

December 2014

# SETTLEMENT

NEWS

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

## Settlement agents operating from residential addresses

**The department wishes to remind settlement agents about their responsibilities when operating an agency from their residence.**

The department is concerned that some agents are working from a private address but failing to comply with section 45(b) of the *Settlement Agents Act 1981* (the Act). Section 45(b) requires an agent to carry on business in proper and adequate premises.

The department offers the following suggestions to settlement agents who plan to or currently operate their settlement agent business from a residential address:

- Obtain permission from the Local Government Authority before operating a business from a private residence;
- Only display a sign board on the front fence line of the private residence once permission has been granted by the Local Government Authority; and
- Display a notice in a prominent place at your registered office, as required by section 42(1)(a) of the Act. The notice must provide the following information:
  - notice of the licensee's name;
  - that the licensee is a licensed real estate or business settlement agent or both;

- if the business is not carried on in the agent's name - the name, style, title or designation under which she or he carries on business as an agent.

Agents who operate from home must check with their Local Government Authority before employing staff who do not reside at the premises. Some Local Government Authorities will not permit the employment of staff at home offices, other than those who reside at the premises.

Name	Initials

### IN THIS ISSUE

Settlement agents operating from residential addresses .....	1 cont 2
RCDs and smoke alarms .....	2
CPD 2015 .....	3
CPD reminder 2014.....	4
Changes to application requirements for renewal of licences .....	4
REMINDER: The Department of Commerce has moved .....	5
Are your details up-to-date? .....	6
Settlement agent cautioned over misuse of trust account .....	6
E-Bulletins.....	7
Website .....	7
Contact details .....	7



### RCDs and Smoke alarms

Current best  
practice guide

## Settlement agents operating from residential addresses

### Continued from page 1

An agent may find that the local laws of their Local Government Authority prevent them from conducting a settlement business from a private residence.

It appears some settlement agents who operate from home offices use PO Box numbers instead of their residential addresses on correspondence.

While agents may deem this practice necessary for personal security reasons,

section 37(1) of the Act requires a licensee to have a **registered** office in the State which shall be the **place of business** of the licensee in the State.

Section 42(2) of the Act goes on to state that on all correspondence and on the outside of all documents prepared in the course of business:

*the licensee shall be identified as a real estate settlement agent or a business*

*settlement agent, or both, and the registered office of his business shall be shown;*

In short, settlement agents must display their registered office address on all correspondence. A PO Box number may only be used in addition to the section 42(2) requirement.

# RCDs and smoke alarms

On 4 August 2014 the department issued an e-Bulletin on RCDs and smoke alarms (Issue 40). Given the importance of the topic, the current best practice guidance is reprinted here.

Consumer Protection has updated previous best practice guidance information supplied to settlement agents regarding their obligations with respect to residual current devices (RCDs) and smoke alarms.

The former Settlement Agents Supervisory Board (the Board), which regulated settlement agents conduct prior to Consumer Protection taking over the role in July 2011, issued two e-Bulletins in 2009 concerning best practice in relation to RCDs and smoke alarms.

## Current best practice guidance

The department has updated the information the Board issued in 2009 with the following suggested best practice regarding RCDs and smoke alarms.

Given the majority of people do not routinely buy or sell residential property, the department believes it would be appropriate for settlement agents to remind clients of the legal requirements regarding RCDs and smoke alarms.

This could be achieved by providing clients with current brochures from the Building Commission, EnergySafety and/ or the Department of Fire and Emergency Services. The appropriate time to provide this material would be when an agent obtains or confirms an authority to act.

Supplying this information to clients is consistent with a settlement agent's obligation to provide services with due care and skill.

As a further service to their clients, agents may wish to ascertain the status of RCDs and smoke alarms, to the extent possible, prior to settlement and communicate this to their client.

## Previous information

Please note the information contained in the two e-bulletins published by the Board in 2009 is no longer current. Please refer to the current best practice guidance as provided by the department in 2014.

# CPD 2015

## The 2015 core and prescribed elective Compulsory Professional Development (CPD) topics have been determined for settlements agents.

The Department of Commerce administers the *Settlement Agents Act 1981*, which requires licensees to complete CPD programs.

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

The CPD program for settlement agents comprises activities from which agents must accrue six points each year. At least four points are accrued by completing two of the core activities, and the additional two points can be accrued from completing prescribed elective activities.

The core and prescribed elective CPD topics determined for settlement agents for 2015 are detailed below.

