

real estate *news*

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

Residential tenancy amendment regulations

Name	Initials

In May 2012, Consumer Protection released a consultation paper seeking feedback about five key areas to be dealt with in regulations that have to be prepared as a result of amendments to the Residential Tenancies Act (the Act). These included:

- the content of the mandatory residential tenancy agreement;
- the content of the mandatory property condition reports;
- the amount of the capped option fee;
- clarifying the minimum security obligations for residential rental premises; and
- clarifying which urgent repairs should be considered essential services.

Thirty-four submissions were received from a wide range of stakeholders, including real estate agents, property managers, REIWA, property owners, government agencies, tenancy advocates and tenants.

The feedback received in these submissions will be considered as part of the process to finalise the recommendations for the required changes to be made to the regulations.

The drafting of the regulations is expected to occur over the upcoming months and the project remains on track. The new laws should commence by early next year.

Social housing provisions

The social housing provisions relating to Department of Housing tenancies commenced on 30 July 2012. The social housing provisions clarify the process for terminating social housing tenancy agreements on the grounds of:

- objectionable behaviour;
- the tenant no longer being eligible for social housing; and
- the Department of Housing needing to transfer a social housing tenant to alternative social housing premises.

Further information is available in a "Department of Housing tenants" fact sheet available on Consumer Protection's website at <http://www.commerce.wa.gov.au/ConsumerProtection>

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Training and education

Later in the year, the Department of Commerce will provide resources such as a powerpoint presentation, publications and a series of mini videos for property owners and tenants. This information will also be useful for property managers and real estate agents.

Many property managers should have already attended Compulsory Professional Development (CPD) training about legislative changes and key amendments to tenancy laws, as this is a mandatory CPD subject in 2012. The mandatory activities are being delivered by the Central Institute of Technology, REIWA Learning and Livepm. Bookings can be made by contacting the training providers.

More information about the training is available on the Department of Commerce website at http://www.commerce.wa.gov.au/ConsumerProtection/Content/Licences/Real_Estate_Industry/CPD/Mandatory.html

Consumer Protection's Proactive Compliance branch is holding one-on-one information sessions on amendments to the Act. Proactive Compliance will contact real estate agents with property manager roles to schedule a session in the coming months.



Commercial tenancy amendment regulations

The summer edition of *Real Estate News* outlined a number of amendments to the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (the Act). These amendments mean the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* (the Regulations) will also need to be changed.

Changes to the Regulations include key matters such as:

- a more comprehensive disclosure statement;
- a revised tenant guide;
- a definition of lettable area; and
- a standard redevelopment and relocation clause.

Consumer Protection released draft regulations in June 2012 for a six-week consultation period and is now finalising amendments.

It is anticipated amendments to the Act and Regulations will come into effect in early 2013. An education campaign informing commercial tenants and landlords of their rights and obligations will be undertaken before the new laws commence.

Commercial tenancy: Small Business Commissioner

The new Small Business Commissioner for Western Australia commenced in March this year. The Commissioner has a role in relation to the resolution of retail tenancy disputes through the provision of low cost alternative dispute resolution services to small businesses, including retail shop tenants.

While the Small Business Commissioner is able to provide advisory and dispute resolution services in relation to retail tenancy matters, the power to determine retail tenancy disputes remains with the State Administrative Tribunal (SAT). However, before a party can apply to the SAT, the majority of disputes in relation to retail shop leases must first be referred to the Small Business Commissioner for alternative dispute resolution. If a dispute cannot be resolved, the Commissioner will issue a certificate which must be provided to the SAT.

Some cases can still proceed directly to the SAT and are generally matters:

- of an administrative nature;
- simply requiring the approval of the SAT and therefore alternative dispute resolution is not appropriate; or
- where urgent action is required for an order that a party do or refrain from doing something.

Further information about the Small Business Commissioner is available from the Small Business Development Corporation website at www.smallbusiness.wa.gov.au.

