

June 2015

REAL ESTATE

NEWS

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

Retain the integrity of original documents

Real estate agents, sales representatives and property managers are reminded that when completing forms to be submitted to Consumer Protection, such as licensing forms, that they ensure all relevant information that is required to be provided is complete and accurate.

It is also important to submit all pages of the form even if the information is not required to be completed in your particular case. This is important in demonstrating that all issues have clearly been considered by you.

Should an error be made on the form, the incorrect information can usually be crossed out and the correct information inserted with all parties (ie applicant/s for licensing forms or tenants/lessors/agent for security bond forms) signing and dating the alteration to show their agreement that the amended information is correct.

If other documentation is required to be submitted to Consumer Protection, the original document or certified copy (if acceptable) must not be altered in any way.

Name	Initials

Mandatory CPD course caters to commercial agents and sales representatives

Mandatory CPD sessions specifically tailored to suit commercial licensees and registrants are on offer in 2015!

Training providers contracted to deliver mandatory CPD activities to the real estate industry have been approved to deliver a limited number of commercially focused mandatory sessions in 2015. The sessions may be attended by all licensees and registrants working predominately in commercial real estate.

Attendance at a mandatory commercial session will accrue the required three mandatory points for participants with a current licence or registration.

Interested commercial agents, sales representatives and property managers should contact the **training providers** for information on the sessions that will be available.

Information on the CPD program can be viewed on the Department of Commerce's **website**.

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Retain the integrity of original documents

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For example if a licensing renewal application has already been submitted and the applicant is required to provide a National Police Certificate (NPC) after the fact, the applicant should either submit the original document in the same condition as they received it from the issuer or provide a certified copy of the unaltered original document. If the applicant wishes to provide reference information for the document, the applicant should attach a separate note with this information rather than writing

it anywhere on the original document or certified copy.

Upon receipt of a NPC from the issuer, you should review the information that it contains, including your name and date of birth, to ensure the information is accurate. Should the information be inaccurate, subject to where the error originated, you may either be able to obtain a reprinted certificate with the correct information or need to apply for a new certificate.

Be aware that inappropriately amending a form or original document can be seen as a fraudulent act and may be a contravention of the Code of Conduct for Agents and Sales Representatives 2011.

Should you have any queries about the submission of a form or document which may hold incorrect information, you can contact Consumer Protection on 1300 30 40 54 to seek advice.

Update:

Review of the Code of Conduct for Agents and Sales Representatives 2011

The Minister for Commerce has recently approved the drafting of amendments to the Code of Conduct for Agents and Sales Representatives 2011 (the RE Code).

The proposed amendments are a result of a review that commenced in 2013. The Department of Commerce (the Department) released a discussion paper seeking submissions from industry and peak representative bodies in relation to a review of the property industry codes regulated by the Department, including the RE Code.

From the submissions received by the Department, the general consensus was in support of the need for the Code to provide greater detail and clarity on matters relating to an agent's duties. It was also concluded that the Code should be consistent with the Settlement Agents' Code of Conduct 1982 (the SA Code) and the Licensed Valuers Code of Conduct (the LV Code).

The proposed amendments to the RE Code are designed to allow for consistency with the SA Code and the LV Code in regulating the property industry as a whole. They will also take into account a number of generic duties required under all three codes and will also provide for specific provisions relevant to the needs of each industry.

The drafting of the amendments by Parliamentary Counsel's Office is currently underway and the Department will seek further consultation with each industry once the draft amendments have progressed.

RCDs within premises sold or leased in Western Australia

In 2009 the State Government enacted legislation requiring a minimum of two Residual Current Devices (RCDs) being installed and operational whenever residential premises are sold or offered for lease.

The Department of Commerce (the Department) wishes to clarify that the residential premises is not only the home in which the occupant resides but also extends to outbuildings and sheds which have electricity connected and form part of the residential property either by being directly or indirectly attached to the home.

For outbuildings that are used solely for occupational purposes, the obligation to fit RCDs to the outbuildings falls under the Occupational Safety and Health Regulations 1996 which requires RCDs to only be fitted to the power circuits. The number of RCDs to be fitted is dependent upon the number of power circuits for the outbuilding. RCD protection of lighting circuits would be on a risk assessment basis.

If the outbuilding is solely used as residential premises or is used as a mixture of both a residential premises and for occupational purposes, the Electricity Regulations 1947 requires RCDs to be fitted on both the power and lighting circuits.

The RCDs are able to be fitted either at the outbuilding's sub-distribution board or at the property's main switchboard. However this is subject to the individual circuit arrangements.

Agents are requested to remind clients of the requirements regarding RCDs. You may wish to refer to the [Real Estate News issue 9](#) for information and advice on agent's obligation in relation to RCDs.

