

December 2014

REAL ESTATE

NEWS

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

Rental property security deadline

Property managers should remind their lessors that rental premises are required to meet the minimum security standards set by the *Residential Tenancies Act 1987* (the RT Act) by 1 July 2015.

The RT Act provides that the lessor must provide and maintain the rental premises to a reasonable level of security as determined by the **Residential Tenancies Regulations 1989**, which outlines the following to be fitted as a minimum standard:

- Main entry door – either a single/double cylinder deadlock; or a key lockable security screen door.
- Other external doors – either a deadlock; or if a deadlock cannot be fitted, a patio bolt lock; or a key lockable security screen door.
- Exterior windows - either a lock, which does not need to be lockable by a key, which prevents the window from being opened from the outside; or a security window grille.
- External lighting – an electrical light on or near the exterior of the premises, which is operable from inside the premises and is capable of illuminating the main entry of the premises. (An exception applies to strata premises as explained below.)

The fitting of the above-mentioned locks to doors and windows is not necessary if a key lockable security screen door or security window screen is already fitted.

IN THIS ISSUE

Rental property security deadline.....	1 cont 2
Selling an owner-built property.....	2
CPD 2015	3
Residential bond tips	4
National crackdown on fake testimonials	4
Reminder: Infinity brand electric cable safety recall.....	5
Qualified Audit Reports.....	5
Reminder: The Department of Commerce has moved.....	6
Website	7
e-Bulletins	7
Contact details	7

Name	Initials

Licence application requirements simplified

A number of red tape reductions have been introduced across several pieces of legislation administered by the Commissioner for Consumer Protection, including the *Real Estate and Business Agents Act 1978* (the REBA Act).

The amendments to the REBA Act, which came into force on 19 November 2014, mean that notices of licence applications are no longer required to be published.

These amendments will save applicants both time and money. While the purpose of publishing a notice was to give the public an opportunity to object to the grant of a licence, past experience shows that the response rate from the public to newspaper notices was extremely low with five recorded objections in the past 10 years across all licensing Acts administered by the Commissioner for Consumer Protection and no application was refused on the basis of these objections.

The amended REBA Act also provides for the re-issue of a duplicate licence when the original licence is lost or destroyed (for a prescribed fee). The requirement for a list of licensees to be published annually in the Government Gazette has also been removed.

For enquiries about the licensing process for real estate agents please call **1300 30 40 64** or email licensingenquiries@commerce.wa.gov.au

Rental property security deadline

Continued from page 1

In addition, the locks are not required to be fitted if a door or window is situated on the second storey or above in apartments and multi-storey homes and is not easily accessible from outside.

The fitting of external lighting to premises within a strata complex is not required if the strata manager ensures there is adequate lighting within the complex to illuminate the main entry of the premises.

Exemptions apply to rural premises or those listed on the State Heritage Register, which are required to maintain a reasonable level of security.

In many instances, it is likely that these minimum standards of security are already being met by lessors, however lessors should check to ensure the property is compliant.

We encourage you and your lessors to visit the Department's **website** to access the Minimum security standards fact sheet for further information and frequently asked questions.

Selling an owner-built property

The Building Commission would like to remind real estate agents of the legal requirements affecting owner-built properties.

The introduction of the *Building Services (Registration) Act 2011* removed the restriction from owner-builders selling within three years. This applies to individuals who are not registered builders but have been granted an owner-builder approval.

In some cases however, owner-builder approval is given to a registered builder who constructs the dwelling as their main residence and not for immediate sale. In this instance the owner-builder is bound by the *Home Building Contracts Act 1991* (HBCA), which prohibits sale within three years.

Under the HBCA, builders can apply for an exemption order from the Minister for Commerce to sell within the three years if they can satisfy that they would suffer hardship if the application were refused.

All owner-builders who wish to sell their property within seven years of the building licence being issued by the local government authority should inform their real estate agent or prospective purchaser that their property was built, extended or renovated by an owner-builder. They must also give the purchaser a valid Policy of Home Indemnity Insurance covering the remainder of the seven year period.

