

real estate *news*

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

Audit and statutory declaration deadline approaching

Name	Initials

It's time to start preparing for your audits and statutory declarations for 2012. This applies to all real estate and business agents who hold a current 'granted' licence, even if you are **not** trading.

For agencies completing a full audit, please contact your auditors early to arrange a time for your audit to be completed and delivered prior to the **31 March 2013** deadline.

To prepare for the audit, you are urged to review the detailed checklist in *A guide to auditing real estate and business agents trust accounts and Real estate trust accounting* which can be found on the Department's website.

Failing to deliver a trust audit report within the prescribed time frame, in respect to both agents and auditors, is an offence under the Act and an infringement notice for a \$600 penalty may be issued.

Agents who have neither received nor held trust funds, or do not hold an open trust account are still required to lodge a *Statutory Declaration – No Receipt of Trust Funds* form. Failure to do so may result in an infringement notice being issued, which carries a \$200 penalty. The only agents exempt from submitting a statutory declaration are those who have held the role of *bona fide* control, Licensed Director or Branch Manager for all of 2012.

If you have any queries regarding your audit obligations for 2012, please email audits@commerce.wa.gov.au.

Information relating to audits and statutory declarations can be found on the Department of Commerce's website at www.commerce.wa.gov.au/CP/Auditors.

IN THIS ISSUE...

Audit and statutory declaration deadline approaching	1
The Department's website.....	2
Fine for Armadale Real Estate over bond breach.....	2
Reminder: licensing advice line.....	2
Reminder: business names	2
Title searches.....	3
What happens to the interest on tenancy bond trust accounts?.....	3
Update on National Occupational Licensing Scheme (NOLS).....	4
Online licence search	5
Scam reminder: fake real estate listings	5
Removing unclaimed goods from abandoned premises.....	6
Legal action against rent to buy property promoters.....	7
e-Bulletins	8



The Department's website

The Department's website plays an important role in the promotion and provision of educational and advisory services to industry participants and the public.

The website's dedicated section for real estate agents and sales representatives covers a range of subjects including Compulsory Professional Development requirements and licensing information. The website also contains the relevant application forms, which can be found under *News, Publications and Forms*

on the Department's website at www.commerce.wa.gov.au/CP/RealEstate.

The Department is committed to the continuing development and improvement of the website and welcomes feedback from the industry. Please send your comments to pinews@commerce.wa.gov.au.



Reminder: licensing advice line

The Department has a dedicated contact telephone number for its Licensing Branch.

Any licensing related enquiries should be directed to 1300 30 40 64.

For any general or compliance enquiries, please continue to use the General Advice Line on 1300 30 40 54.



Reminder: business names

The national Business Names Register commenced on 28 May 2012.

Business names registration enquiries should now be directed to the Australian Securities and Investment Commission (ASIC).

More information is available by calling ASIC's Infoline on 1300 300 630 or by visiting its website at www.asic.gov.au.

Fine for Armadale Real Estate over bond breach

A real estate agency has been fined \$500 by the Perth Magistrates Court for the late lodgement of a tenant's bond money.

Drie Pty Ltd, trading as **Armadale Real Estate**, was also ordered to pay Court costs of \$253 on 31 October 2012.

Consumer Protection told the Court the agency had lodged a tenant's security bond with the Bond Administrator 56 days after receipt. This is in breach of the *Residential Tenancies Act 1987* which requires agencies to lodge bonds as soon as practicable and contravenes the industry standard of bonds being lodged within one business day.

Legal action was taken after previous warnings about late bond lodgements were issued to the agency.

Commissioner for Consumer Protection Anne Driscoll has warned real estate agencies and private landlords that action will be taken against those who hold on to bond funds for too long.

Enquiries regarding bonds can be made by calling the Department on 1300 30 40 54 or by email: consumer@commerce.wa.gov.au.

Title searches

The Department would like to remind agents they should not delay obtaining title searches until receiving an offer on a property.

Article 8(3) of the Code of Conduct for Agents and Sales Representatives (the Code) states when an agent receives instructions to offer a property for sale, they shall promptly obtain a copy of the certificate of title.

There have been instances where encumbrances registered on titles have either not been searched, or were searched and not disclosed to the buyer(s). Article 10(1) and 10(2) of the Code requires an agent to make

all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent agent would have ascertained and to promptly communicate that fact to any person who may be affected.

A prudent agent would ensure a buyer is aware of and accepts any potential restrictions on the property at the time of making an offer, such as easements or restrictive covenants.

If an encumbrance is not specified as part of a contract, a buyer may be entitled to terminate the contract prior to settlement.

A title check when receiving instructions to sell a property is also important to enable confirmation of the proprietors prior to undertaking client identification checking.

