

Dec 08/Jan09

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## HALF YEARLY TRUST ACCOUNT REPORT

Regulation 28 of the Property Agents and Land Transactions Regulations 2006 provides that Real Estate Agents Part 1, Division 1 and General Auctioneers Part 3 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.

Consequently, real estate agents, property managers and general auctioneers are required to lodge with the Board by **31 January 2009** a Trust Account Report for the six month period ended 31 December 2008.

That form may be accessed on the Board's website: [www.propertyagentsboard.com.au](http://www.propertyagentsboard.com.au) or hard copy available on request.

Please be aware there is a late fee of \$50.82 if the report is received by the Board later than 31 January 2009.

## CODE OF CONDUCT

The Act requires that it is a duty of the Board to not only establish a Code of Conduct for Property Agents, but also to keep the Code of Conduct under review.

The Code of Conduct has again been updated and the change came into effect on 17 December 2008.

### Code "9. Advertising and marketing

#### A property agent-

- (a) must not erect a sign on private property (other than that being sold) which has not been authorised by the owner of the property on which the sign is erected; or
- (b) Contravenes any applicable law, regulation, by-law ,or planning scheme: and"

All property agents must have a good understanding of the Code of Conduct. A breach of the Code of Conduct may lead to disciplinary action by either the Board or the Tribunal for both the employee and employer.

You can download a copy of the Code of Conduct from the Legislation Online Website: [www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au)

## OPENING/BUYING/SELLING?

There has been a lot of movement with property agents opening, selling, or taking over an existing business or parts of another agent's business (rent roll or sales listings).

There are a number of requirements that an agent should be aware of when going through this process. They include such things as the name under which the business may operate, who can manage the business, where the premises are located and how the premises becomes an authorised address. It is important to know what application(s) must be lodged with the Board, potential changes to professional indemnity insurance, and most importantly the changes and requirements with regard to trust accounts.

Implications to changes with money held in trust include:-

- obtaining the written approval of the parties to the transaction to which the money relates (usually tenant or purchaser).
- audit requirements on the closure of accounts
- notification to the Board when either opening or closing a trust account.

A telephone call to the Executive Officer can certainly save much time and expense when going through this process.

**TRUST ACCOUNTS**

A property agent must notify the Board in writing of any trust account which is opened or closed by the agent within seven days.

Approved financial institutions as at December 31 December 2008

- Australian and New Zealand Banking Corporation
- Bank of Queensland
- Bank of Western Australia
- Bendigo Bank
- Commonwealth Bank of Australia
- Heritage Isle Credit Union
- Macquarie Bank Limited
- MyState Financial Credit Union
- National Australia Bank
- Westpac Banking Corporation



**Trust money must, without delay, be paid into a trust account maintained by the property agent Section 145**

**Certification of Reconciliation**

The Board’s Inspector has provided suggested wording with regard to monthly reconciliations which will help to prompt those concerned as to what should be in the record and what the agent’s responsibility is-

The suggested wording is:

**“Certified that these reconciliation records required by Regulation are complete and accurate**

**Prepared by** .....  
 (signature)

**Date:** .....

**Reviewed by Authorised Agent.....**  
 (signature)

**Date:** .....

Because none of us is perfect and the human element enters every facet of our life, we will make mistakes. What is important, however, is how we handle those mistakes.

In real estate this is so very important because real estate is a people business.

What is particularly important is when mistakes are made in the trust account records they are fixed as **soon as they are detected** and the latest time they should be detected is the monthly reconciliation.

**PROPERTY AGENTS GUARANTEE FUND GRANTS**

Grants approved by the Board and the Attorney General and paid from the Property Agents Guarantee Fund during the year ended 30 June 2008 were:

REIT – Training/Research	\$281,140
REIT – Continuing Education	\$263,194
REIT—Training Material Re-Write	\$12,076
Real Estate Scholarship Board	\$462,861
Property Agents Board—Registration System	\$24,640
Dept of Justice—Rental Deposit Authority	\$150,000
Dept of Justice—Residential Tenancy Act	\$136,500
Dept of Justice—Magistrates Court	\$228,588



## COMPLAINTS AND DISCIPLINE

Summarised below are the complaints received and actioned for the 12 months ended 30 June. In broad terms the 55 complaints can be divided as follows, property management (16), misrepresentation/false advertising (10), pressure selling (2), advertising overcharge (1), commission dispute (6), unfair treatment of intended purchaser (11), conflict of interest (6) failure to protect client's interests (16), and acting as property consultant while not employed (2).

### Outcomes of Board decisions:-

- Agents reprimanded 6
- Agents cautioned 3
- Agents/Consultants instructed to undertake further education 3
- Offices instructed to close 3
- Trust account issues involving PAB involvement 3
- Issues requiring further legal action 2

**CAUTION:** There has been an increasing number of conflict of interest allegations. All property agents should be aware of the conflict of interest sections of the Act, Sections 22 and 23. Disclosure with regard to **sale of a property** by an agent, director of the company, employee or relative must be made **BEFORE** the sale **OR** attempt to sell. With regard to an acquisition, **written approval** of the owner of the property must be given **BEFORE** negotiations and after a full disclosure of all the relevant facts.