The insurance is required as coverage in the case that a builder or owner-builder dies, disappears or becomes insolvent and is unable to rectify any faulty or unsatisfactory workmanship for the balance of the seven-year period from the date the building licence was issued.

Further information about owner-builder requirements and home indemnity insurance is available from: www.commerce.wa.gov.au/building-commission



CPD

2015

The 2015 prescribed mandatory and elective Compulsory Professional Development (CPD) topics have been determined for real estate and business agents and registered sales representatives.

The Department of Commerce administers the *Real Estate and Business Agents Act 1987*, which requires licensees and registrants to complete a CPD program consisting of mandatory and elective activities.

In preparation for planning the CPD programs for 2015, the Commissioner for Consumer Protection canvassed the views of a number of industry associations, training organisations, other relevant regulatory agencies and internal stakeholders regarding appropriate topics. The topic suggestions from stakeholders, assisted in informing the mandatory activities determined by the Commissioner for next year.

The CPD Program for real estate agents, sales representatives and property managers, comprises activities from which participants must accrue 10 points each calendar year - three points for mandatory activities, which are funded from the Real Estate special purpose account, and seven points for elective activities, which are paid for by the participating licensee or registrant.

The mandatory CPD topics are generally covered in a three hour activity or equivalent for each level of licence and registration. The elective activities are approved on behalf of the Commissioner prior to, and throughout the year.

The Real Estate and Business Agents (General) Regulations 1979 (REBA Regulations) provide for the Commissioner to specify one or more CPD activities for a calendar year as mandatory. The REBA Regulations also provide for the Commissioner to specify the point value of an approved educational activity, specify the CPD subject/s in relation to which the activity is approved and specify the regulated persons for which the educational activity is approved. Schedule 1A of the REBA Regulations provides a list of the professional development subjects for the prescribed educational requirements.

The mandatory CPD topics determined for real estate and business agents, sales representatives and property managers for 2015 are detailed below.

Licensing/registrant category	Approved topics	Hour/point allocation
MANDATORY		
Real Estate Agents & Business Agents	<ul style="list-style-type: none"> • Statute Law, Contract Law and Industry Practice • Case studies and Compliance Exercises <ul style="list-style-type: none"> ○ Off-the-plan sales ○ Negotiating multiple offers ○ Sale and/or transfer of property management "rental rolls" 	2 hours/points 1 hour/point
Sales Representatives	• Statute Law, Contract Law and Industry Practice	2 hours/points
	<ul style="list-style-type: none"> • Case studies and Compliance Exercises <ul style="list-style-type: none"> ○ Off-the-plan sales ○ Negotiating multiple offers 	1 hour/point
Property Managers	• Statute Law, Contract Law and Industry Practice	2 hours/point
	<ul style="list-style-type: none"> • Case studies and Compliance Exercises <ul style="list-style-type: none"> ○ Conducting inspections ○ End of lease issues 	1 hour/point

Residential bond tips

The Bond Administrator can only issue electronic refunds of residential tenancy bonds to Australian bank accounts.

Tenants who plan to leave Australia may therefore find it useful to maintain their Australian bank account until they have received their bond refund.

While the Bond Administrator will send cheques overseas, it appears some European-based banks are no longer accepting foreign cheques. Furthermore,

US banks will not accept cheques if they are marked 'not negotiable' as is the case with cheques drawn on the Rental Accommodation Account.

National crackdown on fake testimonials

The real estate sector is particularly prone to the publication of fake testimonials, according to an inquiry by national and state-based consumer protection agencies.

The inquiry, conducted by Australian Consumer Law (ACL) regulators, has resulted in more than 40 businesses across Australia receiving substantiation notices over the past six months, with state and territory-based agencies demanding proof that the glowing testimonials posted on businesses' websites are genuine.

Across the 11 markets surveyed in the National Testimonials Project, the real

estate sector, along with the restaurant and alternative health care sectors, were identified as having a comparatively high risk of carrying false online review content. Consumer Protection is currently reviewing a number of testimonials of WA real estate agencies.

False testimonials are a breach of the ACL and in most cases removal of unsubstantiated testimonials has occurred after regulator intervention.

