



# settlement **news**

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

## A new year message from the Commissioner

Looking back over the past 12 months a number of significant changes to consumer protection laws and administrative arrangements have occurred. I congratulate the industry in integrating these and in the cooperative approach to addressing industry issues.



Whilst for industry the transition resulted in what appeared to be mainly cosmetic changes, a great deal of work was undertaken behind the scenes to ensure a smooth handover of the Board's responsibilities.

In the latter half of the year the industry was affected by the second occurrence of a property scam in which a house was sold without the owner's knowledge. Consumer Protection, REIWA, AICWA and Landgate worked together to put in place procedural and legislative changes to help prevent a recurrence of a scam of this type. Amendments to the Settlement Agents' Code of Conduct came into effect in November 2011 and were supported by the release of a set of Guidance Notes detailing the changes and providing direction as to how settlement agents could best meet the new requirements.

Looking forward throughout 2012, there are many further challenges ahead. The introduction of National Licensing will be the subject of further consultation and its potential introduction is something Consumer Protection will closely monitor. It is a key priority of Consumer Protection that the views of the Western Australian settlement industry are



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Last year commenced with the introduction of the new Australian Consumer Law (the ACL) which brought into line various consumer laws across Australia. The introduction of the ACL has benefited the community by simplifying and streamlining consumer law, giving consumers the same rights and protections regardless of where they are in Australia and reducing business operators' compliance burdens by creating greater clarity in regards to their rights and obligations.

In July last year the settlement industry was involved in the biggest regulatory transition witnessed in recent years as several industry boards, including the Settlement Agents Supervisory Board, were abolished and its regulatory and disciplinary functions transferred to Consumer Protection.

## A new year message from the Commissioner (continued from page 1)

heard, and the high standards of compliance and education in the State are maintained should licensing procedures be transferred to a new, national process.

The Property Industry Advisory Committee, established in full in November last year, will continue to represent industry across all facets of governance throughout 2012, most notably education, regulation

and training. An important aspect of industry education, the Compulsory Professional Development program will continue and further details can be found within this publication.

As a final note, I would like to pass on my thanks to all who made 2011 as productive and positive a year as it was, and I hope Consumer Protection and industry continue to foster their positive relationship to

ensure an equally productive and positive 2012.

Regards,



**Anne Driscoll**  
Commissioner for  
Consumer Protection

## New Seniors' Housing Centre offers options for over 55s

The Consumer Protection Division of the Department of Commerce has launched the Seniors' Housing Centre.

The Centre provides a free information service on the many housing options available to the over 55s, from modifying or re-developing existing homes, to moving into strata titled community housing, renting or moving into a residential park or retirement village.

Located on the ground floor of 219 St Georges Terrace, Perth, the Centre offers a chance for people to meet face-to-face with Consumer Protection officers to discuss any concerns or raise any queries they may have about seniors' housing. People can visit without an appointment, telephone or send an email to obtain assistance and information.

As part of the service, Consumer Protection publishes *Your Home: a guide to housing options for people over 55*. The booklet contains a wealth of information on the important matters to consider when making the decision to stay at home or find new accommodation, as well as the details of organisations that can provide further advice and assistance.

The publication is available from the Seniors' Housing Centre website [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au), or can be obtained by phoning 1300 367 057 or emailing [seniorshousing@commerce.wa.gov.au](mailto:seniorshousing@commerce.wa.gov.au)

## Compulsory Professional Development in 2012

Consumer Protection reminds settlement industry participants that the requirement to undertake Compulsory Professional Development (CPD) remains unchanged for 2012.

The CPD requirements for 2012 remain the same as previous years with all individual licensees who possess a current triennial certificate required to attain six CPD points within this calendar year. Of these six points, a minimum of four points are to be earned from core activities and two points from elective activities.

The core training topics for 2012 are:

- Risk Management – this session will focus on the prevention/

detection of real estate property fraud and other matters.

- Ethics; disclosure and conflict of interests; agent/principal relationship; valid appointment to act.

The prescribed elective training topics for 2012 are:

- Trust account reconciliation (required by all new settlement agent licensees within the first six months of operation).

- Understanding self-managed superannuation funds for real estate purchases.
- Dealing with disposition statements.
- Interpreting contracts.