Approved topics	hour/point allocation
<b>CORE</b>	
Duties of a settlement agent	2 hours/points
Case Studies and Compliance Exercises <ul style="list-style-type: none"> <li>• “Performance and staff management within your agency – legislative requirements for settlement agents”</li> <li>• E-Conveyancing – ‘preparing for the roll-out’</li> <li>• Off the Plan Sales</li> </ul>	2 hours/points
<b>PRESCRIBED ELECTIVES</b>	
Professional Indemnity Insurance Claims – to be delivered by Jardine Lloyd Thompson in conjunction with Vero Insurance and DLA Piper Lawyers	2 hours/points
Reconciliation of Trust Accounts	2 hours/points
Various approved CPD sessions to be offered by the Office of State Revenue <ul style="list-style-type: none"> <li>• Transfer Duty Overview</li> <li>• Revenue Online (Duties)</li> <li>• The First Home Owners Grant for Professionals and Land Tax Overview</li> </ul>	2 hours/points
Settlement of Commercial Properties – DISTANCE LEARNING TOPIC ONLY (was an approved topic in 2014)	2 hours/points
Compliance with Settlement Legislation – DISTANCE LEARNING TOPIC ONLY (was an approved topic in 2014)	2 hours/points

# CPD reminder 2014

## There are less than two months left to obtain your required points!

All licensees with current triennial certificates are reminded to complete the required CPD activities annually in preparation for their triennial certificate renewal. Failing to complete your CPD requirements can result in your triennial certificate not being renewed.

Do not wait until the final weeks of 2014 to attend CPD. Lack of course availability is not a valid reason for non-compliance.

Settlement agents who operate more than 100km from Perth or Busselton can get specific information about CPD attendance [here](#).

If you have any specific queries relating to your CPD obligations, please contact the CPD team directly on **(08) 6552 9582** or email: [cpd@commerce.wa.gov.au](mailto:cpd@commerce.wa.gov.au)

# Changes to application requirements for renewal of licences

The recent enactment of the Consumer Protection Legislation Amendment Bill 2013 (the Bill) has made a variety of amendments across 14 pieces of legislation administered by the Commissioner for Consumer Protection (the Commissioner) including the *Settlement Agents Act 1981* (the Act).

The Act now provides that when considering the renewal of a licence or a triennial certificate, the Commissioner must take into account the same factors that she would consider for the initial grant of a licence. Specifically, the amendments provide for the Commissioner to consider the continued fitness and propriety of all of the natural persons involved in the management and or control of the agency, as well as the licensee's ongoing financial viability at the time they seek to renew their triennial certificate.

The other significant amendment to the Act is the removal of the requirement for a notice of licence applications to be published in the newspaper.

The amendments to the Act came into force on 19 November 2014.

Further details about the changes to application requirements for renewal of licences are available in Settlement Industry e-Bulletin **Issue 46** distributed on 23 October 2014.

Amended forms that include the new requirements for the renewal of a triennial certificate will soon be available on our [website](#).



# 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 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

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

### Postal address

Locked Bag 14  
CLOISTERS SQUARE WA 6850

### General enquiries:

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

### Licensing application related enquiries:

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

# Are your details up-to-date?

Attention all licensee and triennial certificate-holders – you may be unaware but you have an obligation to notify the department within fourteen days of when you start or stop carrying on business as an agent. Please note that this obligation also includes a change of employment between settlement agent businesses.

When you provide the department with your business details you are not only avoiding a possible fine of \$1000 but you are also helping the department to keep you informed of current issues and send renewals to the correct address.

The department has a responsibility to record the information outlined in Section 7 of the *Settlement Agents Regulations 1982* (the Regulations), including the name and address of all agents who hold a triennial certificate. Please ensure that when you move house you notify the department of your change of address.

For more details, please refer to the *Settlement Agents Act 1981* and the Regulations which are available at [www.slp.wa.gov.au](http://www.slp.wa.gov.au)



## Settlement agent cautioned over misuse of trust account

A West Perth settlement agent has been cautioned by the State Administrative Tribunal (the SAT) over the misuse of his trust account.

Sydney James Chesson, trading as Master Settlements, had used his trust account for transactions which were not for the purpose of a settlement, a breach of the *Settlement Agents Act 1981* (the Act).

In issuing a caution on 30 September 2014, the SAT acknowledged that there was no misappropriation of funds from the trust account. Mr Chesson was ordered to pay costs of \$8,828.

The case highlighted the importance of licensed settlement agents using their trust account only for transactions related to settlements and not for any other business activities.

The Act provides legislative control over the use of trust funds by settlement agents. Any reference to a trust account within the legislation is clearly defined as relating to moneys received or held by a settlement agent for or on behalf of any other person in respect of settlement transactions. Funds unrelated to the arranging or the effecting of settlements must not therefore be held in a settlement agents trust account.

More information on the obligations of settlement agents can be found on the Consumer Protection [website](#).

## Contact details

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

- If your enquiry relates to your licence or registration, license 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 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 Settlement 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 information on changes to application requirements for renewal of licences and ASIC business names registration. An e-Bulletin and publication 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

Consumer Protection's website is an integral tool in providing education and advisory services to industry participants and the public.

The website has a dedicated section for settlement agents, which covers a range of subjects including Compulsory Professional Development, proactive compliance and licensing information. The **website** also contains a wide range of application forms.

Consumer Protection is committed to the continuing development and improvement of the website and welcomes feedback from the industry. Comments can be sent to **pinews@commerce.wa.gov.au**

The website is located at **www.commerce.wa.gov.au/ConsumerProtection**