



settlement **news**

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

A Welcome from the Commissioner

With the transfer of responsibility for the regulation of several industry boards to Consumer Protection now well behind us, I thought it would be a good opportunity for me to thank those who assisted during both the transitional period and importantly the Boards themselves, that oversaw the real estate and settlement industries in Western Australia. It's also a great opportunity for me to discuss a number of the positive changes that are occurring now and are set to occur into the future.



Tenancies Act 1987. The changes will also position the local property industry for the proposed national harmonisation of licensing under the National Occupational Licensing System, which was originally scheduled to commence on 1 July 2012 for the real estate industry and as soon as possible after 1 July 2013 for the settlement industry, but has since been delayed. For further information on National Occupational Licensing please see the relevant article later on in this publication.

The Department is very aware of the high quality of service that the Boards provided to the industry and is committed to ensuring that this high standard is maintained. Core programs initiated by the Boards, such as the Compulsory Professional Development Programs and Proactive Compliance Programs will continue as part of this commitment.

I would like to remind the industry of the continued need to comply with the requirements of the *Settlement Agents Act 1981* and the Settlement Agents' Code of Conduct 1982. Consumer Protection will continue to investigate all matters in regards to the adherence of

Firstly, I would like to express my gratitude toward the former Boards and their staff, for the outstanding work they did in regulating the industries over the years, and in assisting during the transitional period. They have left very big shoes to fill, but I feel with their help in the transition, the planning that we have undertaken, and the staff we are very privileged to have, we will be able to maintain the standards of performance that they have upheld for so long.

Bringing together the regulation of a number of industries under the Consumer Protection umbrella results in a more streamlined operating structure with a single regulator across a number of property-related occupational areas and better integration with generalist laws such as the *Australian Consumer Law* and *Residential*

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the aforementioned legislation. In addition, industry participants are reminded of the need to comply with the requirements of the Australian Consumer Law (the ACL). More details on the ACL are provided elsewhere in this publication.

A newly formed Interim Property Industry Advisory Committee (IPIAC) consisting of eight industry members has been established in order to represent the views of the real estate, settlement and land valuer industries in Western Australia. The interim committee will become the Property Industry Advisory Committee (PIAC) after it has received parliamentary approval. The committee will advise the Minister and myself in regard to many significant current and future

undertakings including industry regulation, training and education.

Industry will continue to be kept informed through the continuation of quarterly newsletters, e-Bulletins and educational publications that will now be produced by the Consumer Protection Division of the Department of Commerce.

While we have tried to keep disruption minimal, we acknowledge that minor changes have been required and as such I'd like to thank you, the industry, for your patience and understanding during this transitional period. I truly believe that these changes will be for the betterment of the industry and the public of Western Australia, and I am enthusiastic about what lies ahead.

Finally, I wish to thank both AICWA and REIWA and in particular Ciaran Westland, Graham Glasson, Alan Bourke and Anne Arnold, for their assistance in responding to the most recent property fraud in WA. The professionalism and responsiveness of both industries to develop a comprehensive response to this unfortunate incident has had an unexpected benefit in cementing positive relations at the time of transition.



Regards

Anne Driscoll

*Commissioner for
Consumer Protection*

Landgate Interest Enquiry

The Interest Enquiry service is a relatively new online search tool provided by Landgate which allows parties to obtain the details of interests that may be held on a property. A property interest is an interest that affects the use of land, is supported by legislation and has a government agency as its custodian. Examples of property interests currently held on Landgate's system include Native Title and Indigenous Land Use Agreements, Municipal Heritage Inventory listings and Native Vegetation Conservation requirements.

The Interest Enquiry service builds on Landgate's traditional provision of Certificate of Title in recognition that increasingly, property interests have been established by a range of government agencies and have not been included on the Certificate of Title.

An Interest Enquiry Reference Group has been established to garner support and raise awareness for the Landgate Interest Enquiry service as well as assist Landgate in the identification of further interests that should be added to the service to improve the level of protection it currently provides to consumers.