RCDs save lives and the Department recommends that they be installed to protect **all** power and lighting circuits.

If you are unsure what is required in your client's situation, you can contact EnergySafety on 6251 1900.



Bond Administrator's eTransactions system

As referred to within Real Estate e-Bulletin issue 80, the Department of Commerce (the Department) has gone live with an online automated system for security bonds taken for tenancies under either the *Residential Tenancies Act 1987* or the *Residential Parks (Long-stay Tenants) Act 2003*.

The enhanced system, known as eTransactions, will allow the fast, easy and secure electronic lodgement, variation and disposal of security bonds held by the Bond Administrator without the need for paper forms to be signed by the parties. eTransactions has security measures, similar to those used for online banking, which meet the requirements of the *Electronic Transactions Act 2011*.

eTransactions, which provides enhanced functionality to BondsOnline, has been successfully trialled with a small test group of agents for security bond lodgements only.

Future releases for bond variations (changes to parties) and disposals will take place over the next few months, with full implementation being planned for September 2015.

Agents wishing to use eTransactions will need to amend their access to BondsOnline.

BondsOnline enhancements will also allow agents to view certain records maintained by the Bond Administrator as well as increased reporting capabilities.

In addition, BondsOnline also now supports agencies that require separation of duties with the inclusion of individual logins for all employees that require access. Only agency staff with approver level access will be able to finalise a lodgement, so the agency will know exactly when payments will be debited from its registered bank account.

Once a bond eLodgement is received by the Bond Administrator, the other parties to the agreement, such as the tenant or lessor, will be required to meet some security measures and be requested to approve the details of the eTransaction.

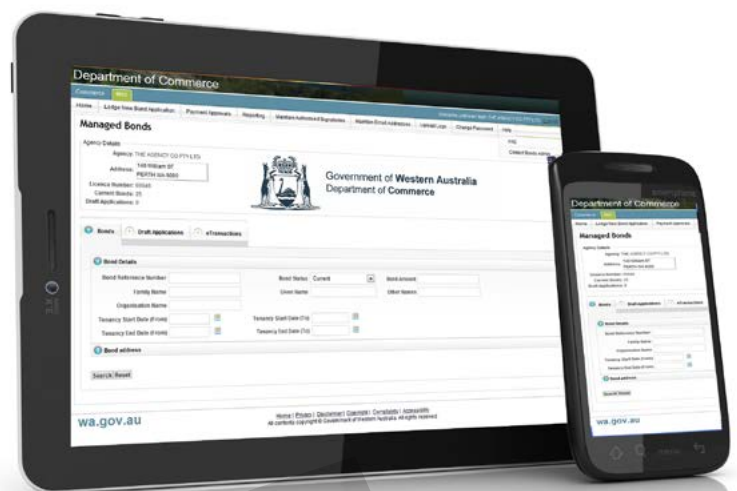
It is in the tenant's best interest to confirm the details of an eLodgement as soon as possible because this will facilitate the

prompt processing of any future eTransactions. However if the tenant does not complete the process within the specified timeframe, the eTransaction system will automatically accept the details and progress the transaction to ensure the agency meets its legislative obligations.

Further information on security bonds can be found on the Department's [website](#).

You can register your interest for access to BondsOnline by email at bondsadmin@commerce.wa.gov.au

If you have any queries about eTransactions please contact the Bond Administration branch on 1300 853 829 or by the above-mentioned email address.



WA property scam conviction

In December 2014, the Lagos High Court in Nigeria convicted Mr Ntuen Promise Ekemini on five counts and sentenced him to one year's imprisonment for his involvement in attempted real estate fraud.

Ekemini's attempt to sell a home in Falcon using forged documents began in December 2012, when Ekemini contacted the Mandurah real estate agency managing the property claiming to be the owner of the home.

Ekemini used a Yahoo email address in the name of one of the real owners to request property documents, which were provided to him, and requested the agency change its records of the owners' contact details, instructing all future communication be directed to a new email address and new mobile phone number.

A month later, the agency was then approached by Ekemini to sell the property. He completed a sales agreement using false signatures and provided copies of fake passports of the two owners, along with forged documents purporting to be from the Australian High Commission in Pretoria confirming their identities.

Following property fraud training received by a member of the agency's staff, suspicions were raised resulting in WA's fraud squad being contacted. An operation was then undertaken where a feigned sale proceeded to try to snare the fraudsters.

Ekemini was arrested in August 2013 in Nigeria when he attempted to collect documents related to the supposed settlement of the Falcon property using a forged licence in the name of the South African based owners.

The arrest came after an eight month investigation and joint operation of State, Federal and overseas authorities.

It had generally been thought that people attempting to perpetrate frauds from Nigeria were beyond the reach of the law. This prosecution shows that, while difficult, prosecution is not impossible.

