developers must keep records of all their real estate transactions. Records need to be appropriately detailed, properly stored and retained for a minimum

of six years.⁴ Details on transactions such as the sale, exchange, purchase or acquisition of real estate as well as the collection of rent or payment for use/occupation of the property¹ need to be handled in this way. When selling property, developers should also ensure they supply signatories with copies of any signed offer, acceptance, contract, or any similar documents relating to the property negotiation or transaction.⁶

- **Handle property sales:**

A developer can either sell the property themselves, or contract a licensed real estate agent to sell the property. An employee of the developer cannot undertake this task unless they are also a licensed real estate agent holding a current triennial certificate or a registered sales representative with a current certificate of registration issued by Consumer Protection.⁵

- **Comply with consumer protection laws:**

Developers, like all businesses in Australia, must also comply with the requirements of the Australian Consumer Law when selling to a consumer. This includes ensuring that any property sold, rented or leased is safe and matches any description given. Developers also have to guarantee the property:

- is sold with clear title, unless buyers were informed otherwise before the sale;
- is fit for any disclosed purpose – for instance the property can be used for the purpose the buyer was told;
- is sold with a right to undisturbed possession – the seller promises no-one has a legal right to the property or can prevent the buyer from using the property;
- does not have any undisclosed securities – the goods do not have any hidden securities or charges; and
- matches any demonstration model or sample shown.

Developers are not required under the REBA Act to place deposits in a statutory trust account, however, they must take care to ensure any deposits paid are adequately safeguarded. It may be prudent to seek independent legal advice on this matter.

A developer is also responsible for authorising the publication of advertisements in respect of the business. The advertisement must contain sufficient detail to identify the developer including their trading name and office telephone number.⁷

Further information

If you need further information about the obligations of developers in accordance with the REBA Act, please call Licensing on (08) 9282 0839 or 1300 304 064. For more information about consumer guarantees see our website.

¹ Section 4 of the Real Estate and Business Agents Act 1978.

² Section 57 of the Act.

³ Section 58 of the Act.

⁴ Section 59 of the Act.

⁵ Sections 54(2) and 55 of the Act.

⁶ Section 63 of the Act.

⁷ Section 62 of the Act.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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