

January 2007

Special points of interest:

- Half yearly trust account report due 31 January 2007
- Penalty fee for late lodgment of trust account report
- Code of Conduct has been amended download an up-to-date copy

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HALF YEARLY TRUST ACCOUNT REPORT

Regulation 28 of the Property Agents and Land Transactions Regulations 2006 provides that general auctioneers, property managers and real estate agents must, within one month after 30 June and 31 December, complete and give to the Property Agents Board a written report on the trust account in accordance with that regulation.

Consequently, property manager, general auctioneers and real estate agents are required to lodge with the Board by 31 January a Trust Account Report for the period ended 31 December 2006.

That form may be accessed on the Board's website: www.propertyagentsboard.com.au

Please note that the form does not need to be referred to the auditor as is for completion by each general auctioneer recorded in Part 3 of the Board's Register, property manager or real estate agent.

Should there be a problem accessing the form from the website, please give the Board office a call and one will be put in the mail.

The attention of general auctioneers, property managers and real estate

agents is particularly drawn to the following:-

Firstly, the form is now a report instead of a declaration so there is no need for it to be signed before a JP or Commissioner for declarations.

Secondly, while it is not an offense for a false report to be lodged a false report is the equivalent of no report.

Thirdly, there is now a fee of \$50.82(including GST) if the report is received by the Board later than 31 January.

INFORMATION SESSIONS

The Real Estate Institute of Tasmania conducted twelve information sessions around the State, all of which were very well attended. Of concern is, however, the number of principals who did not attend and who may consequently not be fully informed regarding their obligations under the new Property Agents and Land Transactions Act 2005 and Property Agents and Land Transactions Regulations 2006.

A copy of the notes provided at the sessions may be obtained from the Institute or alternatively a CD is available, also from the Institute. I know it is stating the obvious but every real estate agent, property manager and general auctioneer should have a copy of the Act and Regulations. Copies can be downloaded from www.thelaw.tas.gov.au

CODE OF CONDUCT

The Code of Conduct can be accessed on the Board's website.

I know this again may be stating the obvious but every general auctioneer and all property agents, whether they be real estate agents, property consultants, property managers, or assistant property managers, must have a good understanding of the Code of Conduct because if they do not, there is a good chance that they will do or say something which will result in a breach and consequently a complaint.

Real estate agents who employ property agents and are consequently responsible for their supervision, should be aware that if any of their employees commit a breach of the Code of

Conduct they may also be subject to disciplinary action by either the Board or the Tribunal.

Since the last copy of the Code was circulated to property agents in December, there has been an amendment rule 4(q).

I strongly recommend to all property agents that they download the Code of Conduct from the Board's website and circulate copies to all their employees.

NEW ACT AND REGULATIONS SUMMARY

BENEFIT DISCLOSURE

Property agents are required to disclose to their client any benefits, in excess of \$100, he/she is to receive from a third party in exchange for the referral of business.

AUCTION CONDITIONS AND NOTICE

The Auction Conditions must be available at least seven (7) days before the start of the auction and the Auction Notice must be on display at every auction. A copy of the Auction Notice may be downloaded from the Board's website (auction notice).

REGISTRATION / REGISTERS

There are now three forms of registration, Real Estate Agents, Property Managers and General Auctioneers.

The Property Agents Board must keep a register of registrations and the register is available for inspection by the public.

PART 10

Part 10 of the Act concerning land transactions was not proclaimed on 1 December and will be subject to amendment before it is proclaimed later this year.

VENDOR AND DUMMY BIDS

The Act refers to bids by an owner being prohibited, but it also refers to permissible owner bids which must be made personally by the auctioneer. These bids must be identified as such, it being sufficient for a bid on behalf of the owner to be identified as "vendor bid".

AGENCY AGREEMENTS

Agency agreements are required to include a clause which clearly sets out how either party to the agreement may terminate the appointment.

MANAGING AUTHORISED PLACE OF BUSINESS

A real estate agent or property manager can manage up to three authorised places of business, but the Board must first be satisfied that the agent is competent to manage those places of business and those places of business must be in the same region. (definition of a region may be found on the Board's website under "regions")

Notwithstanding the managing real estate agent, or property manager not being in full-time attendance at a place of business, still has the full-time responsibility of that office.

PROPERTY CONSULTANTS AND ASSISTANT PROPERTY MANAGERS

Notwithstanding property consultants or assistant property managers no longer being licensed or registered they must still be qualified and must advertise their intention to be employed (available from the Board's website under "forms").

PROPERTY MANAGEMENT AGREEMENTS

A property management agreement which contains no period of termination agreed by the parties to the agreement may be terminated by either party giving to the other party 30 days written notice of termination.

QUALIFICATIONS

The qualifications for a real estate agent are prescribed in the Regulations and the qualifications for a property manager and auctioneer are that the Board must be satisfied by examination or enquiry.

Presently the only registered training organisation approved by the Board for the provision of training for qualifications is the Real Estate Institute of Tasmania.

A real estate agent who employs a person as a property consultant or assistant property manager who is not qualified and does not advertise, is subject to disciplinary action by the Board and the penalty is a maximum of \$50,000.

