

# Property Agents Board Information Bulletin

ISSUE 22

JULY 2017

## INSIDE THIS ISSUE:

Advertising

Infringements

Agency Agree-  
ments

Published  
Registers

Changes for  
the Board

Commission  
entitlements

Continuing  
Education

Diplomas

Examinations

Definitions

Board's Role

Fees and  
Charges

Trust  
Accounting

## New Legislation

The *Property Agents and Land Transactions Act 2016* commenced on 1 April 2017 it replaces the 2005 Act.

This information bulletin highlights some of the major changes but does not constitute all changes that property agents should know and understand.

## Trust Account Report (Form 7)

If a property agent who conducts business holds money in trust the Property Agent is required to lodge with the Board by **31 July** a Trust Account Report (Form 7) for the six months ended 30 June.

This form is for completion by the managing Property Agent named on the Board's Register.

**A separate Report must be completed for each trust account held.**

Fees apply for late lodgement.

A photograph of the 'TRUST ACCOUNT REPORT FOR THE SIX MONTHS ENDED 30 JUNE 2017' form. The form is a detailed table with multiple columns and rows, containing various fields for reporting trust account transactions and balances. It includes sections for 'Particulars', 'Debit', and 'Credit', and a summary section at the bottom.

## Annual Audit

Has your business held money in trust during the last audit year? "Audit Year" means a period of 12 months ending on 30 June.

**Regulation 31** of *Property Agents and Land Transactions Regulations 2017* provides that a Property Agent **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 Property Agent in respect of the audit year.

A separate Report and Checklist must be completed for each trust account held.

The Audit Report forms, including Audit Check-lists and Information for Auditors, can be accessed on the Board's web site or hard copies are available on request.

The Property Agent 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**.

Please be aware that there is a late fee payable for each audit report received by the Board after 30 September.

## Annual Audit Exemption

If your business has not held money in trust Regulation 32 provides for an exemption to Property Agents 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.

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# Advertising - the business name and address

When a property agent publishes an advertisement in connection with the business, the advertisement **must** contain both the business name and the address of the authorised place of business.

This provision applies to all advertisements regardless of the medium used to advertise. There are a number of property agents that are advertising without including this information.

## Infringements

The Act provides for infringement notices if the Board believes that a person has committed an infringement offence.

The Regulations provides the amount for each infringement. For example an infringement of Section 54, which is not including the business name and authorised place of business address in an advertisement, by an individual is \$785.00 and for a body corporate is \$1,570.00.

## Agency agreements

New provisions for agency agreements.

- There is a maximum of 120 days for a sales agreement (except for property development.)
- The termination clause for a sales agreement is a maximum of 30 days written notice.
- The termination clause for a management agreement is a minimum of 30 days written notice.
- There can be no conditions to be able to terminate.

Refer to Section 44 for real estate agency businesses or Section 46 for property management businesses.

## Published Registers

Two registers are published on the Board's website.

One lists the Property Agents conducting business, the other is a list of all individuals with a licence. This includes real estate agents, property managers, general auctioneers and property representatives. The information includes the person's name, the business that they work for, the business address and the type of licence held.

## What is the name?

People who are undertaking regulated functions, must hold a valid licence to do that work.

A person must also be "linked" to a business in order to undertake the regulated functions of sales or property management.

If you move employer you must ensure that these details are communicated to the Board **BEFORE** you commence working **or** advertising **AND** must ensure that the changes have been made to the Board's Registers. To make these types of changes there is a form available on the front page of the Board's website under "useful links".

The Board deals with these types of changes as a priority and will issue a new licence without delay.

### USEFUL LINKS

[Licence Details change form](#)

[Making a complaint](#)

[Exam Registration](#)

# Changes for the Board

The Board would like to recognise the outstanding contributions made by John Upcher as the Board's Chair and John Soundy as one of the two property agent members. Both were inaugural members of the Property Agents Board and served for 10 years . Thank you for your dedication.

In February this year, Ann Cunningham was appointed as Board Chair and Andrew Wright as the property agent member replacing John Soundy.