The imprisonment of Mr Ekemini should send a strong message to other potential fraudsters in Nigeria that they are not beyond the law.

As you will be aware, in November 2011, the Code of Conduct for Agents and Sales Representatives 2011 (the RE Code) was strengthened to incorporate strict identity verification guidelines for all transactions, particularly involving overseas owners. The RE Code can be viewed on the State Law Publisher's [website](#).

This case is a reminder that agents and property managers should be vigilant when not dealing with an owner face-to-face.

Advice on property scams and the Guidance Notes are available on the Department of Commerce's [website](#).

Landgate's strict fraud prevention measures which can also be viewed on its [website](#).



Requirements for correspondence and documents: are your details stated correctly?

Consumer Protection has noticed that some agents are confused by the requirements under Section 41(2)(a) of the *Real Estate and Business Agents Act 1978* (the Act) to identify the correct licensee details on all documents and correspondence.

Consumer Protection considers business related emails to be 'correspondence' and as such the first email in any chain of electronic correspondence should include the necessary details. These details can easily be included by automatic electronic 'signatures' or 'mastheads'.

Section 41(2)(a) of the Act states:

(2) On all correspondence, and on all documents prepared, in the course of business of a licensee at his registered office and every branch office

(a) the licensee shall be identified as a real estate agent or business agent, or both, and the registered office of his business shall be shown

A document may be physical or electronic and includes:

- any authority prepared by the agency;
- any offer and acceptance used by the agency;
- any receipt issued by the agency; and
- correspondence emanating from the agency.

Requirements for correspondence and documents: are your details stated correctly?

The legal entity that holds the licence, together with the business name and the registered address (not a post office box), must be identified on all documents and correspondence as being a licensed real estate and business agent. For example, as below:

SOLE TRADER >

Where Tom Smith is licensed and trades solely using a business name such as ABC Realty, the following identification must appear on all documents and correspondence:

**Tom Smith – Licensee
Trading as ABC Realty
Address
Licensed Real Estate and Business Agent**

PARTNERSHIP >

Where the partnership consists of two or more persons such as Tom Smith and Mary Smith and trades as ABC Realty the following applies:

**Tom Smith and Mary Smith – Licensee
Trading as ABC Realty
Address
Licensed Real Estate and Business Agent**

BODY CORPORATE >

Where a licence is issued to a body corporate such as ABC Pty Ltd, and uses the business name of ABC Realty the following applies:

**ABC Pty Ltd—Licensee
Trading as ABC Realty
ACN/ABN
Address
Licensed Real Estate and Business Agent**

Titling of general trust accounts

Agents are required to include the following information in the title of a general trust account:

- Licensed entity name and business name as recorded on the triennial certificate
- REBA Trust Account (the word 'account' can be abbreviated or in full); and
- 'TC' followed by the triennial certificate number.

**Example: ABC Pty Ltd (ABN 12 345 678 910) T/A ABC Realty
REBA Trust a/c TC 12345**

Where there is more than one general trust account (eg sales and rent), the account identifier should appear after the words REBA Trust a/c.

**Example: ABC Pty Ltd (ABN 12 345 678 910) T/A ABC Realty
REBA Trust a/c - sales TC 12345**

**ABC Pty Ltd (ABN 12 345 678 910) T/A ABC Realty
REBA Trust a/c – rental TC 12345**

Requirements for correspondence and documents: are your details stated correctly?

Please note the identification requirements under the *Corporations Act 2001*. The name of the company and its ACN/ABN number must be identified on all public documents including:

- documents required to be filed at the Australian Securities and Investments Commission (ASIC);
- statements of account;
- receipts;
- orders for goods and services;
- business letterheads;
- official company notices;
- websites;
- cheques; and
- brochures and leaflets advertising a specific service.

For more information about the above refer to: www.asic.gov.au.

Consumer Protection reminds all agents of the importance to review their documentation to ensure it complies with the above requirements.

With regard to authority documents, the use of a business name as opposed to the use of the licensed entity name does not disentitle an agent from receiving remuneration; however, this may constitute a breach of Section 41(2)(a) of the Act.

Agents are also reminded to ensure that their business name is currently registered with ASIC.

The registered business name is required to be recorded on the agent's Triennial Certificate in accordance with section 40(1)(a) of the Act. Further information about the requirement to register a business name can be found within **e-Bulletin issue 68** which was distributed on 15 August 2014.

Is your Appointment to Act valid?

The Department of Commerce (the Department) would like to remind agents and sales representatives of section 60(2)(c) of the *Real Estate and Business Agents Act 1978* (the Act) which states that:

“An appointment to act as an agent is not valid unless:

(c) the person obtaining the signature to the document gives a true copy thereof to the signatory immediately after the signing thereof with the onus of proof of which is upon the person obtaining the signature.”

