

real estate *news*

A newsletter from the
Consumer Protection Division of the Department of Commerce

A new year message from the Commissioner



Looking back over the past 12 months a number of significant changes to consumer protection laws and administrative changes have occurred. I congratulate the industry in integrating these and in the cooperative approach to addressing industry issues.

Last year commenced with the introduction of the new Australian Consumer Law (ACL) which brought into line various consumer laws across Australia. The introduction of the ACL has benefited the community by simplifying and streamlining consumer law, giving consumers the same rights and protections regardless of where they are in Australia and reducing business operators' compliance burdens by creating greater clarity in regards to their rights and obligations.

In July last year the real estate industry was involved in the biggest regulatory transition witnessed in recent years as several industry boards, including the Real Estate and Business Agents Supervisory Board, were abolished and its regulatory and disciplinary functions transferred to Consumer Protection. Whilst for industry the transition resulted in what appeared to be mainly cosmetic changes, a great deal of work was undertaken behind the scenes to ensure a smooth handover of the Board's responsibilities.

In the latter half of the year the industry was affected by the second occurrence of a property scam in which a house was sold without the owner's knowledge. Consumer Protection, REIWA, AICWA and Landgate worked together to put in place procedural and legislative changes to help prevent a recurrence of a scam of this type. Amendments to the Real Estate Agents' Code of Conduct came into effect in November 2011 and were supported by the release of a set of Guidance Notes detailing the changes and providing direction as to how real estate agents could best meet the new requirements.

Looking forward throughout 2012, there are many further challenges ahead. The introduction of National Licensing will be the subject of further consultation and its potential introduction is something Consumer Protection will closely monitor. It is a key priority of Consumer Protection that the views of the Western Australian real estate industry are heard, and the high standards of compliance and education in the State are maintained should licensing procedures be transferred to a new, national process.

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A new year message from the Commissioner (continued from page 1)

Licensing strata managers is another important matter to be considered during the coming year. Strata living is an increasingly popular form of ownership within the property market, currently accounting for over one-third of all forms of titles registered in Western Australia. Owing to the increased volume of registrations and the accompanying increase in the amount of strata funds being held, there have been calls to licence strata managers.

Consumer Protection is facilitating discussions on this matter to establish whether licencing or

another form of regulation of strata managers is warranted.

A paper dealing with the subject, which was detailed in the Spring edition of the Real Estate News, can be downloaded from the Department of Commerce's website: www.commerce.wa.gov.au/ConsumerProtection

The Property Industry Advisory Committee, established in full in November last year, will continue to represent industry across all facets of governance throughout 2012, most notably education, regulation and training. An important aspect of industry education, the Compulsory

Professional Development program will continue and further details can be found within this publication.

As a final note, I would like to pass on my thanks to all who made 2011 a productive and positive year, and I hope Consumer Protection and industry continue to foster their positive relationship to ensure an equally productive and positive 2012.

Regards



Anne Driscoll
*Commissioner for
Consumer Protection*

Advertising your own services

Consumer Protection reminds agents and sales representatives of the information they must include in advertisements. Special regard is given to the requirements of section 62(2) of the *Real Estate and Business Agents Act 1978 (the Act)*.

There have been several recent cases where agents or sales representatives have placed advertisements displaying only their name and personal telephone details.

Advertising of this kind contravenes section 62(2) of the Act which states "a *duly authorised advertisement in respect of an agent or developer shall contain such details as are sufficient to identify the agent or developer*".

When placing advertisements, agents and sales representatives must correctly identify themselves. The minimum requirements within the advertisement are the inclusion of the agency's trading name (clearly identifying the specific office) and the office telephone number.

Simply including a mobile number or an email or website address does not meet the requirements of the Act. Agents may include these details so long as the minimum requirements are met.



New Seniors' Housing Centre offers options for over 55s

The Consumer Protection Division of the Department of Commerce has launched the Seniors' Housing Centre.

The Centre provides a free information service on the many 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 village.