Reconciling tenancy bond trust accounts

The former Real Estate and Business Agents Board (the Board) issued auditing guidelines in two publications, *Real estate trust accounting: a reference manual* and *A guide to auditing real estate and business agents trust accounts*.

The auditing guidelines required agency records to be reconciled with the Bond Administrator every three months. Auditors did this by obtaining a schedule from the Bond Administrator and reconciling the schedule against the agency's record.

Consumer Protection recently reviewed the Board's guidelines in light of the statutory requirements provided by the *Real Estate and Business Agents Act 1978* and *Residential Tenancies Act 1987*. The review determined that agents are **no longer required** to reconcile agency records to the security bond account held by the Bond Administrator.

However, as best practice, a prudent agent should reconcile the security bond account held by the Bond Administrator as this will help them properly and accurately account for all bond money received.

Consumer Protection is currently reviewing its trust account publications and will issue updated versions later in the year.

Code of Conduct Reviews

Consumer Protection has commenced a review of the property industry codes of conduct and will shortly release a Discussion Paper for comment. The review will cover the Code of Conduct for Agents and Sales Representative 2011 (made under the *Real Estate and Business Agents Act 1978*), Settlement Agents' Code of Conduct 1982 (made under the *Settlement Agents Act 1981*) and the Licensed Valuers Code of Conduct (made under the *Land Valuers Licensing Act 1978*) (the Codes).

The Discussion Paper aims to stimulate dialogue and invite written submissions on the Codes from industry participants. The paper will take on a broad review of the Codes and follows amendments to introduce client identity verification requirements in 2011.

The review is being conducted to consider whether:

- the Codes promote and encourage fair trading practices;
- whether the Codes impose regulations that are excessive to the requirements of Consumer Protection;
- there are any drafting and technical issues;
- the Codes are consistent with the Australian Consumer Law;
- the Codes reflect best regulatory practice; and
- any other issues that arise from the consultation process.

Submissions received will assist Consumer Protection in making recommendations to the Minister for Commerce on the content of the Codes and any required amendments.

Copies of the Discussion Paper will be available on the Consumer Protection website once they are released (<http://www.commerce.wa.gov.au/ConsumerProtection>). The Discussion Paper will also be available from the Consumer Protection Contact Centre on 1300 30 40 54. The Department will advise the industry of the paper's release via eBulletin.



Are you using EFT for security bonds?

You may be aware the Bond Administrator has developed a new management system for residential tenancy security bonds, Bonds Online. The changeover to the new system started on 10 July 2012 with Consumer Protection moving significant resources into bond administration during the implementation period to help maintain services to you and your clients.

The new bonds system will provide benefits to agents using the Bond Administrator and is a forerunner to the Residential Tenancies Act amendments due later this year. These amendments will establish the Bond Administrator as the sole bond holder.

As part of Bonds Online, the Bond Administrator can direct debit agents' trust accounts for the bond amount as an Electronic Fund Transfer (EFT) payment.

Consumer Protection would like to remind the industry that EFT payments are quicker to prepare, quicker to get to the Bond Administrator, and quicker to lodge. This creates time and cost efficiencies for everyone, including:

- all lodgement paperwork is in one document;
- no postal delay or postal costs as lodgements can be emailed or faxed;

- the bond reference number for each lodgement appears on your bank statement;
- no outstanding cheques to reconcile; and
- no cheques lost in the mail requiring stop payments and reissue.

If you have any questions or concerns about your bond transactions please contact us at bondsadmin@commerce.wa.gov.au or on 9282 0829.

Rental market discrimination

In light of recent news reports claiming people applying to rent residential property have faced discrimination, Consumer Protection would like to remind all property managers and sales representatives of their obligations to treat all rental applicants equally and fairly.

Some applicants have claimed they are being rejected from the rental market because they are Aboriginal, have a disability or have children.

With the current rental market being particularly competitive, property managers must take extra care to ensure that when selecting a tenant on behalf of a landlord, their decision does not breach the *Equal Opportunity Act 1987* or the *Residential Tenancies Act 1987* (the RT Act).