Should you have any queries concerning the CPD program for the settlement industry contact (08) 9282 0584 or email [cpd@commerce.wa.gov.au](mailto:cpd@commerce.wa.gov.au)

# Landgate changes

**The following information was sourced from Landgate Customer Information Bulletins 208 and 210. Customer Information Bulletins may be updated or superseded by Landgate. Updated CIBs are published on Landgate's website at [www.landgate.com.au](http://www.landgate.com.au)**

## **Caveat (Improper Dealings)**

In order to reduce the risk of WA landowners being the subject of improper dealings on their property, Landgate now offers a service where a Caveat (Improper Dealings) can be lodged. The caveat, once lodged, will stop the registration of any instruments or documents that would ordinarily need to be signed by the owner, for example:

- transfers;
- mortgages; and
- leases.

A Caveat (Improper Dealings) Form C4 must be made in the name of all the owners as recorded on the Certificate of Title for the relevant property. If one of the owners does not want to be part of the caveat then it cannot be lodged. The caveat can be signed and lodged with Landgate by the owners themselves, or by a solicitor acting on behalf of all the owners. The solicitor must be instructed by all owners to act for them in the preparation and lodgement of the caveat. A licensed settlement agent does not currently have authority under the *Settlements Agents Regulations 1982* to sign and lodge a caveat to prevent improper dealings on behalf of land owners. Consumer Protection supported settlement agents in being able to lodge caveats on behalf of landowners, but this is not currently possible.

Please note that owners who have mortgaged properties should review their mortgage terms and consult with their lending institution before lodging a Caveat (Improper Dealings) as the terms and conditions of the mortgage may

prevent the lodgement of any caveat without the mortgagee's consent.

In order to remove the caveat, all the owners must present themselves in person at the same time at Landgate's Midland office and satisfy, as a minimum, the requirements of a 100 point identity check using original documents, not copies. Only the owners of the property can remove the caveat in person. For example, if the property was owned by three persons as tenants in common, and one of the owners did not wish the caveat to be lodged, then the other owners would not be able to lodge a Caveat (Improper Dealings).

In the same way, once a Caveat (Improper Dealings) is in place, if one of the three owners did not want it to be withdrawn, then the other two owners could not successfully lodge a Withdrawal of Caveat form.

The Withdrawal of Caveat (Improper Dealings) can only be lodged at the time of witnessing. A Power of Attorney cannot be used to withdraw the caveat. The strength of a Caveat (Improper Dealings) is that the only way to remove it is for all the owners to attend in person at Landgate's Midland office to identify themselves to the satisfaction of the Registrar of Titles.

Due to the operation of law, the Caveat (Improper Dealings) will not prevent the following situations occurring, including but not limited to:

- Mortgagee exercising a power of sale would be able to use section 138B of the *Transfer of Land Act 1893* if the application is not being signed by the owners;

- Sale of the property by a Local Government for non-payment of rates;
- Sale by the Sheriff under a Property (Seizure and Sale) Order;
- In the case of deceased owner(s) Survivorship and Transmission; and
- Sale of land under the *Criminal Confiscation Act 2000*.

The current regulated fee of \$160 applies for the lodgement and withdrawal of each caveat.

For further information contact Landgate's Advice Line on (08) 9273 7044 or email [advice@landgate.wa.gov.au](mailto:advice@landgate.wa.gov.au)

## **Transfer of Land Documents executed by the Transferor(s) outside of Australia**

As a further means to reduce property fraud within Western Australia, the Registrar of Titles has introduced the following witnessing and identity verification requirements for transfer of land documents executed by transferors outside of Australia.

*1. The Registrar of Titles will only be satisfied where the execution of a transfer of land document by the transferor(s) is witnessed by an Australian consular officer (where witnessing requirements apply) when that execution occurs outside of Australia.*

An Australian consular officer is defined by section 145(4) of the *Transfer of Land Act 1893* as a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside the

*Continued on page 4*



## Landgate changes (continued from page 3)



Commonwealth, such as:

- Ambassador;
- Minister;
- High Commissioner;
- Head of Mission;
- Commissioner;
- Chargé D'Affaires;
- Consul or Secretary at an Embassy;
- High Commissioner's Office;
- Legation or Other Post;
- Consular-General;
- Consul;
- Vice-Consul;
- Trade Commissioner; and
- Consular Agent

*2. Prior to witnessing the execution of the transfer of land the Consular Officer is to undertake an identity check of the transferor(s) and provide certified copies of all the identity documents sighted.*

For each transferor the Consular Officer is required to identify the transferor prior to witnessing execution of land documents by sighting all of the following **current** and **original** documents:

- a rate notice issued by the local Government Council for the property being sold;
- the transferor(s) passport; and
- a drivers licence for the transferor(s).