Located on the ground floor of 219 St Georges Terrace, Perth, the Centre offers a chance for people to meet face-to-face with

Consumer Protection officers to discuss any concerns or raise any queries they may have about seniors' housing. People can visit without an appointment, telephone or send an email to obtain assistance and information.

As part of the service, Consumer Protection publishes *Your Home: a guide to housing options for people over 55*. The booklet contains a wealth of information on the

important matters to consider when making the decision to stay at home or find new accommodation, as well as the details of organisations that can provide further advice and assistance.

The publication is available from the Seniors' Housing Centre website www.commerce.wa.gov.au, or can be obtained by phoning 1300 367 057 or emailing seniorshousing@commerce.wa.gov.au

Compulsory Professional Development in 2012

Consumer Protection reminds industry participants that the requirement to undertake Compulsory Professional Development (CPD) remains unchanged for 2012 and that agents and sales representatives are still required to obtain three mandatory and seven elective CPD points in this calendar year.

The same mandatory subjects for agents and sales representatives have been prescribed though the content for the two groups will differ. There are also separate subjects for sales representatives whose certificate is restricted to property management.

The following subjects have been prescribed for agents and sales representatives in 2012:

- Risk management – this session focuses on the detection and prevention of real estate property fraud and other matters.
- Ethics – disclosure and conflict of interests.

For property managers the 2012 subjects are:

- Legislative changes – this session includes the *Residential Tenancies Act 1987*, relevant

aspects of Australian Consumer Law, smoke alarms and residual current devices.

- Ethics – principal/agent relationships and valid appointment to act.

It is important to note that Consumer Protection will only fund one attendance at each of the two mandatory activities per year and will only fund attendance for the mandatory activities that are relevant to the participant's licence or registration. As such:

- Licensed agents with a current triennial certificate will only be funded to attend the mandatory activities for Licensed Real Estate and Business Agents.
- Sales representatives with a full registration will be funded to attend either the Sales

Representatives mandatory activities or the Property Managers mandatory activities (but not both).

- Sales representatives whose registration restricts them to only performing property management transactions will only be funded to attend the Property Managers mandatory activities.

Should you have any queries concerning the CPD program for the real estate industry contact (08) 9282 0584 or email cpd@commerce.wa.gov.au

Checking employee details

When employing a new sales representative, agents should take several steps to ensure compliance with section 54 of the *Real Estate and Business Agents Act 1978*.

The Act states:

“an agent shall not employ as a sales representative, or permit to carry out in the business of the agent any of the functions of a sales representative, any other person, not being a licensee who is the holder of a current triennial certificate, unless that person is a registered sales representative”.

The recommended practice when taking on new staff in the capacity of a sales representative is to request they provide a current **original** sales registration certificate. If they are unable to do so, the agent should contact

Consumer Protection to confirm the sales representative is currently registered.

Agencies employing new sales representatives **must** also monitor the ongoing registration of these staff members.

If a sales representative does not have their original registration certificate, Consumer Protection can issue a replacement for a fee of \$20.60. To request a replacement of any certificates please call (08) 9282 0839 or send an email to licensing.enquiries@commerce.wa.gov.au

Property manager to sales representative

In light of recent confusion, Consumer Protection would like to clarify the procedure for property managers who have completed the relevant training course and wish to modify their registration to allow sales transactions.

There is no requirement to apply for a new sales representative registration. Instead, property managers need only send proof of completion of the course to Consumer Protection to effect an upgrade to their registration.

Updating your details with Consumer Protection

Consumer Protection reminds all sales representatives that, under section 51 of the *Real Estate and Business Agents Act 1978* (the Act), they must notify the Commissioner for Consumer Protection of any changes to their contact and/or employment details.

The person in *bona fide* control of an agency must also maintain accurate staff records.

Keeping details up-to-date ensures compliance with the Act and also provides access to the Consumer Protection's latest alerts and updates. In order to assist processing, the applicant should include their full name and licence or registration number.