Under the *Equal Opportunity Act 1987*, it is unlawful for an owner or an agent to discriminate against someone seeking rental accommodation because of their:

- race;
- religious or political conviction;
- impairment;
- age;
- sex;
- pregnancy;
- marital status;
- gender history; or
- sexual orientation.

Further information can be found on the Equal Opportunity Commission website at <http://www.eoc.wa.gov.au>

It is also unlawful under the RT Act to refuse to let a property to person/s because they have a child or children who will live at the property.



Two-year suspension and \$3,000 fine for property sales rep

A Perth real estate sales representative who dishonestly kept clients' money intended for property advertising or repairs has been disqualified for two years and fined \$3,000.

The Commissioner for Consumer Protection took disciplinary action against Byron Hutton, of Tuart Hill, for breaches of the Code of Conduct for Agents and Sales Representatives (the Code).

The State Administrative Tribunal reprimanded Mr Hutton for contravening four sections of the code of conduct for his industry.

Mr Hutton cannot work as a sales representative for a period of two years because he has been deemed unfit to hold a certificate of registration.

Commissioner for Consumer Protection Anne Driscoll said the disqualification and fine is an appropriate outcome.

"It is important to uphold standards in the real estate industry and all sales representatives must, without exception, comply with the law in regard to the handling of clients' funds in the process of advertising and selling property," she said.

Mr Hutton, who had been employed by a real estate agency in Joondalup, has not worked in the industry since November 2010.

Aircraft noise and residential property sales

The impact of aircraft noise on residential property can be an important factor in the residential sales process. Real estate agents should be aware of their obligation to inform prospective buyers of any interest which may impact a property, including aircraft noise.

The Code of Conduct for Agents and Sales Representatives 2011 (the Code) states an agent must:

- Obtain a copy of the Certificate of Title after receiving instructions to offer real estate for sale and make all reasonable efforts to ascertain or verify the facts material to that transaction which a prudent agent would have ascertained.
- Promptly communicate any fact which is material to the transaction to any person who may be affected by it unless it is clear that person was already aware of that fact.
- Act fairly and not mislead or deceive any party to the property transaction.

An agent must advise prospective buyers of any memorials noted on the Certificate of Title, or other information they may be aware of about aircraft noise. It would also be

appropriate to suggest to the buyer that if they are still concerned about aspects such as aircraft noise that they make further enquiries with entities such as the local council, neighbourhood associations or related industry associations.

Land use in the area surrounding Perth Airport is regulated by the *Planning and Development Act 2005* and the State Planning Policy 5.1 Land Use Planning in the Vicinity of Perth Airport (Land Use Policy). The Land Use Policy seeks to minimise the impact of airport operations on existing and future communities with regard to aircraft noise.

The Land Use Policy contains the Perth Airport Noise Contour Map, which agents can use to determine whether a property is likely to be affected by aircraft noise. Agents can also determine the different levels of aircraft noise impacting

suburbs under flight paths as measured by the Australian Noise Exposure Forecast (ANEF). The Land Use Policy is available from the Department of Planning website at <http://www.planning.wa.gov.au/>

Local councils may be able to provide information in relation to a property's ANEF zone as a council zoning certificate may contain data about the relevant ANEF zone.

Airservices Australia, a government-owned corporation which works with the aviation industry to minimise the impact of aircraft noise, have a facility called WebTrak. This system allows anyone to get information about where and how high aircraft fly over metropolitan suburbs within 55km of a selected airport. More information is available on Airservices Australia website at <http://www.airservicesaustralia.com>.

Licensee or person in *bona fide* control: taking leave

The supervision of a real estate agency by a licensed real estate agent is an essential component in ensuring the best interests of clients are served in real estate transactions. Errors, deceptions or misrepresentations that could be made by employees are more likely to be identified when a licensee is supervising and controlling the conduct of the business.

It is important to note that the requirements on directors and persons in *bona fide* control do not change when they go on leave.

The responsibilities of a licensee or person in *bona fide* control in supervising and controlling a real estate agency are outlined in the *Real Estate and Business Agents Act 1978* (the REBA Act) and the *Code of Conduct for Agents and Sales Representatives 2011* (the Code).

