



GOVERNMENT OF
WESTERN AUSTRALIA

Real Estate News e-Bulletin

An electronic bulletin from the Consumer Protection Division of the Department of Commerce

ISSUE one

July 2011

Residual Current Devices (RCD's) and Smoke Alarms – a timely safety reminder

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According to EnergySafety, 23 of the 29 people who have died as a result of electrocution in the past 17 years could have been saved if **Residual Current Devices** (RCDs) had been fitted to the power and lighting circuits. Additionally, each year in Western Australia, structural fires result in injury and death as well as significant property damage.

New laws were introduced two years ago that require all residential tenancy properties to be fitted with RCDs and Smoke Alarms. The new laws provided for a transition period to have these devices fitted to the properties. This transition period is now coming to an end.

By **8 August 2011**, all residential tenancy properties **must be** fitted with at least two **RCDs**. Since 9 August 2009, it has also been a requirement that RCD's be installed in all residential properties prior to the transfer of ownership of the property.

By **1 October 2011**, all residential tenancy properties **must be** fitted with **mains powered smoke alarms**. Since 1997 it has been law, under the Building Code of Australia, to install mains powered smoke alarms in new properties and any existing properties that have undergone significant renovations. Since 1 October 2009, it has been a requirement that mains powered smoke alarms be fitted in all existing residential buildings prior to sale and when a new tenancy agreement is signed for rental properties.

Penalties apply if properties do not comply with the requirements to install the required RCDs and smoke alarms by the above dates. Failure to install **RCDs** risks exposing the seller or landlord of a property to penalties of up to \$15,000 for individuals and \$100,000 for a body corporate. Failure to install mains powered **smoke alarms** risks exposing the seller or landlord to an infringement notice or a fine of up to \$5,000.

For rental properties, it is recommended that the tenant be reminded to test RCDs every three months and inform the property manager if the RCD does not operate. All RCDs have a test button that, when pressed, simulates an earth leakage fault and indicates whether or not the RCD is operating correctly. It is also recommended that they be tested at all property inspections. For further information concerning testing RCDs [click here](#).

It is also recommended that all smoke alarms be regularly tested – all smoke alarms have a test button that when pressed indicate whether the alarm is working or not. FESA recommends that the alarms be tested monthly.

Department of Housing tenancies

The Department of Housing has asked the Department of Commerce to assist in reminding all agents that manage properties on behalf of clients who have a residential tenancy agreement with the Housing Authority of their request for information in regards to an audit of smoke alarms and RCD's in the aforementioned properties.

Three letters have been sent to those agents managing Housing Authority tenancies, requesting that they complete and return to it a declaration enclosed in the letters confirming:

- 1) That their client has taken all necessary steps to comply with all of its statutory obligations under the regulations referred to above relating to the installation of smoke alarms and RCDs, including applicable Building Code of Australia requirements; and
- 2) The number, type and location of the smoke alarms and RCDs installed in the premises.

If agents haven't already done so, the Department of Housing request that the declaration be signed and returned to the Department as a matter of urgency. It can be sent via post in the reply paid envelope provided with the original letters, faxed to (08) 9286 6025 or scanned and emailed to either groh.mailbag@housing.wa.gov.au or housingprograms@housing.wa.gov.au.

These legislative changes have been brought about in the interests of improving safety within homes and ultimately saving lives. Compliance with the new requirements should be of paramount concern to all property managers.

Further information on RCDs is available at www.energysafety.wa.gov.au/RCD, while further information on smoke alarms is available on the FESA website (www.fesa.wa.gov.au) at [this address](#).



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End of year *bona fide* control RA6 condition requirements

With the start of a new financial year, the Department of Commerce would like to advise those licensees who have a triennial certificate subject to the RA6 condition of the continuing need to comply with that condition post 1 July 2011.

The RA6 condition states:

By 31 August in each year, the licensee shall satisfy the Commissioner that during the preceding financial year the person in bona fide control of the licensee's business has been paid a salary, which in the opinion of the Commissioner is consistent with salaries payable to persons giving substantial time and attention to an agent's business.

This condition excludes persons in *bona fide* control who have a substantial shareholding (at least 50%) in the company or partnership. While no amount is specified in the triennial certificate condition, the policy since November 2008 requires the licensee in *bona fide* control to be paid not less than \$50,000 per annum (exclusive of commissions). This applies whether the service agreement is for a person in *bona fide* control of a partnership, or company.

Agents can satisfy this condition by forwarding a copy of the group tax certificate of the person in *bona fide* control to:

The Department of Commerce

Licensing Branch

Locked Bag 14

Cloisters Square

Perth WA 6850

Alternatively, the agency's accountant can certify in writing that they have sighted a copy of the group tax certificate verifying the amount paid to the person in *bona fide* control. Failure to comply with this condition can result in disciplinary action being taken against the agency for a breach of section 34(3) of the *Real Estate Agents and Business Agents Act 1978*.

If there has been a change to the shareholding or partnership structure, and the person in *bona fide* control becomes a substantial shareholder, then compliance with the condition may not be required.

If you have any queries regarding this matter, please contact the Department's Licensing Section on 9282 0839.