

TRIBUNAL

There have been four conduct complaints referred from the Board to the Property Agents Tribunal for hearing to date.

Two of those conduct complaints have been heard by the Tribunal.

First Hearing

The particulars of the conduct to which the hearing related was that the agent failed to provide the Property Agents Board written information, verified by statutory declaration, concerning a complaint against the agent which was investigated by the Board.

The Tribunal found the agent guilty of professional misconduct.

The Tribunal ordered the agent to pay a fine of \$1,500, legal costs of \$800 and in addition, pursuant to S121(f) of the Act, the Agent was required provide the information (by statutory declaration) as originally requested by the Board.

Second Hearing

The particulars of the conduct to which the hearing related was that the agent breached Section 23 - Conflict of interest of the *Property Agents and Land Transactions Act 2005* in that it attempted to sell an interest in property owned by one of its directors, without disclosing that interest before the attempt to sell the property.

The Tribunal reprimanded the agent for its infraction. In addition the Tribunal placed conditions on and provided instructions for the agent to undertake certain actions as a consequence of this breach.

The Tribunal ordered the agent to pay costs of \$4,530.

Property Management

Of the services provided in real estate, property management can be the most stable in these changing times. When the sales are good, investors are buying property and need property managers. When the sales are poor, owners need property management when their properties don't sell and regardless of the market, tenants will always require accommodation.

It is a good business, but it requires constant effort to control the exposure to potential liabilities that come with long term relationships with landlords and tenants.

Your fiduciary relationship with your landlord requires you must follow instructions, be diligent in your duties and use reasonable care to assure their property is protected and producing the results. This requires constant effort and work. I am told that if you learn nothing else in property management it is that problems will occur every day and you will be working to either correct or prevent them. As well as a good work ethic, a good property manager must be able to handle the stress of the job. Enforcing rules and collecting rent can sometimes produce tense moments but uncontrolled emotions have no place in property management. These words are not meant to sound discouraging. A career in property management can be very rewarding if you know and follow the laws and establish good policies and procedures to prevent errors or problems.

DON'T FORGET

- Half Year Trust Account Report (Form 7) - completed by agent in charge - return by 31 July (late fees apply)
- Audit or Declaration—completed by agent's auditor - return by 30 September (late fees apply)

Alicia Hutton
Executive Officer



PROPERTY AGENTS BOARD

INFORMATION BULLETIN

ISSUE 6

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 complete and give to the Property Agents Board a written report on the trust account in accordance with that regulation.

Real estate agents, property managers and general

auctioneers are required to lodge with the Board by **31 July** a Trust Account Report for the six months ended 30 June 2009.

The form may be accessed on the Board's website or a hard copy available on request.

A separate Report should be completed for each trust account held.

Please note that **this** form

does not need to be referred to the auditor as it is for completion by each Real Estate Agent Part 1 Division 1, Property Manager Part 2 Division 1 and General Auctioneer Part 3 of the Board's Register.

Real Estate Agents, Property Managers and General Auctioneers should note that there is a late fee payable if the report is received by the Board later than 31 July.

ANNUAL AUDIT REPORT

Regulation 31 of *Property Agents and Land Transactions Regulations 2006* provides that Real Estate Agents Part 1 Division 1, Property Managers Part 2 Division 1 and General Auctioneers Part 3 of the Board's Register must, within three months after 30 June of each year, cause an audit to be made by an auditor of the trust accounts and accounting records kept by that real estate agent, property manager or general auctioneer in respect of the audit year. **A separate Report and Checklist should be completed for each trust account held.**

"Audit Year" means a period of 12 months ending on 30 June.

Consequently, it should be clear that real estate agents, property managers and general auctioneers must provide their trust

account records to their auditors within sufficient time for the audit to be completed and the report lodged with the Board **by 30 September.**

The Audit Report forms, including Audit Check Lists and Information for Auditors, can be accessed on the Board's web site www.propertyagentsboard.com.au or hard copy available on request.