Changes can be sent through to Licensing Branch, Locked Bag 14, Cloisters Square, Perth WA 6850, faxed to (08) 9282 0861 or via email to licensingenquiries@commerce.wa.gov.au

Please note this email address is only for licensing enquiries and all general enquiries should be sent to consumer@commerce.wa.gov.au



Make sure you renew on time

Agents should make sure applications to renew relevant triennial certificates are lodged with Consumer Protection well before the expiry date to ensure their businesses are not at risk.

The Commissioner for Consumer Protection will be taking a firm stance on renewal requirements. An agency will not be permitted to trade after its triennial certificate has expired. This renewal policy has been discussed with industry stakeholders who accept and support the Department's position.

Timely renewal of triennial certificates is important because, as you would know, the Fidelity Guarantee Account (FGA) is in place to provide pecuniary protections for consumers under the *Real Estate and Business Agents Act 1978* (the Act).

One of the criteria which allows consumers to claim against the FGA is dealing with an agent who holds a current triennial certificate issued in accordance with the Act. The Commissioner is committed to ensuring that consumers are not exposed to risk by dealing with agents who are not authorised to trade. It is therefore imperative that you **submit your renewal before the expiry date**.

While the Act allows a period of one month after the expiry date within which a triennial certificate can be renewed, this time may be required for the Commissioner to make a determination about the application, particularly when the renewal application is received close to the expiry date. Under the Act, the renewal must be **finalised** within one month of the expiry date in order for the triennial certificate to continue. This period should not

be used as "extra time" to lodge an application.

If you fail to renew your triennial certificate or have been advised that your application has not been approved by the Commissioner by the end of the month following the expiry date **at the latest**, your triennial certificate will cease to have effect and you will be required to immediately cease business, close your trust account and arrange a termination audit.

To assist you with ensuring your triennial certificate remains current, Consumer Protection will send out two reminder notices. The first will be sent approximately three months prior to your expiry date and a final reminder will be sent approximately one month prior. You are strongly encouraged to begin the renewal process when you receive the first reminder notice. Waiting until a month before the expiry date may not leave enough time to complete the renewal process if there are unforeseen problems.

Please note that sending reminder notices is a courtesy and is not required by law. If you have not updated your address details with us or do not receive the notice for other reasons, your certificate will still expire if a renewal is not approved in time. It is therefore imperative you know when your triennial certificate renewal falls due and ensure you take the appropriate steps to renew it on time.

If you intend to cease trading when your triennial certificate expires, but think you may recommence in future, you can place your licence on hold by paying the prescribed holding fee. As your triennial certificate will not be in place, you must cease all trading, close your trust account and arrange a termination audit. That is, you cannot place your licence on hold while you finalise your renewal application.

Triennial certificates already on hold

If your triennial certificate and the respective licence are already on hold, you must pay a holding fee **before** the holding period expires if you do not want your licence to expire. The law does not permit the acceptance of holding fee payments after the expiry date in any circumstances. Section 30(3a) of the Act states a licensee ceases to be licensed if they fail to pay the Commissioner in accordance with the Real Estate and Business Agents (General) Regulations 1979. Once again, we will endeavour to assist you with this requirement by sending a reminder notice approximately two months in advance of the expiry date.

Amendments to residential tenancy laws

The *Residential Tenancies Amendment Act 2011* (RTA Amendment Act) will provide Western Australia's residential tenancy laws with greater clarity in residential tenancy transactions. The RTA Amendment Act seeks to enhance the legislation's effectiveness and provide greater balance between the rights and obligations of tenants and lessors.

The legislation, passed on 1 December 2011, supports changes recommended by the statutory review of the *Residential Tenancies Act 1987* (the Act). The RTA Amendment Act will be implemented later in the year once supporting Regulations have been prepared and all stakeholders have been informed of the changes. At this stage, the RTA Amendment Act is expected to be implemented in the second half of 2012.

Several key amendments aim to reduce disputes and assist in better property management, including:

- **Prescribed form for residential tenancy agreements**

The regulations prescribe a plain-language tenancy agreement that must be used for all written tenancies. Interested parties may include additional terms and conditions, but they must not conflict with the Act.