There are strong penalties for fake testimonials and last year as part of this initiative, a WA motor vehicle repair company and its director were fined a total of \$33,000 for posting fake online testimonials.

A Consumer Protection investigation found that four testimonials on the company's website were entirely fictitious and concocted by the company's web designers.

Qualified audit reports

Section 70 of the *Real Estate and Business Agents Act 1978* requires all real estate and business agents who hold a current triennial certificate to have their trust accounts audited.

An auditor will qualify an audit report when they take issue with part of an agency's trust account.

The department received 319 real estate Qualified Audit Reports for the audit period 1 January to 31 December 2013. It subsequently issued 31 administration warnings, 156 educational notices and referred 19 cases for investigation.

Matters under investigations may ultimately result in court action.

The department will visit agencies that have a history of audit issues, including those making similar errors in consecutive years and/or providing responses that lack sufficient detail.

Audit issues on the department's radar for 2014 include:

- a lack of account keeping procedures eg reconciliations out of balance, client ledgers overdrawn;
- a lack of diligence in obtaining client identification;
- not entering funds into the trust ledger in a timely manner; and
- overcharging for management fees.

Reminder: *Infinity* brand electric cable safety recall

The Department of Commerce recently issued a media release regarding the national safety recall of *Infinity* brand electrical cables, which do not comply with Australian safety standards.

Real estate agents, property managers and lessors may be interested in the issues that arise from the recall.

Testing has found that *Infinity* cables will degrade prematurely and, if disturbed, may break the insulation and expose live conductors.

While there appears to be no immediate danger, the faulty cables can

potentially cause electric shock or start fires in homes that have been renovated or repaired.

More detailed information is available in the **joint media statement** issued by EnergySafety, Consumer Protection and the Building Commission.





Reminder: The Department of Commerce has moved

As of 30 September 2014, Consumer Protection's main office, including the Property Industries Directorate, as well as Bonds Administration, is now located at **Gordon Stephenson House, 140 William Street, Perth**, and the Licensing Branch is now located at **The WestCentre, 1260 Hay Street, West Perth**.

Our contact centre number, mail and email addresses have not changed but please note that the phone numbers of individual staff members have changed.

Property Industries and Bonds Administration

New office street address

Gordon Stephenson House
Level 2
140 William Street
Perth

The reception area for all visitors is on **Level 2** of the building - entry is via Railway Lane, Murray Street Mall.

Licensing Branch

New office street address

The WestCentre
Level 5
1260 Hay Street
West Perth

The reception area is on **Level 5** of the building.

The postal address

Locked Bag 14
CLOISTERS SQUARE WA 6850

New phone numbers

* Bonds Administration: **1300 853 829**

General enquiries:

Please continue to call **1300 30 40 54**

Licensing application related enquiries:

Please continue to call **1300 30 40 64**

Contact details

In order for your enquiry to be handled efficiently, please note the following:

- If your enquiry relates to your licence or registration, licence or registration application or the structure of your business, please contact Licensing on **1300 30 40 64, Option 2**.
- If you need to inform the Commissioner of a change to your details, please email **licensingenquiries@commerce.wa.gov.au**. Please include your licence/ registration number.
- If you have an enquiry, including any relating to a proactive visit, please contact Proactive Compliance on **(08) 6552-9592** or email **proactivecompliance@commerce.wa.gov.au**
- If you have a trust account or auditing enquiry, please call **(08) 6552 9583** or email **audits@commerce.wa.gov.au**
- If your enquiry relates to CPD (contact trainers directly for bookings) please call **(08) 6552 9582** or email **cpd@commerce.wa.gov.au**
- For newsletter or e-Bulletin subscription enquiries, email **pinews@commerce.wa.gov.au**
- Consumer Protection's general contacts should be used for all other issues. You can telephone **1300 30 40 54** or email **consumer@commerce.wa.gov.au**

E-Bulletins

The department regularly publishes Real Estate e-Bulletins which provide agents 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 fines over unregistered sales representatives, Home Buyers Assistance Account, iRentWA, national safety recall of Infinity brand electrical cables, five year ban and fine for property manager and renewal of business name registration. An e-Bulletin archive can be found on the department's [website](#).