Regulation 32 provides for an exemption to real estate agents, property managers and general auctioneers from having to lodge an audit report if they lodge a declaration stating that they did not receive, or hold, any trust money during the audit year. That exemption declaration, or Form 10, is also available on the Board's web site.

DEALING WITH UNCLAIMED MONEYS

The Unclaimed Moneys Act 1918 deals with such moneys. The Department of Treasury and Finance has produced guidelines to provide general information regarding unclaimed money and the procedures businesses must follow when dealing with unclaimed money.

Treasury accepts unclaimed moneys on behalf of the Treasurer and the money is kept in Trust.

Unclaimed Moneys means all sums of money whatsoever which have become legally payable by a business but where circumstances have meant that the person entitled to these moneys has been unable to claim for a period of six (6) years.

The guidelines produced by the Department of Treasury and Finance include a comprehensive procedural guide to dealing with unclaimed moneys.

June/July 2009

Inside this issue:

Half year trust account report	1
Annual Audit Report	1
Unclaimed Moneys	1
Rental Deposit Authority	2
Current Fees and Charges	2
Holidays	2
Updating Information	2
Monitoring Professional Standards	3
Complaints	3
Tribunal	4
Property Management	4
Continuing Education	4
Don't Forget	4

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DEALING WITH UNCLAIMED MONEYS Cont.

This information is provided as general guide.

For further information go to the Unclaimed Moneys Guidelines at the following link:- [http://www.tenders.tas.gov.au/domino/df/df.nsf/LookupFiles/Unclaimed.Moneys-Guidelines.pdf/\\$file/Unclaimed.Moneys-Guidelines.pdf](http://www.tenders.tas.gov.au/domino/df/df.nsf/LookupFiles/Unclaimed.Moneys-Guidelines.pdf/$file/Unclaimed.Moneys-Guidelines.pdf)

RENTAL DEPOSIT AUTHORITY

You would no doubt be aware that The Rental Deposit Authority (RDA) commenced on 1 July 2009. As a property agent any bonds paid to you on or after 1 July 2009 must be paid to the RDA. All property agents must register with the RDA. Bond disputes are still handled by the Residential Tenancy Commissioner.

Contact details for the RDA are as follows:-

Phone 1300 654 499 **E-mail** rda@justice.tas.gov.au
Fax 1300 737 487 (claim forms only) **Web** www.mybond.tas.gov.au
Mail Rental Deposit Authority
 GPO Box 1244
 Hobart Tas 7001

FEES AND CHARGES FROM 1 JULY 2009		
	FEE UNIT	FEES
APPLICATIONS		
APPLICATION FOR REGISTRATION- NATURAL PERSON	91	\$121.02
APPLICATION FOR REGISTRATION – COMPANY	182	\$242.05
REGISTRATIONS		
REAL ESTATE AGENT PART 1 DIVISION 1	273	\$363.07
REAL ESTATE AGENT PART 1 DIVISION 2	91	\$121.02
ADDITIONAL FEE FOR EACH PROPERTY CONSULTANT OR ASSISTANT PROPERTY MANAGER	46	\$61.13
PROPERTY MANAGER PART 2 DIVISION 1	228	\$303.21
PROPERTY MANAGER PART 2 DIVISION 2	91	\$121.02
ADDITIONAL FEE FOR EACH PROPERTY CONSULTANT OR ASSISTANT PROPERTY MANAGER	46	\$61.13
GENERAL AUCTIONEER PART 3	273	\$363.07
GENERAL AUCTIONEER PART 3 IF DIRECTOR OF COMPANY	91	\$121.02
APPLICATION FOR LICENCE		
ISSUE OF LICENCE UNDER SECTION 62(2) OF ACT	23	\$30.58

HOLIDAYS?

Agents-in-Charge are reminded of the provisions in the Act relating to permission for an authorised place of business to be managed by a property consultant to cover the absence of the agent-in-charge from a real estate office.

If a real estate office has a second agent on staff, then, of course, permission is not required.