A meeting of the group was held on 19 July 2011 and was attended by representatives from Landgate, Consumer

Protection, Australian Institute of Conveyancing WA Division (AICWA), the Real Estate Institute of Western Australia (REIWA) and other property industry stakeholders.

As an outcome of the meeting, a number of key interests were identified that participants believe should be included on the Interest Enquiry service as a priority. Landgate are exploring options to enable these enhancements and Consumer Protection will keep you regularly updated on developments regarding this service as they occur.

It is recommended that all agents avail themselves of the service. To find out more information visit the Landgate Interest Enquiry website at <http://www.landgate.wa.gov.au/corporate.nsf/web/Interest+Enquiry> or call 08 9273 7341.

New licensing fees

As at 1 July 2011 fees related to new licence and registration applications and triennial certificate renewals were increased slightly to keep pace with the annual increase in the CPI.

These changes are in line with regular annual increases to the fees and are not related in any way to the abolition of the Board. The new licensing fees are outlined below:

Settlement Agent fees

Settlement Agent Licence (individual)	
Type of Fee	Cost
Grant of Licence/Triennial Certificate	\$688
Fidelity Guarantee Account	\$150
Total	\$838

Settlement Agent (firm and body corporate)	
Type of Fee	Cost
Grant of Licence/Triennial Certificate	\$900
Fidelity Guarantee Account	\$150
Total	\$1,050

Triennial Certificate Renewal (Individual, firm and body corporate)	
Type of Fee	Cost
Triennial Certificate	\$442
Fidelity Guarantee Account	\$150
Total	\$592
Renewal of Triennial Certificate with holding status	\$208

Holding fee	
Type of Fee	Cost
Holding fee	\$208

Property Industry Advisory Committee

As part of its reforms to the administration of licensing in the settlement and real estate industries the Government decided to establish a statutory Property Industry Advisory Committee (PIAC).

It is expected that Cabinet will endorse the final membership of this Committee by early November 2011. The role of the Committee will be to provide advice to the Minister for Commerce, the Hon Simon O'Brien MLC, and the Commissioner for Consumer Protection, Anne Driscoll, on the regulation of the land valuation, real estate and settlement industries in Western Australia. The Committee will also advise on the criteria required to receive grants from the Homebuyers Assistance Account, and any other issues as requested by the Minister or Commissioner.

An Interim Property Industry Advisory Committee has been in place for sometime to provide advice to the Minister and Commissioner. The members of the Interim Property Industry Advisory Committee are Graham Glasson and the Chief Executive Officer (currently vacant) from the Australian Institute of Conveyancing WA; Alan Bourke and Anne Arnold from the Real Estate Institute of WA; Ross Hughes and Gail Walker from Australian Property Institute; Mark Atkinson from the Strata Community Australia (WA) and Radar Luttrell from the Australian Institute of Business Brokers WA.

New contact details, eBulletins, Newsletters

With the transfer of the regulatory functions to Consumer Protection it is a good time to ensure that you have all the correct and current contact details should you need to make any enquiries to the Department.

The telephone numbers have largely remained unchanged. Thus for any specific licensing enquiries please continue to call (08) 9282 0839. For any compliance issues, please call (08) 9282 0874.

Consumer Protection's generic contacts should be used for any other issues. Therefore, for general enquiries you should telephone 1300 30 40 54 or email consumer@commerce.wa.gov.au.

Although the Board has been abolished, the means for disseminating information to the settlement and real estate industries has remained the same. The responsibility for the distribution of quarterly newsletters and regular e-Bulletins and updates to the website now falls to the Department's Consumer Protection Division, which will now produce new Settlement Industry News and Real Estate Industry News, in addition to regular e-Bulletins.

If you would like to sign up for the e-Bulletin mailing list, or wish to be sent the electronic copy of the newsletter in place of the physical copy, please send an email to propertyindustriesnews@commerce.wa.gov.au. Please note that this mailbox is not for email enquiries regarding licensing or compliance matters, as those should now be sent to consumer@commerce.wa.gov.au.

The SASB 'Contact Us' Mailbox is currently being phased out and will shortly become inactive.