- **Compulsory property condition reports**

Agents must complete a property condition report at the start and end of each tenancy. Tenants must be given a reasonable opportunity to attend the final property inspection.

- **Centralised bond lodgement**

Agents must lodge all bonds with the bond administrator at the Department of Commerce. There is an 18-month transition period for bonds not currently held by the bond administrator. As part of this process, the Department of Commerce bond system is being upgraded.

- **New rules on the use of databases**

Tenants can only be listed after the tenancy agreement has ended, and only when the tenant owes more than the bond or where a court has terminated the tenancy agreement. Listings can remain on the database for a maximum of three years.

- **Urgent Repairs**

The Act has been amended to require action be taken to arrange for the repair of an essential service within 24 hours of being notified by the tenant, or other urgent repairs within 48 hours of being notified by the tenant. If the owner/property manager is unable to be contacted within this time, or fails to make the appropriate

arrangements for the repairs, the tenant can arrange for the repairs to be performed to the minimum extent necessary. The owner must then reimburse the tenant. Arranging the repairs does not mean the repairer has to attend the premises within the prescribed period of time. It only means the owner/property manager has contacted a repairer and made arrangements for the repairs within this time.

- **Option fees**

The RTA Amendment Act introduces a cap on the amount of option fee that can be charged to a prospective tenant. The amount of the cap will be prescribed in the Regulations. The RTA Amendment Act also requires the option fee be returned within seven days of the decision to refuse the option (ie within seven days of refusing their application to lease the premises). The option fee must be returned by cash or EFT.

A community and industry education campaign will also take place before the new laws come into operation during the second half of 2012.



Changes to retail shops tenancy laws to help small business

The *Commercial Tenancy (Retail Shops) Agreements Amendment Act 2011* (CTA Amendment Act) amends the *Commercial Tenancy (Retail Shops) Agreement Act 1985*. The amendments will introduce a number of changes to current retail shop tenancy laws and aims to improve the operating environment of small business in Western Australia.

Consumer Protection is developing the Regulations to support the changes contained in the CTA Amendment Act. These include a standard redevelopment and relocation clause for leases of fewer than five years and amendments aimed at improving disclosure for tenants.

Consultation with industry on the proposed regulatory changes will commence early in the new year.

The key reforms of the CTA Amendment Act will:

- Allow small business tenants to make more informed leasing decisions by increasing a landlord's disclosure obligations.
- Enhance the security of tenure for tenants by:
 - Requiring landlords to provide a notice of an option expiry date. This ensures tenants do not inadvertently fail to exercise their option to renew.
 - Improving tenants' rights on relocation clauses.
- Improve the negotiating power of tenants by prohibiting landlords from passing on their legal fees for negotiating and executing a lease. Currently, small tenants may be reluctant to negotiate fairer leasing terms for fear of increasing their landlord's legal costs.
- Support more consistent and equitable rent reviews by requiring landlords and tenants to supply valuers with relevant information for retail shops situated in the same building or shopping centre.
- Prohibit misleading and deceptive conduct by giving the State Administrative Tribunal the jurisdiction to hear disputes. Small business tenants will also have access to the mediation and advisory services of the new Small Business Commissioner.

It is anticipated the new laws will come into effect in mid 2012. An education campaign informing landlords and tenants of their rights and responsibilities will be undertaken before the new laws commence.



New bonds lodgement process

An option to complete Tenancy Bond Forms is now online. After filling out the required fields and going through a one-click validation process, the form produces a completed PDF file which can then be printed and signed.

This online process can be undertaken by anyone and the required form is located at www.commerce.wa.gov.au/bondforms

For assistance or queries in regards to the new process, please contact the Commerce Contact Centre on 1300 30 40 54, or via email at consumer@commerce.wa.gov.au





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 Commissioner for Consumer Protection, 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 CONSUMER PROTECTION DIVISION OF THE DEPARTMENT OF COMMERCE.

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