Where there is not another agent on staff and the agent-in-charge is intending to be absent from the office for some period in excess of 5 days, then an application to be Board is required. Application forms can be downloaded from the Website.

UPDATE INFORMATION REQUIREMENTS

As mentioned in the last information bulletin, there has been a lot of movement within the real estate industry in the last few months. Please ensure that if your business has changed address, an agent has left your employ, or the “agent-in-charge” has changed, that the Board is notified in writing of these details. In certain circumstances not notifying the Board can result in legislative breaches.

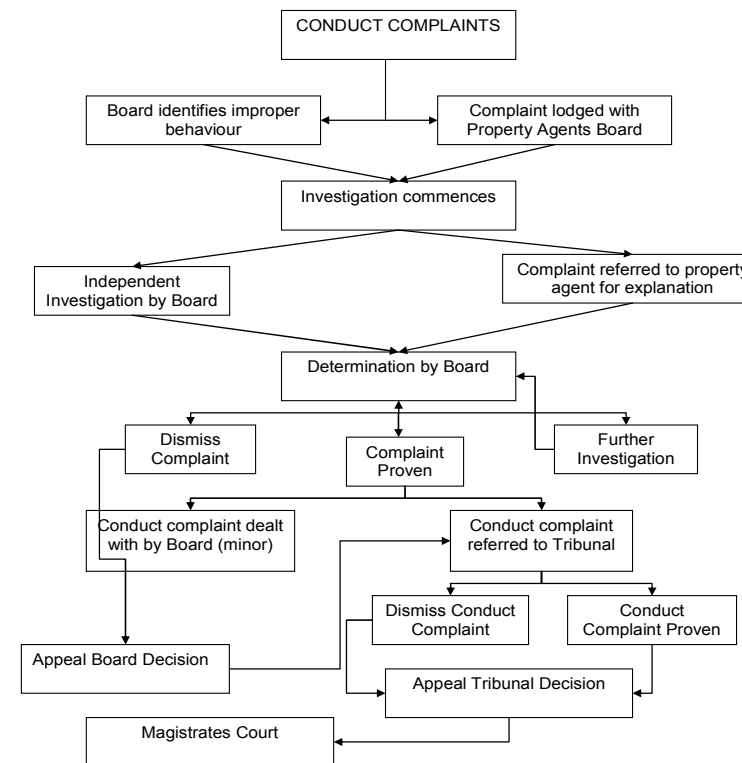
Property Consultants (PC) or Assistant Property Managers (APM) should be added or removed from the agent’s employee register when starting or finishing with an agency. To help with the movement of PC/APM between agencies, a Certificate of Employment (proforma available on website) should be issued by the agent-in-charge to the Property Consultant or Assistant Property Manager when the individual ceases employment. The individual can then use the Certificate of Employment as evidence of compliance for their next employing agent.

MONITORING PROFESSIONAL STANDARDS

The Board monitors the conduct and activities of property agents to ensure compliance with the legislation. The monitoring falls into two broad categories, firstly, the following up and investigation of formal complaints lodged with the Board and secondly, a regular program of inspections.

Over the past twelve months the Board has focused on attempting to satisfactorily settle complaints to ensure that misunderstandings and mistakes between agents and their clients or customers are identified and resolved before they become major problems and so that misconduct is detected as early as possible.

Many complaints continue to be a matter of one person's word against that of another so resolution to the satisfaction of both parties is not always possible. Below is a basic flowchart of the complaint process.



Sanctions imposed by the Board include:

- Caution
- Reprimand
- Impose conditions

Sanctions imposed by the Tribunal include:

- Suspend registration/qualification
- Revoke registration/qualification
- Prohibit or restrict property agent from conducting any or all parts of business
- Impose fines
- Caution
- Reprimand
- Impose conditions

38 matters received the Board’s attention during the past twelve months which has reduced from 55 complaints in 2007-08. There were only 14 matters requiring the Board’s attention between the period 1 December 2006 to 30 June 2007.

Set out below are graphs indicating the type of complaint and outcome.