The other members of the Board are Adrian Kelly, Belinda Webster and Kim Backhouse.

## Commission entitlements

Section 45 outlines the entitlements to commission when an agency agreement expires or is terminated and the property is subsequently sold.

If the vendor enters into an agency agreement with a second real estate agency and the property sells to a purchaser who was introduced to the property by the original real estate agency the original real estate agency **is not** entitled to commission.

If the vendor does not enter into another agency agreement and sells the property to a purchaser introduced by the original real estate agency within 90 days after the end of the original agreement the real estate agency **is** entitled to commission. If the vendor sells the property after that 90 day period has expired to a purchaser introduced by the real estate agency there is no entitlement to commission.

## Meaning of “must” or “may”

In an Act or statutory instrument-

the word "may", or a similar term, used in relation to a function indicates that the function may be exercised or not exercised, at discretion.

**but**

the word "must", or a similar term, used in relation to a function indicates that the function is required to be exercised.

**Function** is defined in the dictionary to include authority, duty and power.

## Continuing Education

Continuing Education applies to all licensed categories. Each licensee is to complete eight (8) hours per year. Continuing education is declared on renewal documents.

A list of approved courses are available for review on the Board's website. Anyone can request for a session to be approved, but requests should be made before the date of training.

If you want a session to be considered for continuing education purposes, complete the Training Approval Form available on the Board's website.

TRAINING APPROVAL FORM

## Do you have a Diploma in Property?

Many people have completed the diploma qualification– congratulations! This qualification requires a lot of time and hard work. Don't waste your efforts, apply for the appropriate licence as soon as you receive the qualification.

There is a misconception that a Diploma automatically makes a person a real estate agent. It does not.

A person must apply to the Property Agents Board and the licence to be granted before they can call themselves a real estate agent or a property manager.

# Definitions from Section 3 of the Act

**authorised place of business** means a place shown in the Register as a place where the agent, property manager or general auctioneer may carry on business.

**functions of a property representative** includes all or any of the following functions performed by a person while in the employ of a real estate agent or property manager:

(a) inducing or attempting to induce, or negotiating with a view to inducing, people to do all or any of the following:

(i) acquire or dispose of property or a business;

(ii) make an offer to acquire or dispose of property;

(iii) make an offer to acquire or dispose of a business;

(iv) enter into a contract for the acquisition or disposal of property;

(v) enter into a contract for the acquisition or disposal of a business;

(b) negotiating the leasing or letting of property;

(c) collecting rents for property that is leased or let;

(d) managing property that is leased or let.

**name** in respect of a real estate agent named in Part 1(1) of the Register, a property manager named in Part 2(1) of the Register or a general auctioneer named in Part 3(1) of the Register, means the name shown in the Register as a name by which the agent, manager or auctioneer may carry on, respectively, real estate agency business, property management business or general auctioneering business

**property agent** means a real estate agent, a property manager, a general auctioneer or a property representative.

**property management business** means a business that includes carrying out all or any of the following activities pursuant to instructions received from other people:

(a) negotiating the leasing or letting of property;

(b) collecting rents for property that is leased or let;

(c) managing property that is leased or let

**real estate agency business** means a business that includes carrying out all or any of the following activities pursuant to instructions received from other people:

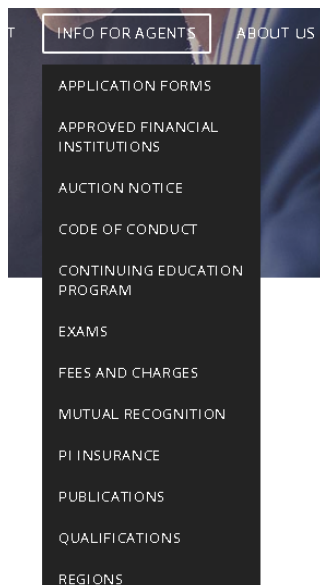
(a) selling, buying, exchanging, leasing or otherwise dealing with, or disposing of, property or businesses;

(b) negotiating the sale, purchase, exchange, lease or any other dealing with, or the disposition of, property or businesses;

(c) collecting rents for property that is leased or let;

(d) managing property that is leased or let.