EMPLOYEE REGISTERS

Real estate agents and property managers are required to keep a register of employees.

To manage a place of business, carry out property management functions and carry out property consultant functions. To assist, a suggested register of employees maybe downloaded from the Board's website (employee registers).

PROPERTY MANAGERS

A Property Manager is now a regulated occupation and a person cannot be given this title unless he/she is a qualified property manager. Consequently, those consultants previously described as property managers will have to be given a new title such as "Property Portfolio Manager", or even the title stated in the Act "Assistant Property Manager".

Information can be downloaded from the Board's Website:

www.propertyagentsboard.com.au

Vendor bids can only be made by the auctioneer and must be identified

Dummy bids are prohibited

NEW ACT AND REGULATIONS SUMMARY CONT.

DEREGULATION OF AUCTIONEERS

Auctioneers other than general auctioneers who conduct a general auctioneering business, are deregulated. This does not mean, however, that anybody and everybody can conduct auctions.

AUCTION OF LAND AND CHATTLES

The auction of land must be conducted by a real estate agent and the auction of chattels and the like must be conducted either by a general auctioneer, or a real estate agent.

PROPERTY AGENTS BOARD/ PROPERTY AGENTS TRIBUNAL

In addition to their being a Property Agents Board there is a Property Agents Tribunal. For minor disciplinary matters the Board may issue a reprimand but if the Board determines that an alleged offense is serious, then it must be referred to the Tribunal which can suspend or revoke a registration, disqualify a property consultant, or assistant property manager from being employed, impose a fine, or issue a reprimand.

The Board, may if it considers it is in the public interest to do so, publish details of a suspension or disqualification.

A decision of the Board may be appealed to the Tribunal and any decision by the Tribunal, may be appealed to a Magistrate.

CONFLICT OF INTEREST

Conflict of interest - acquisition of property, now includes not only a property agent acquiring a property, but also attempting to acquiring a property.

There is a new Section relating to Conflict of Interest—Sale of a property. This requires disclosure of all the relevant facts **before** a sale or attempt to sell. The “relevant facts” would be that the vendor is a property agent employed by the real estate agent marketing the property, or a director of the agency company, or a relative of a person employed by the real estate agent. When would the disclosure be necessary? When a purchaser indicates a definite interest in a property.

TRUST ACCOUNTS

The trust account provisions are similar to those in the previous Act and Regulations.

Changes are that transactions by electronic fund transfer are now permitted and those agents who invest trust money on behalf of the parties to a contract must now maintain a schedule of invested trust money and keep a copy of that schedule with the monthly reconciliations and schedule of balances.

Real estate agents who are responsible for trust accounts are required to sign off on the reconciliations each month within two days of their preparation. Failure to do so will be regarded by the Board as being a serious breach.

LICENCE/CERTIFICATE OF EMPLOYMENT

A person who is named in the Board’s register may apply to the Board for a licence (fee of \$27.83 per licence).

A person employed by a real estate agent or property manager, who is named in the employee register may request from that real estate agent or property manager a certificate of employment.

The approved form of certificate of employment is available on the Board’s website (employee register section).

FIDELITY BOND/ PROFESSIONAL INDEMNITY INSURANCE

There is no longer a requirement for a Fidelity Bond, but general auctioneers, property managers or real estate agents conducting a business, must have professional indemnity insurance.

The Act provides that the Board may determine the minimum amount of cover but it has not done so yet, so as long as the property agent has some cover, that is acceptable

REGISTRATIONS DATE

Registrations are now on an annual basis, rather than all expiring on the common date of 31 December.

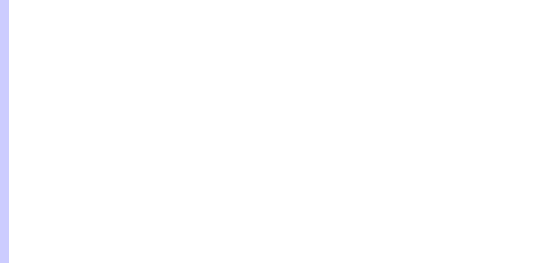
MORE INFORMATION?

Any queries regarding the new legislation can be directed to myself, or the Board’s Assistant Executive Officer, Alicia Hutton.

Trust account reconciliations are required to be signed off within two days of their preparation

INFORMATION BULLETIN

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www.propertyagentsboard.com.au

HAPPY NEW YEAR AND BOARD OFFICE HOURS

The Members of the Property Agents Board, that is the Chairman John Upcher, Members, Nicky Reed, Lynden Griggs, John Soundy and Ian Wells, wish everybody working in the general auctioneering and real estate industries a happy, prosperous, healthy, safe (and discipline free!) 2007.

The Board Office hours are 9.00am to 5.00pm, Monday - Friday.
However, for the period 22 January 2007 for some six weeks the office will be open 9.00am to 5.00pm on Tuesday, Wednesday and Thursday.

For matters which require immediate attention on Monday and Friday the Assistant Executive Officer, Alicia Hutton may be contacted by telephone 0412 608 459.

G CLARKE
Executive Officer