The REBA Act requires the licensee or person in *bona fide* control to give substantial time and attention to the business. The Code states the licensee or person in *bona fide* control must take reasonable steps to ensure that sales representatives and other employees of the agency business comply with the provisions

of the REBA Act, the Code and other relevant statutes, rules and regulations where applicable to them. As such, the licensee or person in *bona fide* control must frequently attend the offices at which the agency business is conducted.

Supervision requirements are personal obligations which cannot be contracted out to other staff no matter how experienced they may be. Asking qualified staff to supervise while the licensee or person in *bona fide* control is on leave, **does not** meet the requirements of the REBA Act and Code.

Taking annual leave and meeting supervisory obligations will therefore be a judgment call which depends on the following factors:

- the length of time of the leave;
- whether there are other licensed staff;
- whether there are unlicensed staff who would be supervised in the absence of the licensee; and
- how much and what type of contact the licensee will have with the agency while they are away.

This does not mean the licensee or person in *bona fide* control necessarily has to be physically present as important or urgent work can be settled via email and meetings can be held via telephone or Skype.

If a licensee or person in *bona fide* control is going to be away for an extended period of time, then the business may wish to consider **changing** the person in control for that period.



Home Buyers Assistance Account

The Home Buyers Assistance Account (HBAA) was established to financially assist first home buyers with the incidental expenses incurred when purchasing an established or partly built home through a licensed real estate agent. Consumer Protection encourages real estate agents and sales representatives to promote and educate clients about this grant.

The HBAA is a State Government scheme administered by Consumer Protection. The scheme is funded from the interest paid on real estate agents' trust accounts and currently provides grants of up to \$2,000 toward some of the incidental expenses associated with buying a first home.

Many of the applications from first home buyers are late, so it is important to note that the forms must be lodged with Consumer Protection no later than 90 days after the date an offer to buy a home is accepted. Should the application be received later than 90 days after the offer is accepted, first home buyers must include a letter explaining the reasons for their late lodgement. Late applications may be considered, provided the explanation given presents reasonable grounds to justify the late lodgement.

The HBAA grant may be used to reimburse mortgage registration fees, settlement agent fees, valuation and inspection fees, loan establishment fees, mortgage insurance premiums and lending institutions' fees associated with lodging the application.

Postage, bank cheque fees, rates and taxes on the property, which are split between the purchaser and vendor at settlement, cannot be included.

First home buyers can only apply for an HBAA grant if they purchase their home through a licensed real estate agent.

The eligibility criteria for an HBAA grant may be subject to change from time to time. The most up-to-date information can be found on the Consumer Protection website at www.commerce.wa.gov.au/consumerprotection.



EBulletins

Consumer Protection regularly publishes Real Estate eBulletins which provide agents, sales representatives and other interested parties with industry related news and up-to-date information on Consumer Protection policy developments.

Recent bulletins have included articles relating to Compulsory Professional Development, Consumer Protection Licensing and Bonds Administration.

Our eBulletin archive can be found under *New, Publications and Forms* on the Consumer Protection website at http://www.commerce.wa.gov.au/ConsumerProtection/Real_Estate.

If you would like to subscribe to our eBulletins, update your email address or if you have any queries, please email pinews@commerce.wa.gov.au.

Compulsory Professional Development

The end of the year is fast approaching so Consumer Protection would like to remind all real estate agents and sales representatives of their obligation to comply with the CPD program.

For more details, visit www.commerce.consumerprotection/real_estate.

CPD Calendars

Livepm: <http://www.livepm.com.au/content/page/courses.html>

REIWA Learning: <http://reiwalearning.com.au/main.cfm?NavArea=Courses>

Central Institute of Technology: <http://www.central.wa.edu.au/Courses/BusinessLegal/Pages/CPD-Training.aspx>



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.

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THIS PUBLICATION WAS ISSUED BY THE CONSUMER PROTECTION DIVISION OF THE DEPARTMENT OF COMMERCE.

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