Where a transferor is a company or other incorporated body, the Registrar of Titles requires the

identity of the natural person executing the transfer of land on behalf of the transferor to be verified by a Consular Officer using the documents identified above.

The Consular Officer must take a copy of the documents and certify they are a true and correct copy of the original documents presented. On the certified copy of the documents the Consular Officer must clearly state their name, position and the consular office where the certification took place as well as the date and time of the certification.

After being satisfied with the transferor's identity, the Consular Officer must then witness the transferor execute the transfer of land document. All of the required witness details must be clearly printed on the transfer of land form.

The transferor(s) is responsible for providing the original executed transfer of land form and the original certified copy of the identity documents to their settlement agent.

In exceptional circumstances, the Registrar of Titles may be satisfied with an alternate witness. Any request seeking the Registrar of Titles' approval to use an alternate witness must be made in writing prior to the execution of the transfer of land document. The requirement to travel some distance to a Consular Office will not, on its own, be considered as an exceptional circumstance.

*3. Settlement agents are to provide the original certified copies of the identity documents sighted by the Consular Officer who witnessed the transfer of land to the Registrar of Titles at the time of lodging the transfer of land at Landgate.*

Transfers of land executed by the transferor(s) outside of Australia and lodged with Landgate for registration

by the Registrar of Titles must be accompanied by:

- a) an original statutory declaration made by the settlement agent acting for the transferor(s); and
- b) the original certified copy of the transferor's identity documentation sighted by the Australian Consular Officer.

The statutory declaration made by the settlement agent at item 'a' above must contain statements detailing, but not limited to, the following:

- they have satisfied themselves that the registered proprietor on the certificate of title for the property being sold is the one from whom they are taking instructions; and
- they have satisfied themselves that the name(s) on the identity documents certified by the Australian Consular Officer is consistent with the name of the registered proprietor on the certificate of title or their authorised legal representative (eg Power of Attorney) and has the legal authority to sell the property that has been sold; and
- any additional steps taken to satisfy themselves of the person's identity and authority to transact.

It is extremely important that settlement agents familiarise themselves with the requirements set out in Landgate's Customer Information Bulletin 210 as the Register of Titles may not register the transfer of land if the requirements are not complied with. For the complete details regarding the new requirements settlement agents **should** visit the Customer Information Bulletin section found on Landgate's website [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)

# Make sure you renew on time

**Agents should make sure that applications to renew relevant triennial certificates are lodged with Consumer Protection well before the expiry date to ensure their businesses are not at risk.**

The Commissioner for Consumer Protection will be taking a firm stance on renewal requirements. An agency will not be permitted to trade after its triennial certificate has expired. This renewal policy has been discussed with industry stakeholders who accept and support the Department's position.

Timely renewal of triennial certificates is important because, as you would know, the Fidelity Guarantee Account (FGA) is in place to provide pecuniary protections for consumers under the *Settlement Agents Act 1981* (the Act).

One of the criteria which makes consumers eligible to claim against the FGA is dealing with an agent that holds a current triennial certificate issued in accordance with the Act. The Commissioner is committed to ensuring that consumers are not exposed to risk by dealing with agents who are not authorised to trade. It is therefore imperative that you **submit your renewal before the expiry date**.

While the Act allows a period of one month after the expiry date within which a triennial certificate can be renewed, this time may be required for the Commissioner to make a determination about the application, particularly when the renewal application is received close to the expiry date. Under the Act, the renewal must be **finalised** within one month after the expiry date in order for the triennial certificate to continue. This period should not be used as "extra time" to lodge an application.

If you fail to renew your triennial certificate or have been advised that your application has not been approved by the Commissioner by the end of the month following the expiry date **at the latest**, your triennial certificate will cease to have effect and you will be required to immediately cease business, close your trust account and arrange a termination audit. To assist you with ensuring your triennial certificate remains current, Consumer Protection will send out two reminder notices. The first will be sent approximately three months prior to your expiry date and the second will be sent approximately one month prior. You are strongly encouraged to begin the renewal process when you receive the first reminder notice. Waiting until a month before the expiry date may not leave enough time to complete the renewal process if there are unforeseen problems.

