

Property Agents and Land Transactions Act 2005

(Section 82)

EXPLANATORY NOTES CODE OF CONDUCT

The Property Agents' and Land Transactions Act 2005 ("the Act") provides in Section 82 that a Code of Conduct is to be established and kept under review by the Property Agents' Board of Tasmania ("the Board").

The Code of Conduct applies to those defined as property agents in Section 3 of the Act. For the information of property agents and the general public, the following explanatory notes are provided:-

Registration of Property Agents

The Act provides, under Sections 56 - 59, for a Register of Property Agents divided into three Parts.

Part 1 is the Register of Real Estate Agents.

There are two Divisions of Part 1.

- **Division 1** contains the names of real estate agents who are carrying on a real estate business.
- **Division 2** contains the names of real estate agents who are not carrying on a real estate business.

A real estate agent can be an individual, a company, or a partnership, but only an individual can be employed by another real estate agent.

Part 2 is the Register of Property Managers.

There are two Divisions of Part 2.

- **Division 1** contains the names of property managers who are carrying on a property management business.
- **Division 2** contains the names of property managers who are not carrying on a property management business.

A property manager can be an individual, a company, or a partnership, but only an individual can be employed by a real estate agent, or a property manager.

Part 3 is the Register of General Auctioneers

A general auctioneer carries on a general auctioneering business and can be an individual, a company, or a partnership, but only an individual can be employed by another general auctioneer.

Assistant Property Manager & Property Consultant

The definition of a Property Agent in Section 3 of the Act includes an assistant property manager and a property consultant. These two categories of property agents are not, however, recorded in a register.

Available for public inspection

The Register maintained by the Board may be inspected by a member of the public at a convenient time (Section 61).

Qualifications for Property Agents

Property agents are required, under Division 2, Sections 64-66, of the Act, to have qualifications before conducting a business as a real estate agent, property manager, or general auctioneer, or being employed by a real estate agent, or property manager.

The qualifications are primarily: -

Real estate agent (individual) - two years full-time experience as a property manager or property consultant during the previous five years and the prescribed educational qualification of a Diploma in Property (Real Estate) awarded by a registered training organisation.

Real estate agent (company) - must have at least one director who is a real estate agent.

Property manager (individual) – must be able to satisfy the Board, by examination or inquiry, that he/she has sufficient knowledge of property management business to be able to carry on that business.

Property manager (company) – must have at least one director who is a property manager.

General auctioneer (individual) – must be able to satisfy the Board by examination or inquiry, that he/she has sufficient knowledge of general auctioneering to be able to carry on that business.

General auctioneer (company) – must have at least one director who is a general auctioneer.

Complaints & Discipline

Part 6, Division 1, Section 93 onwards, of the Act refers to “Complaints about the conduct of property agents.”

Any person may make a conduct complaint to the Board about a property agent.

There is an expectation that a property agent will keep himself or herself informed and up to date with the Act and Regulations, including in particular this Code of Conduct and any other legislation which impacts on the businesses of real estate agency, property management, or general auctioneering.

A conduct complaint to the Board is to be in writing and lodged with the Board’s Executive Officer. The complaint must include: –

- the complainant’s name;
- an indication as to how he/she would like to be contacted;
- adequate details of the conduct complained about; and
- the name and address of the property agent against whom the complaint is being made or sufficient information to identify the property agent.

The Board's Executive Officer is to provide any reasonable assistance a person may require in order to lodge a conduct complaint with the Board.

A complaint cannot be accepted by the Board if the conduct complained about occurred more than one year previously unless the Board is satisfied that –

- it would cause injustice not to accept it; or
- it is in the public interest to investigate the complaint

A conduct complaint may be dismissed by the Board if any information it requests is not provided within a reasonable time.

A conduct complaint may be withdrawn by a complainant by the giving of written notice. Despite the withdrawal of a conduct complaint, the Board may continue its investigations should it believe it would be in the public interest to do so.

If during an investigation of a conduct complaint in respect of a property agent the Board is satisfied that it is necessary in the public interest to do so, it may by written notice sent to the property agent: –

- suspend the registration of the property agent; or
- in the case of a property consultant, disqualify the property consultant from being employed as a property consultant;

in each case for a period to be specified in the notice.

The Board may decide if it determines and is satisfied that the conduct amounts to a matter of minor misconduct, to:–

- caution or reprimand the property agent;
- accept an undertaking from the agent to take or refrain from taking action specified by the Board.

The Board must decide after preliminary investigation whether the complaint should be referred to the Tribunal established under Section 112.

The Tribunal, after hearing a conduct complaint in respect of a property agent, may find that the property agent is guilty of the conduct that was the subject of the complaint. As a consequence it may take one or more of the following actions –

- suspend the registration of the property agent for a period not exceeding five years;
- disqualify a property consultant or assistant property manager from being employed as a property consultant or assistant property manager for a period not exceeding five years;
- revoke the registration of the person and prohibit the Board from registering the person without the approval of the Tribunal;
- prohibit any property agent from employing the consultant or assistant property manager without the approval of the Tribunal;
- prohibit the property agent from conducting all or any part of real estate agency business, property management business, or general auctioneering business, as the case may be, for a period not exceeding five years;
- impose a fine not exceeding 1,000 penalty points (\$100,000);

- prohibit the property agent from conducting all or any part of real estate agency business, property management business, or general auctioneering business, as the case may be, except in accordance with conditions, restrictions or limitations specified by the Tribunal;
- require the property agent to take or refrain from taking, actions specified by the Tribunal;
- caution, or reprimand the property agent.

An example of a reason why the Tribunal may prohibit a person from undertaking a certain activity could be where the Board receives many complaints concerning auctions of property conducted by a real estate agent. The complaints are that the auctions were conducted in an unprofessional and negligent manner and the Tribunal determines that the agent must not conduct any further auctions until he/she has attended courses of training and can demonstrate an improved competence.

If an offence is committed by a company, each person who is, at the time of the commission of the offence, a director, manager, secretary, or other similar officer of the company or who is acting or purporting to act as such is guilty of that offence unless that person proves that -

- (a) the offence was committed without his or her consent; and
- (b) he or she exercised such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to the nature of his or her functions in that capacity and the circumstances in which the offence was committed.

Trust money, trust accounts and records

Money received by a real estate agent, a property manager, or a general auctioneer, on behalf of other people is trust money and is held in trust in an account with an approved financial institution (Sections 144-149).

Trust money under the control of a real estate agent, a property manager or a general auctioneer must be held in a trust account, which does not earn interest for the agent, manager, or auctioneer, until instructions are received from the appropriate people for its disbursement.

Trust accounts are audited every year ended 30 June by a qualified accountant who must lodge a report with the Board within three months.

Trust account reports must be lodged with the Board each six months ended 30 June and 31 December in which agents, managers and auctioneers declare that the trust account regulations have been complied with.

The Board employs an inspector who randomly examines the trust account records of real estate agents, property managers and general auctioneers