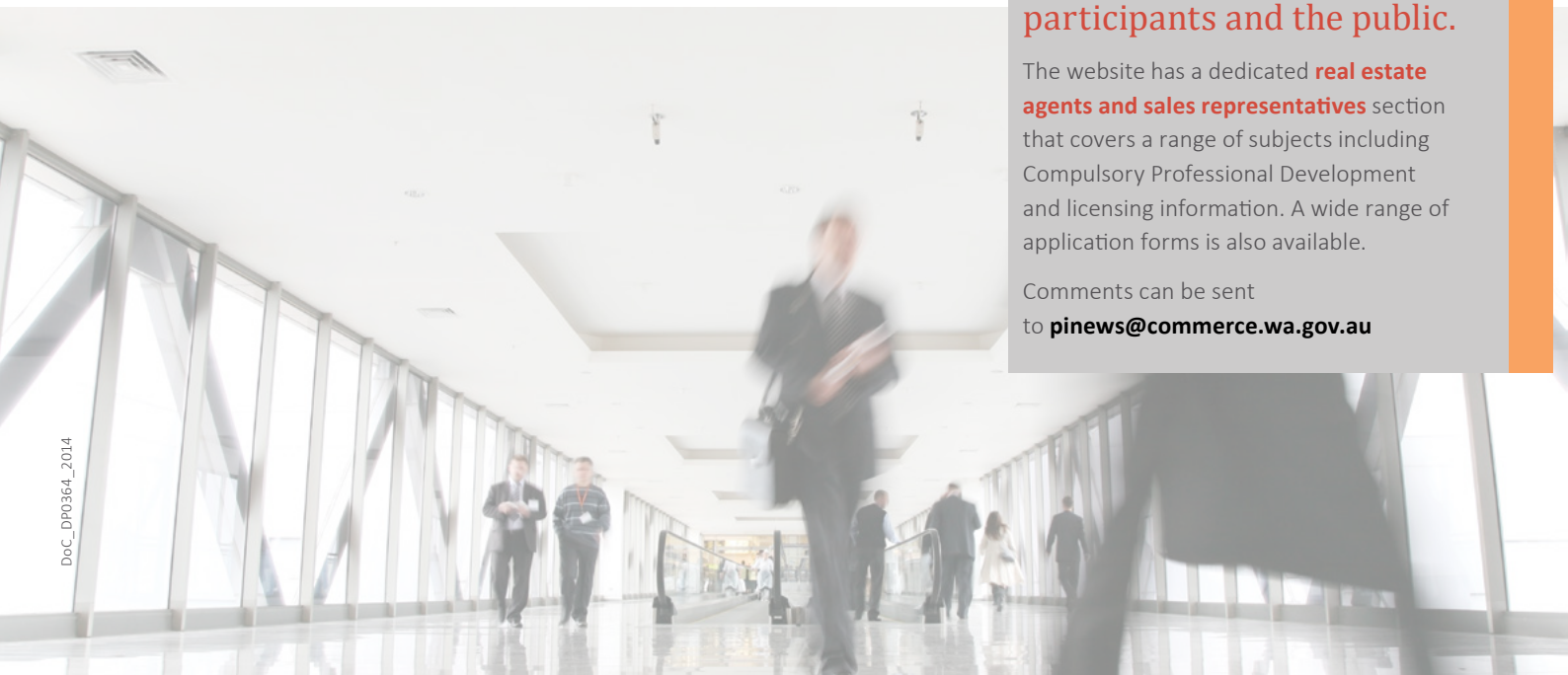
If you would like to subscribe to our e-Bulletins, update your email address or if you have any queries, please email pinews@commerce.wa.gov.au

Website

The department's new-look website, launched in June 2014, provides comprehensive education and advisory services to industry participants and the public.

The website has a dedicated **real estate agents and sales representatives** section that covers a range of subjects including Compulsory Professional Development and licensing information. A wide range of application forms is also available.

Comments can be sent to pinews@commerce.wa.gov.au



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