



Proactive Compliance visits identify common issues

Looking to improve practices at your agency? Considering these common issues identified during recent proactive compliance visits by the Department of Commerce (the Department) may help.

The proactive compliance program is designed to help agencies to better understand and comply with their legal obligations, as well as identifying and remedying areas of risk through guidance, best practice and education. During the 2014/2015 financial year, the Department undertook 494 visits to agencies.

The common areas of concern the Department identified are:

- Trust accounting issues:
 - Trust accounts are not being reconciled at the end of the month as well as the person in *bona fide* control failing to review and certify the reconciliation within 10 working days.
 - Receipts fail to include the heading "Trust Account Receipt".
 - Incorrect titling of the trust account such as triennial certificate holder not identified, registered business name not stated, and incorrect format for interest bearing accounts.
- Agencies do not have sufficient procedures in place to identify clients:
 - Certificate of Title confirming ownership were not being obtained.
 - Checks of client's identity (ie 100 point check) were not being undertaken.
 - Security controls (ie passwords) that can be used to verify the client's identity when they request a change to personal information were not being used.
- Poor complaint handling practices by the agency.
- Agency's staff records do not match the information provided to the Department. *Note: While the sales representative is required to provide the notification for changes of employment, the Department suggests that agents ensure the notification has been sent.*
- Conflicts of interest not being disclosed or inadequate disclosure being made to clients.
- Marketing expenses being charged to a client at above cost price and marketing clauses in agreement not initialed by clients.
- Invalid Appointment to Act contracts.
- Failure to display information:
 - a notice of the licensed agent's name and that they are a licensed real estate and/or business agent is not clearly exhibited in a prominent place at all business premises of the agent. *Note: This can best be served by the display of the agent's licence and triennial certificates at the registered premises. At a branch office, a photocopy of the agent's licence and the branch manager's triennial certificate would suffice.*
 - trading under a business name that is not endorsed on the triennial certificate.
 - correspondence and documents do not clearly state that the agent is a licensed real estate and/or business agent.

To assist you in determining your agency's compliance with the legislative requirements for some of the above issues you may wish to refer to the following resources:

- the Department's real estate proactive compliance [webpage](#)
- Identifying the agent – the [Requirements for agents' correspondence and documents: Are your details stated correctly?](#) fact sheet may assist agents in knowing how to identify themselves on documents and correspondence
- Trust accounts - the [Real Estate and Business Agents' Trust Account Handbook](#) provides extensive information relating to trust accounts

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- Identification checks - [Guidance note](#); [e-Bulletin issue 5](#), *Amendments to the Code of Conduct for Agents and Sales Representatives*, and the *New policy to counter title fraud* article on page 2 of [Real Estate News Issue 3](#)
- Payment of advertising costs – *Compliance issues regarding advertising* article on page 6 of [Real Estate News Issue 6](#)
- Registered business name requirements - [e-Bulletin Issue 68](#), *Business names – Make sure you renew on time*
- Conflicts of interest and the disclosure requirements – [e-Bulletin Issue 101](#), *Conflicts of interest in real estate transactions*

Agents should consider their obligation to render the contracted services with due care and skill. This is a requirement of not only the Code of Conduct for Agents and Sales Representatives 2011 but also under the Australian Consumer Law.

The Department will continue to focus on the above mentioned issues through its proactive compliance program.

To find out more about the proactive compliance program, agents are encouraged to visit the Department's [website](#).

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