Residual Current Devices (RCDs) and smoke alarms— a timely safety reminder

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

Legislation aimed at reducing the number of deaths and injuries caused by electrocution and structural fires was introduced in 2009. This legislation requires the installation of RCDs and smoke alarms prior to residential properties being sold.

Prior to sale

- Since 9 August 2009 it has been a requirement that two RCD's must be installed in all residential properties to protect all power point and lighting circuits prior to the transfer of ownership of the property.
- Since 1 October 2009 it has been a requirement that mains powered smoke alarms must be fitted in all existing

residential buildings prior to sale. In dwellings where the construction of the building does not permit a space to conceal the wiring and there is no other suitable alternative location or where mains power supply is not available, the legislation allows for smoke alarms with a non-removable ten year battery life to be installed in lieu of mains powered smoke alarms.

Penalties apply if properties do not comply with the requirements to install the required RCDs and smoke alarms and the land title is transferred to another person. Failure to install RCDs risks exposing the seller 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, or smoke alarms with a non-removable ten year battery life, risks exposing the seller of a property to an infringement notice or a fine of up to \$5,000.

These legislative changes were 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 agents.

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.

Australian Consumer Law

The *Competition and Consumer Act 2010* (the Act) is the piece of legislation that dictates how businesses must undertake dealings both between themselves, and also with consumers. The Australian Consumer Law (ACL) is a schedule to the Act and creates a single, national consumer law that applies nationally. The *Fair Trading Act 2010* also references and applies the ACL as WA Law.

Two key components of the ACL that are particularly relevant to the settlement industry are its provisions that cover misleading and deceptive conduct, and false and misleading representations. It is important to note that **it is a business' actions and statements that matter, not its intentions.**

A business can be found to have misled or deceived through the

actions of a person, even if it did not intend to do so.

Misleading and deceptive conduct

It is unlawful for a person to make statements that are misleading or deceptive, or would be likely to mislead or deceive. 'Conduct' can include, but is not limited to, actions or statements including advertisements and promotions,

quotations, or any statements or representations made by a person.

False and misleading representations

It is unlawful for a business to make false or misleading representations about goods or services when supplying, offering to supply, or promoting those goods or services.

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National Occupational Licensing

In April 2009 the Council of Australian Governments agreed to establish a national occupational licensing system for specified occupations, including the property industry, in order to streamline regulation across states. The proposed system is intended to result in a number of benefits, including improved business efficiency, productivity, and consumer confidence, while also improving labour mobility.

National occupational licensing for real estate agents, sales representatives, real estate auctioneers and strata managers was originally set to commence on 1 July 2012, with national licensing for conveyancers (settlement agents) and land valuers to follow after 1 July 2013.

The national regulations for the first wave occupations were scheduled to be published in draft form in July of this year for a six week period of public comment. They have been delayed and the latest likely date for their release is now December 2011, with consultation being extended through to mid-March 2011.

Because of the need to ensure affected stakeholders can see the detail of what the national occupational licensing scheme will look like, the WA Government has decided to defer any further

debate on the national occupational licensing legislation for the time being. Instead, the Government will wait until the consultation on the draft national regulations has been completed.

Once it is clear what the final regulations will look like, and what the views of Western Australian stakeholders are, the Government will determine its final position in relation to how to proceed with national occupational licensing in Western Australia.

WA does not currently licence strata managers and there is no obligation under national occupational licensing to introduce licensing for this occupations. The WA Government is, however, undertaking public consultation on the matter. A consultation regulatory impact statement and discussion paper on strata manager

licensing has been released for public comment and can be downloaded from www.commerce.wa.gov.au/consumerprotection (see *Consultations* under the *Resources* tab) or collected from Consumer Protection reception at the Forrest Centre, Level 7, 219 St Georges Terrace, Perth.

Information regarding progress with the implementation of national licensing, including the establishment of the proposed new National Occupational Licensing Authority (NOLA) and the release of draft regulations and accompanying regulation impact statement will be available on the NOLA website (www.nola.gov.au), however Consumer Protection will ensure you are kept informed of all updates through future editions of the Settlement and Real Estate e-Bulletins and newsletters.