Agents and sales representatives should be aware that the term “immediately” should be taken in its ordinary meaning, namely ‘straight away, without delay, with no time intervening’.

Agents should ensure that they retain documentation as evidence of the supply of the document to their principal being the client.

Other requirements to ensure the validity of the appointment to act are:

- The agency must be properly described in the appointment to act. The licensed entity, as it appears on the licence and triennial certificate, must be stated in addition to any business name under which it trades, according to section 41(2) of the Act. This includes listing the business physical address, not a PO Box address.
- Section 60(1) of the Act stipulates that commission cannot be received without a valid appointment to act. Further, if reward or further compensation is demanded without one, sections 60(1), 60(3) and 60(4) allow the State Administrative Tribunal to impose a \$5000 fine and may order the commission to be repaid.
- The appointment to act must comply with regulation 6BA of the Real Estate and Business Agents (General) Regulations 1979:
 - where any commission is expressed as a percentage or hourly rate, a maximum monetary amount must be given. This point will not affect the validity of an appointment to act but will affect the capacity to claim commission.
 - If expenses are to be recovered, the nature of those expenses must be specified as well as the method by which the expenses will be calculated. Also, the client must agree to the expenses and initial this on the document.
- The document must contain two statements to the effect that:
 - The commission, reward or consideration is not to be received pursuant to a scale fixed by law but is to be agreed between the agent and the person; and
 - The person to whom the services are to be rendered by the agent may seek assistance from the Commissioner for Consumer Protection in relation to disputes as to the commission, reward or other valuable consideration to be received by the agent.
- The principal must initial the agreed commission as per section 16 of the Code of Conduct for Agents and Sales Representatives 2011.

Should agents have queries in relation to ensuring they have a valid appointment to act, they can consider contacting the Department via 1300 30 40 54 or emailing consumer@commerce.wa.gov.au



Discrimination in the rental market

The Department of Commerce (the Department) would like to remind agents, and property managers of their obligations to treat rental applicants and tenants equally and fairly.

Under the *Equal Opportunity Act 1984* (the EO Act) it is unlawful to discriminate against someone seeking to rent or someone already renting private accommodation based on race, religious or political conviction, impairment, age, sex, pregnancy, marital status, gender history or sexual orientation. This applies to either the applicant/tenant or their relatives and associates.

In addition it is unlawful under the *Residential Tenancies Act 1987* to refuse an application for rental of premises based on the applicant having a child or children who will reside in the premises.

By reason of gender, race, religion, impairment, sexual orientation etc agencies should not:

- refuse to sell or rent out a property;
- process a rental application less favourably to other applications for the same property (this includes deferring a person's application to a lower order of precedence);
- change the terms upon which accommodation is offered such as imposing a higher bond or requiring guarantors;
- change the terms upon which the accommodation has already been provided;
- deny or limit access to a benefit or facility that is available to other tenants;
- refuse to extend or renew accommodation; or
- evict tenants.

The EO Act is overseen by the Equal Opportunity Commission (EOC), who may investigate and conciliate complaints of discrimination. Further information can be found on the EOC [website](#) or in the joint EOC and the Department publication *Accommodating everyone know your rights as a property owner or agent* available on the Department's website.

Do you need to update your address or employment details?

Consumer Protection is concerned some sales representatives and agents are failing to notify the Commissioner for Consumer Protection (the Commissioner) when they change their address. Sales representatives are also failing to notify the Commissioner when they change their place of employment.

Under section 51(1) of the *Real Estate and Business Agents Act 1978* (the Act), a registered sales representative is required to provide **written** notification to the Commissioner within 14 days of either commencing or ceasing employment as a sales representative with a licensed agent or developer.

Section 51(2) of the Act requires a registered sales representative to provide **written** notification to the Commissioner of a change of address as soon as practicable after the change occurs.

Sales representatives who fail to advise the Commissioner of their change of details commit an offence against the Act, which may result in a disciplinary proceeding and a \$2,000 penalty.

Agents are required under section 35 of the Act to provide the Commissioner with **written** notification within 14 days of commencing or ceasing to carry on business as an agent.

Having accurate details means Consumer Protection can send notices, renewals and other relevant information to the industry.

The written notification of the change, along with your licence/registration number, can be provided to the Commissioner via **email**, **online** or can be posted to:

The Department of Commerce
Att: Licensing
Locked Bag 14
CLOISTERS SQUARE WA 6850

Contact details

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

- If your enquiry relates to your **licence or registration**, an 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 of Commerce (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 disclosure of material facts to buyers and tenants, reminder for trust account audits, amendments to the information for tenant forms, lodgement of security bonds with Bond Administrator, fines issued for unregistered sales representatives as well as fines and bans issued for trust account breaches. 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 of Commerce's (the Department) **website 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**