Further information can be obtained by phoning the Consumer Protection Advice Line on 1300 30 40 54.



What happens to the interest on tenancy bond trust accounts?

The interest earned on residential tenancy bond accounts is used to fund a range of services, from administrative and dispute resolution costs, to tenancy education.

Financial institutions, which hold these accounts, are required under the *Residential Tenancies Act 1987* (the Act) to pay the interest into the Rental Accommodation Account, a fund managed by the Department of Commerce.

The moneys in this account are used for important services for the benefit of tenants and landlords. The moneys contribute towards the costs of the Bond Administrator and the Department of Commerce in carrying out their functions under the Act.

This includes the tenancy bond administration, education, compliance and conciliation functions related to residential tenancy matters.

The moneys also contribute to the cost of running the Consumer Protection Contact Centre which has received more than 52,000 calls this year regarding tenancy. The Magistrates Court is also funded from the Rental Accommodation Account for its time in hearing residential tenancy matters.

Accrued interest also funds community agencies through the provision of educational or advisory services to tenants. Any surplus funds can be put towards the cost of public housing.



Update on National Occupational Licensing Scheme (NOLS)

The consultation period for the NOLS has now closed.

The Commonwealth Taskforce, which has been responsible for developing the NOLS, held a public consultation session on the proposals as they would apply to property occupations, in Perth on 25 September 2012.

This session was well attended and the Taskforce representatives received what might be best described as a polite but hostile reception to their proposals. No attendees spoke out in support of the NOLS legislation as proposed.

Submissions to the Commonwealth Taskforce closed on Friday 12 October 2012. The Department of Commerce has been advised that the Taskforce received more than 3,500 submissions nationally on the NOLS proposals, which cover electricians, gas fitters and plumbers in addition to property occupations.

While some who have lodged submissions with the Commonwealth Taskforce also sent copies to the Department of Commerce, the Department is yet to receive a report from the Commonwealth Taskforce on the submissions that it received and the issues raised in them.

To bolster the consultation undertaken by the Commonwealth Taskforce in WA, the Department of Commerce held its own NOLS consultation sessions. There were three sessions in Perth and one in Geraldton and Karratha for property occupations. The Department accepted submissions up until 31 October 2012.

The Department's sessions were poorly attended by representatives of the property occupations (with the exception of Karratha), especially in comparison to the sessions for electricians, gas fitters and plumbers.

One explanation for this poor attendance was that licensees in property industries are satisfied to have their views represented by their representative bodies, particularly the Real Estate Institute of Western Australia (REIWA), the Australian Institute of Conveyancers Western Australia (AICWA) and the Australian Property Institute (API), whereas the trades lack the same representation.

The NOLS proposals, for all the occupations, were not well received at the Department's consultation sessions.

The key areas of concern arising out of the NOLS proposals for the property occupations are:

- Reducing entry qualifications for real estate agents in WA from Diploma level to Cert IV level.
- Limiting the scope of real estate agents, sales representatives and auctioneers to residential property, meaning that a licence would no longer be required to act in relation to the sale of commercial, industrial or rural real estate.
- Removing the obligation to complete annual CPD training.
- Reducing personal probity requirements by removing the lower age limit of 18 for obtaining a licence and removing consideration of criminal offences against the person (eg assault) and drug related offences.
- Removing any experience requirement for obtaining a real estate agent's licence.
- Including property occupations in with what appears to be a reform targeted at trades.

The Minister for Commerce, the Hon Simon O'Brien MLC, has previously made it clear the Government would not make a decision on implementation of the NOLS in WA until local stakeholders have had their chance to consider the proposals and have their say.

The Department has now provided Minister O'Brien with a briefing on the outcomes of the local consultation and the Minister is considering options for the way forward.



Online licence search

The Department of Commerce's online licence search facility is a quick and easy way to check whether an individual, partnership or company is licensed or registered in WA. This applies to all real estate and business agents, settlement agents, sales representatives and other industries regulated by the Department.



There are many reasons to use the online licence search, not least in helping to ensure all agents hold a valid licence or registration as outlined in the *Real Estate and Business Agents Act 1978* (the Act) and the Code of Conduct for Agents and Sales Representatives 1979 (the Code).

Agents in *bona fide* control can therefore use the licence search to help avoid breaching s54 of the Act which states that agencies cannot employ anyone who does not hold a registration or a licence and current triennial certificate. Being aware of your employee's conditions will also ensure they are not working outside the scope of their licence.

The online licence search also allows you to verify your address or the business branch addresses.

The search can also confirm when your certificate is due to expire. This will be especially helpful if you are planning to take a holiday and need to ensure your licence or registration is not nearing its expiry date while you are away.

Buyers and sellers of property can, if they wish, use the online search facility to check whether the person they are dealing with is licensed or registered.