**Register means** the Register of Property Agents maintained by the Board under Section 29



## [www.propertyagentsboard.com.au](http://www.propertyagentsboard.com.au)

Check out our new look website, there is a lot information available.

The INFO FOR AGENTS tab drops down to display a range of options. New information is being added regularly.

## facebook

The Board has a facebook page, it is in its infancy but we are starting to periodically post information, or reminders. Check it out.



# The role of the Property Agents Board

As set out in Section 6 of the *Property Agents and Land Transactions Act 2016*

(1) *The Board has the following functions:*

- a) *to administer the licensing system for property agents established by this Act;*
- b) *to maintain the Register;*
- c) *to ensure that property agents comply with the requirements of this Act relating to their conduct in carrying on their businesses or in performing their functions and, where they fail to do so, to take appropriate action, including disciplinary action, to protect the public and to discourage such conduct;*
- d) *to ensure that people do not act as property agents unless they are permitted to do so under this Act;*
- e) *to develop and ensure compliance with a Code of Conduct for property agents;*
- f) *to receive, investigate and determine complaints against property agents;*
- g) *to provide support in the resolution of disputes relating to the conduct of property agents;*
- h) *to supervise the trust accounts of property agents;*
- i) *to advise property agents on appropriate standards of conduct;*
- j) *to monitor, identify and report to the Minister trends and issues that emerge within the property agents industry;*
- k) *to perform educational functions for the purposes of this Act;*
- l) *to advise the Minister on matters relating to this Act including its efficacy and on any other matters relevant to the Board's functions or to the property agents industry;*
- m) *to perform any other function imposed on the Board by this or any other Act;*
- n) *such other functions as may be prescribed.*

(2) *The function mentioned in subsection (1)(f) includes –*

- a) *referring complaints in respect of a serious offence, within the meaning of Part 7, to the Tribunal for hearing and determination; and*
- b) *referring complaints involving alleged criminal conduct to the Commissioner of Police.*

(3) *The educational functions mentioned in subsection (1)(k) include –*

- a) *providing input into establishing the standards of education for property agents; and*
- b) *conducting or supervising the conduct of examinations as necessary; and*
- c) *determining the subjects in which property agents are required to qualify; and*
- d) *approving courses of practical instruction on the functions of property agents.*

## Fees and Charges 2017 - 2018

From 1 July 2017 the fees charged by the Board are outlined in the table below. The fees are based on fee units which are published in the *Property Agents and Land Transactions Regulations 2017*.

|  |  |  |
|--|--|--|
| <b>APPLICATION ASSESSMENT FEE</b>              | <b>\$141.00</b>                            |  |
| <b>EXAMINATION FEE</b>                         | <b>\$141.00</b>                            |  |
| <b>LICENCE FEES</b>                            | <b>Full Year Fees<br/>1 July – 30 June</b> | <b>½ Year Fees<br/>1 January – 30 June</b> |
| Real Estate Agent carrying on business (P1D1)  | \$423.20                                   | \$211.60                                   |
| Real Estate Agent (P1D2)                       | \$141.00                                   | \$70.50                                    |
| Property Manager carrying on business (P2D1)   | \$353.40                                   | \$176.70                                   |
| Property Manager (P2D2)                        | \$141.00                                   | \$70.50                                    |
| General Auctioneer carrying on business (P3D1) | \$423.20                                   | \$211.60                                   |
| General Auctioneer (P3D2)                      | \$141.00                                   | \$70.50                                    |
| Property Representative (P4)                   | \$71.30                                    | \$35.65                                    |

## Examinations..... to become a property representative

The *Property Agents and Land Transactions Regulations 2017* provides that the prescribed educational qualification is successful completion, within the previous 2 years, of an examination for property representatives administered by the Board.

The examination is an entry level examination which is designed to touch on a wide range of information. The examinations are designed for the candidate to demonstrate some knowledge and understanding of the property industry. It is a first step for that person to enter a new industry.

There is an expectation that the person will learn a lot more once working in the industry. The list on the opposite page are the topics that the Board considers appropriate, but that is not to say that every examination will contain a question on each of the topics listed.