Please note that sending reminder notices is a courtesy and is not required by law. If you have not updated your address details with us or do not receive the notice for other reasons, your certificate will still expire if a renewal is not approved in time. It is therefore imperative you know when your triennial certificate renewal falls due and ensure you take the appropriate steps to renew it on time.

If you intend to cease trading when your triennial certificate expires, but think you may recommence in future, you can place your licence on hold by paying the prescribed

holding fee. As your triennial certificate will not be in place, you must cease all trading, close your trust account and arrange a termination audit. That is, you cannot place your licence on hold while you finalise your renewal application.

Don't forget – if you are currently the licensed director and/or the person in *bona fide* control of an agency, expiry of your individual triennial certificate will affect the ability of the trading business to continue to operate. If your triennial certificate expires, the agency will also have to cease all activity.

## **Triennial certificates already on hold**

If your triennial certificate and the respective licence are already on hold, you must pay a holding fee **before** the holding period expires if you do not want your licence to expire. The law does not permit the acceptance of holding fee payments after the expiry date in any circumstances. Section 30(3a) of the Act states a licensee ceases to be licensed if they fail to pay the Commissioner in accordance with the Settlement Agents Regulations 1982. Once again, we will endeavour to assist you with this requirement by sending a reminder notice approximately two months in advance of the expiry date.

## Change to settlement agent triennial certificate renewal requirements

In response to issues raised with the Commissioner for Consumer Protection, a review of the settlement agent triennial certificate renewal requirements has been undertaken.

As a result, renewal applications no longer need to include a national police certificate or the financial details of the licensee. Applications must consist of the appropriate form, fee, Previous History Record form and Compulsory Professional Development training log, where applicable. Applications will continue to be lodged through participating Australia Post outlets. All online renewal forms have been updated to reflect these changes. To ensure renewals are finalised in time, agents should submit their applications well before their licence expires.

For any enquiries about the new renewal requirements or any other licensing issues, please contact via phone (08) 9282 0839 or email [licensingenquiries@commerce.wa.gov.au](mailto:licensingenquiries@commerce.wa.gov.au)

## Jardine Lloyd Thompson reappointed as brokers to the Professional Indemnity Insurance Master Policy

The Master Policy for settlement agents' Professional Indemnity and Fidelity Insurance has been renewed with Jardine Lloyd Thompson (JLT).

Settlement agents must provide the Commissioner with a certificate detailing their current professional indemnity and fidelity insurance before any renewal or new licence application can be processed.

Under section 35 of the *Settlement Agents Act 1981*, the Commissioner is able to enter a "Master Policy Agreement" with an insurance provider on behalf of all licensed agents. Section 35(1) provides:

*"The Commissioner may, from time to time, make arrangements for or in respect of the provision to licensees of fidelity insurance and professional indemnity insurance on such terms as the Commissioner thinks fit and, for that purpose, may, from time to time, enter*

*into a Master Policy Agreement with an insurer appointed by the Commissioner and do all such acts or things that the Commissioner deems necessary or expedient for giving effect thereto."*

New agents, or those recommencing trade having previously ceased, must approach JLT to obtain the relevant insurance.

For further enquiries about the insurance requirements please contact the Licensing Branch on (08) 9282 0839 or via email to [licensingenquiries@commerce.wa.gov.au](mailto:licensingenquiries@commerce.wa.gov.au) Alternatively, Jardine Lloyd Thompson can be contacted on (08) 9426 0444 or at email address [contact@jlt.com.au](mailto:contact@jlt.com.au)



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

### Consumer Protection Division, Department of Commerce

The Forrest Centre, Level 6, 219 St Georges Terrace, Perth, Western Australia 6000

Locked Bag 14, Cloisters Square 6850 | Admin: (08) 9282 0843

Real Estate and Settlement Advice Line: 1300 30 40 64

[consumer@commerce.wa.gov.au](mailto:consumer@commerce.wa.gov.au)

[www.commerce.wa.gov.au/consumerprotection](http://www.commerce.wa.gov.au/consumerprotection)