You can also check the status of other licences issued by the Department such as plumbers, gasfitters and electricians. To ensure you are complying with the requirement to exercise due skill, care and diligence (clause 9 of the Code), this tool should be part of your standard checks whenever you are engaging tradespersons to maintain or repair properties you oversee.

The online licence search can be found on the Department's website at www.commerce.wa.gov.au/CP/licencesearch.

A search can be conducted by choosing the appropriate licence type and entering the agent or business name, licence number, suburb and/or postcode.

Scam reminder: fake real estate listings

It appears scammers have been active again in targeting potential tenants by using information and photographs from genuine sales or rental listings, but substituting the real estate agency's contact details with their own.

The scammers often steal their material from real estate websites before including it in their own adverts on 'free' listing websites such as Gumtree and Quokka.

To help combat this sort of scam, the Department recommends agents place watermarks over the pictures they place online. This limits the ability of scammers to republish the pictures on different forums. Agents and owners may also wish to make periodic internet searches for the address of their listed properties to ensure they are not being used to fraudulently obtain money from prospective tenants or purchasers.

If you discover a property has been unlawfully placed onto a classifieds website, you should report the matter immediately to the hosting website to have the advert removed. Sites such as Gumtree provide a 'report this ad' button on each advert.

More information is available from the real estate e-Bulletin issued in February 2012 www.commerce.wa.gov.au/ConsumerProtection/PDF/Real_Estate_industry/Publications/Real_Estate_e-bulletins/Issue_007.pdf.

Removing unclaimed goods from abandoned premises

Real estate agents and property managers are reminded that there are legal requirements for storing, selling or disposing of goods that have been left abandoned by a tenant.

Section 79 of the *Residential Tenancies Act 1987* (the Act) allows landlords, or their agents, to dispose of uncollected perishable foodstuffs two days after a rental agreement has been terminated.

A tenancy is deemed abandoned once a tenant no longer occupies the property and has stopped paying rent without receiving or giving notice to end the tenancy. You are only entitled to take possession and secure the property when you are certain it has been abandoned. If you are uncertain about the property's status, you should apply to the Magistrates Court for an order stating that the tenant has abandoned the premises (use Court Form 12).

The Department can issue landlords with an Abandoned Goods Certificate which protects them against potential action taken by a tenant for goods that have been disposed of. Goods that have a total value of less than the cost of storage and removal may be disposed of once an Abandoned

Goods Certificate has been issued. For further information on obtaining an Abandoned Goods Certificate or for clarification of rights and obligations under the Act, contact the Department on 1300 30 40 54 or visit the 'landlords' page at: www.commerce.wa.gov.au/CP/tenancy.

Goods that are not perishable and have a value greater than the cost of storage and removal **must** be stored for at least 60 days. If the tenant has provided a forwarding address, the landlord should inform the tenant in writing within seven days of removal of the goods by completing a copy of *Form 2 (Notice to Former Tenant as to Disposal of Goods)*. In addition, a notice to the tenant to the effect of *Form 3 (Notice as to Disposal of Goods)* should be published in a newspaper that circulates generally throughout the State.

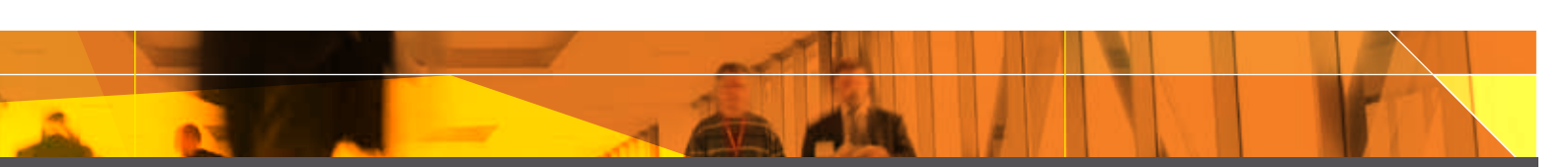
Any person with a lawful right to the goods is entitled to lodge a claim for the goods within the 60-day period after paying reasonable removal and storage costs incurred

by the landlord. If the goods remain unclaimed after 60 days, the abandoned goods must be sold at public auction. The landlord is entitled to deduct costs for removal, storage and sale from the proceeds. The balance is paid into the Rental Accommodation Fund on application to the Magistrates Court using *Proceeds of sale of abandoned goods (Form 11)*.