### WHO ARE YOU WORKING FOR?

It is surprising how many enquiries received each month will include the question "Who is my agent supposed to be working for?" To qualify this query the question is asked "Are you the vendor or the purchaser?". The response is invariably "I am the vendor".

What a criticism of property agents who have listed for sale the properties owned by these people! The conversation continues with the vendor stating that "He/she seems to be working harder for me to reduce my asking price, rather than getting the purchaser to increase his/her offer".

Real estate is a business requiring good communication and if you do believe that the asking price is more than the market is prepared to pay, explain the situation. Alternatively, if the asking price is reasonable work on the purchaser instead of pressuring the vendor.

Remember, Rule 6 of the Code of conduct provides "that a property agent's first responsibility is to the client whom he/she represents".

### QUALIFIED ?

Many agents have asked Board staff to verify whether a particular property consultant or assistant property manager is qualified to work in the industry from information stored on the "old" licensing system.

All sales consultant's licences expired on 31 December 2006 due to the change in the legislation so Board staff will no longer be able to make this verification.

A certificate of employment can be used as verification that a property consultant or assistant property manager is qualified to work in industry when moving between employers. This should be completed by the employing agent. A proforma can be obtained from the Board's website.

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

A person must be **qualified** as a **property consultant** to perform any of these following duties:-

- Acquire or dispose of property or a business
- Make an offer to acquire or dispose of property or a business
- Enter into a contract for the acquisition or disposal of property or a business

A person must be qualified as an **assistant property manager** to perform any of these following duties:-

- Negotiate the leasing or letting of property
- Collect rents for property that is leased or let
- Manage property that is leased or let

### BEFORE THE OFFICE IS OPENED

A real estate agent or property manager can make application to the Board to manage up to three authorised places of business.

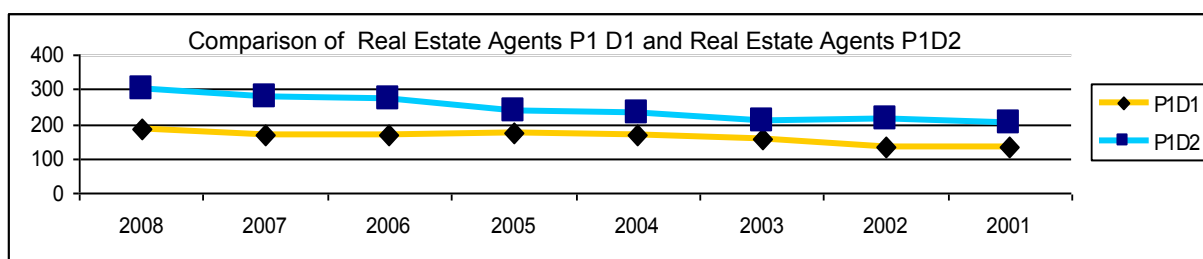
## REGISTRATIONS

Set out below are details of the number of registrations renewed and granted during the financial year ended 30 June 2008 compared with those in previous years.

	2008	2007	2006	2005	2004	2003	2002	2001
<b>Real Estate Agents (Part 1 Div 1)</b>								
Renewals	154	156	150	149	143	127	122	122
New Applications	33	12	19	24	25	31	12	21
Of those registrations the following are:								
companies	180	145	149	147	127	125	106	109
individuals	7	23	20	26	41	33	28	33
Total:	<b>187</b>	<b>168</b>	<b>169</b>	<b>173</b>	<b>168</b>	<b>158</b>	<b>134</b>	<b>143</b>

	2008	2007	2006	2005	2004	2003	2002	2001
<b>Real Estate Agents (Part 1 Div 2) (Previously Managers)</b>								
Renewals	258	252	236	213	199	192	191	173
New Applications	42	29	39	24	31	17	22	29
Total:	<b>300</b>	<b>281</b>	<b>275</b>	<b>237</b>	<b>230</b>	<b>209</b>	<b>213</b>	<b>202</b>

	2008	2007	2006	2005	2004	2003	2002	2001
<b>General Auctioneers (Part 3)</b>								
Renewals	9	8	10	10	13	13	15	17
New Applications	1	2	2	1	-	-	-	3
Of those registrations the following are:								
companies	6	8	9	8	9	9	10	13
individuals	4	2	3	3	4	4	5	7
Total:	<b>10</b>	<b>10</b>	<b>12</b>	<b>11</b>	<b>13</b>	<b>13</b>	<b>15</b>	<b>20</b>



## PROPERTY AGENTS BOARD

The Members of the Property Agents Board, Chairman John Upcher, Members, Nicky McKibben, Elizabeth Gillam, John Soundy and Ian Wells, wish everybody working in the general auctioneering and real estate industries a happy, prosperous, healthy and safe 2009.

The Board Office will be closed from Wednesday 24 December 2008 until Monday 12 January 2009. For matters which require urgent attention the Executive Officer may be contacted by telephone 0412 608 459 during this period.

**Alicia Hutton**  
Executive Officer

**Don't Forget by 31 January 2009**

- Complete the Half Year Trust Account Report (Form 7) - completed by agent in charge - (late fees apply)

**Real Estate Agents Part 1 Division 1** are those who conduct the real estate agency business, **Real Estate Agents Part 1 Division 2** are those who manage the real estate agency business