Australian Consumer Law (continued from page 5)

It is also unlawful to make a false or misleading statement in connection with the sale of land. Making a false or misleading representation is an offence and the maximum fine is \$220,000 for an individual and \$1.1 million for a body corporate.

Whilst settlement agents are not directly involved in the sale of property, they are still at risk of breach both the misleading and deceptive conduct and also false and misleading representations provisions of the ACL when making representations about the status of settlements.

Itemised bill on request

Additionally it is prudent that settlement agents be aware of clause 101 in the ACL that requires agents to, if requested by their client, provide an itemised bill of the costs of providing their services. While it has always been a requirement of the Settlement Agents' Code of Conduct that, if requested by their client, an itemised bill of costs be provided, the ACL provides greater detail as to what should be placed in that itemised bill. As per the requirements of the ACL, upon it being requested, an itemised bill of costs must contain information which shows:

- how the price of the services was calculated;
- the number of hours of labour that related to the supply of the services and the hourly rate for that labour; and
- if applicable, a list of the materials used to supply the services and the amount charged for those materials.

Real estate scam and property fraud prevention

Following on from the recent property fraud scams regarding the sale of a property without the knowledge of the owner, Consumer Protection, AICWA Landgate and REIWA have been working together to define additional practices that need to be introduced in the industry to minimise the likelihood of property fraud in the future.

Many of these measures have now been introduced. One pivotal part of the approach to help industry expose these scams at an early stage and prevent this type of scam reoccurring has been the amendment of the Settlement Agents' Code of Conduct 1982 (the Code).

Guidance notes explaining the above changes to the Code in further detail were recently sent to all licensed agents to disseminate to their staff. These Guidance Notes have been reproduced in part below. The full version the Guidance Notes along with the amended Code of Conduct for Settlement Agents can be located at the Consumer Protection website www.commerce.wa.gov.au/ConsumerProtection/SettlementGuidanceNotes

Similarities in both frauds

While the circumstances relating to the fraudster's dealings with both settlement agents were slightly different, there are some distinguishing features in both cases:

- the settlement agents received referrals from real estate agents who had prior relationships with the real owners as a result of acting as their property managers;
- despite masquerading as owners of property in Western Australia, the fraudsters did not appear to know or fully understand the process of settlement in

this state, which resulted in delays in them providing correct documentation and signatures to effect settlement;

- the fraudsters corresponded with the settlement agents via a generic email address eg Hotmail, Yahoo; and
- the fraudsters sought an urgent settlement to enable them to invest in a petro chemical plant and asked that the proceeds from settlement be deposited in a bank in China.

The need to remain vigilant in all cases

In the two previous fraud cases the real owner of the property was overseas when the fraud was committed.

It is not necessarily the case that any future property fraud attempts will occur along the same lines as the two recent cases.

For example, it may not always be the case that a fraudster is out of the state, but instead approaches an agent in person requesting the sale and settlement of a property. It may even be that the property to be sold and settled is currently occupied by a person who masquerades as the owner, or alternatively the property for sale is vacant land.

A further possibility is that the person wanting to sell the property is a party to either a family/business dispute or fraud and has inside knowledge of the parties.

Therefore settlement agents need to be alert in all sales situations.

For all of these reasons it is imperative that:

1. When effecting the settlement of a property, a settlement agent confirms he/she is dealing with the true owner, or the person legally entitled to sell the property.
2. At all times when dealing with a client, a settlement agent is vigilant to ensure they continue/are dealing with the true owner or the person legally entitled to sell the property.
3. Documented procedures are in place and consistently applied to ensure verification of identities for all settlements.
4. Appropriate arrangements are in place to ensure security of documents and privacy of clients' information.

What is being done to minimise the risk of property fraud?

Action is being taken on several fronts.

1. Amendments have been made to the Codes of Conduct for settlement agents (and real estate agents) to require Client Identity Verification (CIV) to be undertaken.
2. Changes have been implemented by Landgate to improve identity security through new witnessing and CIV requirements for overseas sellers in the execution of transfer of land documents. A new form of caveat to prevent improper dealings has also been introduced.
3. In addition, Landgate is preparing an identity certification regime that will apply to all transferors, regardless of where the seller resides.
4. All lenders have been alerted to ensure careful scrutiny before releasing mortgages over Certificates of Title.