The legislation does not divide sales and property management functions and therefore the examination covers both areas. The way a question is asked may appear to relate to either sales or property management but the purpose of the question may in fact be, for example Australian Consumer Law, Contract Law or Anti-Discrimination Law.

The Board's role is to set an entry level examination for a person to gain a qualification in order for that person to apply for a property representative licensc.

The cost associated with this examination is \$141.00

To sit, examination candidates must register no later than 1.00 pm the Tuesday prior to the Thursday examination. Candidates will receive confirmation by e-mail of their exam booking which will include further information regarding the examination.

Examinations begin at either at 9.30 am or 10.00 am depending on the location and candidates should allow up to 3.5 hours to complete the examination.

Candidates will be notified of exam results by email after 2:00 pm on the Tuesday following the exam date.

## to remove a licence condition... the enabling exam

To remove a condition from a property representative licence, the licensee needs to successfully complete an examination set by the Property Agents Board. It is known as the "enabling examination".

The enabling examination is based on the topics necessary for the individual's licence to become unconditional.

That is, if the licence is conditioned to undertake sales functions only then an enabling examination based on property management questions needs to be successfully completed.

Likewise, if the licence is conditioned to undertake property management functions only then an enabling examination based on sales questions would be undertaken to remove the condition.

This type of examination is only available for a two-year period, at which time a licensee will need to undertake the full licensing examination to have a condition lifted.

The cost associated with this examination is \$71.30.

The enabling examination is conducted on a different timetable to the scheduled Property Representative exams. See the Board's website for further information.

# Exam topics.....

| Consumer Protection |  |
|---------------------|--|
|                     | <ul style="list-style-type: none"> <li>cartel conduct</li> <li>disclosure</li> <li>material Facts</li> <li>misleading conduct</li> <li>misrepresentation</li> <li>remaining silent</li> <li>secret commissions</li> <li>unconscionable conduct</li> </ul>  |
| Contracts           |  |
|                     | <ul style="list-style-type: none"> <li>how are contracts terminated</li> <li>people ineligible to sign contracts</li> <li>the six parts of a valid contract</li> </ul>   |
| Documentation       |  |
|                     | <ul style="list-style-type: none"> <li>Condition Report</li> <li>Notices to Vacate</li> <li>Particulars and Conditions of Sale</li> <li>Property Management Authority</li> <li>Residential Tenancy Agreement</li> <li>Sole Agency Agreement</li> <li>Standard Conditions of Sale</li> <li>Tenancy Application</li> <li>Vendor Disclosure Document</li> </ul>   |
| General Knowledge   |  |
|                     | <ul style="list-style-type: none"> <li>advertising Requirements</li> <li>Competitive Market Appraisal, how to prepare a cooling of periods</li> <li>dispute Resolution</li> <li>fixtures and chattels, the difference between</li> <li>licensing of property agents</li> <li>ownership models for real estate agency business</li> <li>professional indemnity insurance</li> <li>Property Agents Board, role of</li> <li>property title, how to read a</li> <li>real and personal property, difference between</li> <li>Real Estate Institute of Tasmania, role of</li> <li>records in the property industry, keeping of</li> <li>solicitors and conveyancers, the role of</li> <li>The List, how to access and research</li> <li>transfer of property under both Old Title and Torrens Title</li> <li>valuations and market appraisals,</li> <li>vendor disclosure</li> <li>zoning of land</li> </ul> |
| Legislation         |  |
|                     | <ul style="list-style-type: none"> <li>Anti-Discrimination Act 1998</li> <li>Competition and Consumer Act 2010</li> <li>Conveyancing and Law of Property Act 1884</li> <li>Lands Titles Act 1980</li> <li>Privacy Act 1988</li> <li>Property Agents and Land Transactions Act 2016</li> <li>Property Agents and Land Transactions Regulations 2017</li> <li>Residential Tenancy Act 1997</li> <li>Retail Shops Tenancy Regulations</li> <li>Valuation of Land Act 2001</li> <li>Work Health and Safety Act 2011</li> </ul> <p>Have the ability to find and reference information contained in</p> <ul style="list-style-type: none"> <li>Property Agents and Land Transactions Act 2016</li> <li>Property Agents and Land Transactions Regulations 2017</li> <li>Code of Conduct</li> <li>Residential Tenancy Act 1997</li> </ul>  |