The following scenario may help property managers identify their responsibilities under the Act:

- An executive property is let for \$850 a week on a fixed-term lease for a one-year period.
- After paying the rent for six months on a weekly basis, the tenant pays two months' rent in advance and advises that he is going overseas on urgent family business.
- After two months, the rent falls into arrears. The property manager rings the contacts given previously by the tenant but is informed that the tenant is still overseas.
- The property manager then rings an overseas number given by a contact. The tenant advises that he will not be returning to Australia owing to personal reasons.
- The tenant further advises that he does not wish to reclaim any of his possessions, which is made up of some pieces of household furniture.





Legal action against rent to buy property promoters

Consumer Protection has lodged a Supreme Court Writ seeking an injunction against promoters of a rent to buy property scheme in WA.

- The property manager visits the property to carry out an inspection, and finds the security alarm is not working, and that the pool pump and reticulation system are out of commission.

What should the property manager do?

- Advise the owner of the situation.
- Ensure that it is secure. As the owner or property manager has a duty to mitigate any potential losses under section 58 of the Act, it is reasonable to enter an abandoned property to ensure that it is secure.
- Take photographs of the state of the property and of any goods left on the property.
- Dispose of any perishables.
- Request that the tenant provides written acknowledgement that the property is no longer in their possession. If the tenant does not comply with this request, it is recommended that a Form 1A Notice of Termination be issued as protection against possible litigation or prosecution. An order for vacant possession should then be sought from the Magistrates Court.
- Identify the value of the remaining goods. If they have a total value of less than the cost of removing, storing and selling them, then apply to the Commissioner for Consumer Protection for an Abandoned Goods Certificate.
- If the value of the goods is higher than the cost of removing, storing and selling them, organise to store the goods for at least 60 days and issue the correct notices.

In the legal action, Commissioner for Consumer Protection Anne Driscoll will allege that Patricia Mirawati Susilo and Bryan Artawijaya Susilo of Applecross, have engaged in misleading and deceptive conduct in breach of the Australian Consumer Law.

The Commissioner further alleges that they breached the *Real Estate and Business Agents Act 1978* by acting as unlicensed real estate agents or giving people they were dealing with the impression that they were licensed real estate agents.

The Commissioner said an investigation into the activities of the brother and sister team indicates misleading statements have been made in advertisements for several properties and about the nature of Ms Susilo's interest in the properties.

"The alleged misleading statements in advertisements relate to her claimed ownership of the properties and to the amount of weekly payments which don't match the payments the proposed tenant/buyer was requested to pay. There is also no indication of the upfront option fee or the final price that is payable," Ms Driscoll alleges.

"I am particularly concerned that, in the cases where the tenant/buyers do not have sufficient resources to pay the upfront option fee,

Ms Susilo has taken wedding rings and various family collectables as part of the payment for the deposit. These included a Real Madrid jersey signed by David Beckham and a Franklin Mint edition Monopoly board. In another instance, Ms Susilo brokered the sale of a tenant/buyer's vehicle to raise the required deposit funds.

"The proceeds from the transactions are deposited into a bank account of a real estate agent in the eastern states and then transferred to Ms Susilo's personal bank accounts in WA. I am concerned that the funds do not go into a WA trust account and there is no separate account where money is stored for future deposits in accordance with the 'Option to Buy' agreements.

"Consumer Protection urges people considering a rent to buy property proposal to seek further legal and financial advice before committing to a rent to buy contract as there are many reasons to be concerned about the legality of some of these schemes.

"We strongly recommend that consumers only deal with licensed real estate agents in regard to purchasing property in WA. This gives much greater protection as there are laws that are designed to uphold consumer rights and safeguard their financial interests."

continued on page 8

Continued from page 7

In August 2011, the Commissioner for Consumer Protection warned consumers about rent to buy property promoters No Loan Home Pty Ltd (trading as Perth's Easyhomes WA), its sole Director Filip (Fil) Butkovic and employee Nikola (Nik) Butkovic who were operating a different type of rent to buy scheme. In May 2012, the Supreme Court ruled that scheme

was illegal because the promoters were not licensed real estate agents. The Court also ruled that the company had misled clients regarding the future value of the property, the potential equity that they are able to build up over a four to five year period and their ability to obtain finance at the end of this period.

Any real estate agent who observes rent to buy schemes in operation in their area are urged to contact the Department on 1300 30 40 54 or email consumer@commerce.wa.gov.au.



e-Bulletins

The Department regularly publishes Real Estate e-Bulletins which provide agents, sales representatives and other interested parties with industry related news and up-to-date information on the Department's policy developments.

Recent e-Bulletins have included articles relating to the National Occupational Licensing Scheme, the NOLA Taskforce information sessions, a thwarted real estate scam and a successful phone porting scam.

Our e-Bulletin archive can be found under *News, Publications and*

Forms on the Department's website at www.commerce.wa.gov.au/CP/RealEstate.

If you would like to subscribe to our e-Bulletins, update your email address or if you have any queries, please email pinews@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.

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

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