5. In 2012, CIV and other procedures to manage fraud risks will be included as part of mandatory Compulsory Professional Development training.

Amended Code of Conduct

To minimise the risk of successful property fraud, the Settlement Agents' Code of Conduct (the Code) has been amended effective from **1 November 2011**.

The Code has been amended to include a new rule which requires settlement agents to exercise due care and skill. The insertion of this requirement brings the Code more into line with the Real Estate Agents and Sales Representative Code of Conduct and the Australian Consumer Law.

A new article has also been included in the Code. Under the amended Code, as soon as practicable after receiving instructions to act in the settlement of a property and prior to effecting settlement, an agent must ascertain the names of the owner(s) of the property and make all reasonable efforts to: verify the identity of the owner(s); the identity of the person issuing the instructions; and their authority to settle (transfer) the property.

In carrying out CIV checks, for overseas sellers, settlement agents must follow CIV protocols issued by the Registrar of Titles for CIV and witnessing requirements if transfer documents are executed outside of Australia.

Until such time as the Registrar issues further CIV protocols for all other property transfers, settlement agents should put in place, as a minimum, a 100 point CIV check to verify the identity of the owner(s) or the identity of the person issuing the instructions to meet the requirements of the amended Code.

Once the Registrar of Titles issues instructions for CIV for non overseas sellers then those protocols for identification will replace those in this guidance note.

Inheritance Scam

One of the most common scams reported to the Department is an advance fee fraud known as an inheritance or beneficiary scam. The Department has received a number of reports of a potential purchaser contacting a vendor or agent and advising them they are set to inherit a significant sum of money from an overseas relative and they wish to use the proceeds to purchase a listed property. The purchaser will advise the vendor or agent that in order for the transfer of the inheritance to progress, a fee, often in the vicinity of several thousand dollars, must be paid in order to cover an assortment of costs and/or taxes. Settlement agents need to be aware of the potential for this scam when dealing with buyers who advise that they are purchasing a home with the proceeds of an inheritance, especially if they require assistance in raising a release fee.

The Department would also like to remind agents to be cautious of any potential buyers that claim to be overseas investors. Whilst initial contact may be difficult to distinguish from that of a genuine purchaser, scammers may attempt to initiate the trademark transfer of monies via a third party in follow up contact, and will often make mention of a 'financial professional' or 'lawyer' to add credibility to their claims. As per all overseas transactions, agents should ensure they have completed their due diligence, as spotting the difference between a scam and a genuine prospective buyer can sometimes be extremely difficult.

e-Conveyancing (NECS)

National E-Conveyancing Development Limited (NECDL), the company charged with developing a national electronic system for property exchange, has signed an agreement with technology consulting company Accenture to design and build a national e-conveyancing platform for Australia.

The national e-conveyancing system to be known as "PEXA" (Property Exchange Australia), is intended to remove the requirement to use paper based systems for completing property conveyancing transactions, including the transfers of title and mortgage related aspects, and the various payments which are involved.

Despite significant effort over the past ten years, there has previously been no agreement on a single national system. Instead parallel work has been ongoing in a number of states, including Electronic Conveyancing Victoria, the National Electronic Conveyancing Office and others. These streams of development have now converged under NECDL.

NECDL was established in early 2010 in response to the inclusion of e-conveyancing on the Council of Australian

Governments (COAG) agenda and has sought to bring a commercial and a national focus to the task.

NECDL is majority owned by the State governments of Victoria, New South Wales, Queensland and Western Australia.

The delivery of a national e-conveyancing platform forms part of the COAG micro-economic reform agenda and is one of the deregulation priorities under the *National Partnership Agreement to Deliver a Seamless National Economy*.

PEXA plans in due course to be available in all states and territories for use by any party to a conveyancing transaction in Australia. It is expected to move into an initial operational stage in late 2012 with the first property transactions occurring after that date.



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. The producers of this publication expressly disclaim any liability arising out of a reader's reliance on information in this publication.

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

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