| Property Management Functions |  |
|-------------------------------|--|
|                               | <ul style="list-style-type: none"> <li>access to tenanted properties</li> <li>bonds</li> <li>condition reports</li> <li>fixed &amp; non-fixed term leases</li> <li>gross &amp; net returns</li> <li>growing the rent roll</li> <li>maintenance – urgent and other</li> <li>managing arrears</li> <li>minimum standards</li> <li>property agent in property management, role of</li> <li>Rental Deposit Authority</li> <li>Residential Tenancy Commissioner, role of the</li> <li>routine inspections, purpose of</li> <li>smoke alarms</li> <li>terminations – tenants and owners</li> </ul>                             |
| Sales Functions               |  |
|                               | <ul style="list-style-type: none"> <li>auction</li> <li>buying motives</li> <li>buying signals</li> <li>closing the sale</li> <li>conditions precedent and warranties</li> <li>conjunctions</li> <li>contract of agency and fiduciary duty</li> <li>marketing and misrepresentation</li> <li>negotiation</li> <li>notice to show tenanted properties</li> <li>open homes</li> <li>privacy and do not call register</li> <li>private treaty</li> <li>prospecting – demographic and geographic</li> <li>roles and responsibilities of the property agent in sales</li> <li>showing the property</li> <li>tender</li> </ul> |
| Trust Accounting              |  |
|                               | <ul style="list-style-type: none"> <li>audit requirements</li> <li>authority to disburse trust money</li> <li>reconciliations</li> <li>reporting requirements</li> <li>security of trust money</li> <li>setting up a trust account</li> <li>source documents</li> <li>the purpose of trust accounts</li> </ul>   |

Examinations are held in Hobart, Launceston and Ulverstone once per month in each location.

The Board's website has an online booking form.

Payment can be made by cheque or EFT into the Board's bank account.



# Trust Accounting

The *Property Agents and Land Transactions Regulations 2017* outline the requirements for trust accounting.

There are not many changes from the repealed Regulations but it is timely for a reminder of some of the trust account provisions.

## Control of trust money (Regulation 8)

Trust money must remain in the trust account until the money is paid, to the person entitled to it; or to the legal practitioner or licensed conveyancer of the person entitled to it; or in accordance with the written directions of the person entitled to the money or his or her legal practitioner or licensed conveyancer.

Trust money must be kept in the trust account until the property agent has the correct authority to release the money. If the correct authority is not provided, then the money must stay in the trust account.

Commissions, fees and charges cannot, without authority, be paid from a trust account until the transaction is finalised. In the case of a continuing agency (eg, property management agreement) fees and commissions can be drawn according to the provisions agreed to in the Management Agreement.

## Where trust account records are to be kept (Regulation 23)

A property agent must keep all the trust account records for the property agent's business at the property agent's authorised place of business or such other place as the Board may approve. This approval must be given in writing by the Board.

## Notice of trust account (Regulation 27)

Within 7 days after opening a trust account a property agent must give the Board written notice of the name of the approved institution where the trust account was opened and the branch of the approved institution and the name and number of the account.

Likewise, within 7 days after closing a trust account, a property agent or a person who ceases to carry on the business of a property agent must give the Board written notice of the closure of the account by reference to the name and number of the account.

## Trust account documents

The regulations set specific requirements for trust account documents. What information must be on a trust account receipt, on the trust account cheques and the trust account deposit forms.

It can be a costly exercise if the correct information is not included either to have documents reprinted and/or to receive a fine for non-compliance.

Look at Regulation 10 Form of trust account receipt, Regulation 11 Record of trust account deposit and Regulation 13 Trust account cheques.

## Approved financial Institutions

For purposes of holding trust money, the trust account must be with an authorised deposit-taking institution approved by the Board. As at 1 June 2017 the following are approved financial institutions.

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