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CONTACT DETAILS

ISSUE 30

Office Address Level 1, 15 Victoria Street, Hobart 7000
 Phone 03 6281 3480
 Fax 03 6281 3477
 Email Board@propertyagentsboard.com.au
 Web www.propertyagentsboard.com.au

CURRENT LEGISLATION

PROPERTY AGENTS AND LAND TRANSACTIONS ACT 2016
 PROPERTY AGENTS AND LAND TRANSACTIONS REGULATIONS 2017
 CODE OF CONDUCT - VERSION 3

Fee units are automatically indexed every financial year and are \$1.65 for the 2021-2022 financial year.
 One Penalty unit is \$173.00 for the 2021-2022 financial year.

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Right Now

Board Staff Farewells

There are some changes to Board staff this month.

Cynthia Butler was the Operations and Office Manager having been with the Board for 4 years. Cynthia recently left to take up a position at the University of Tasmania.

We will really miss her unique qualities and viewpoints and wish her all the best on her new journey.

We also farewell **Karina Richardson** with her last day being Wednesday 28 July 2021. Karina has been with the Board for 13 ½ years, having taken on a number of different roles, the most recently as the Licensing Coordinator.

For those who have interacted with Karina know her absolute professionalism and effervescent character and she will be missed immensely. We wish her every success in her new role with the Legal Profession Board of Tasmania.

Farewell

Implementation of Certificate IV Real Estate Practice

The Board has determined that property representatives who are granted a licence on or after 1 August 2021 must successfully complete the CPP41419 Certificate IV in Real Estate Practice within a period of not less than three years. (please note the examination remains the qualification required to apply for a property representative licence).

The condition will be implemented in two distinct phases. That is, the licence holder will be required to successfully complete the 5 core units within one specified time period and then the remaining units within another specified time period.

The timeframes in which the person will be required to complete the two phases will depend on when the licence is granted. The 5 core units will be required to be completed in no less than a 12-month period and the remaining units within a period of no less than a 24-month period.

The condition on the licence will clearly set out the requirements for that licence holder. For more information see CPD later in this bulletin.

Fees and Charges from 1 July 2021

	Fees
EXAMINATION FEE	\$150.15
APPLICATION ASSESSMENT FEE	\$150.15
LICENCE FEES	
Real Estate Agent carrying on business (P1D1)	\$450.45
Real Estate Agent (P1D2)	\$150.15
Property Manager carrying on business (P2D1)	\$376.20
Property Manager (P2D2)	\$150.15
General Auctioneer carrying on business (P3D1)	\$450.45
General Auctioneer (P3D2)	\$150.15
Property Representative (P4)	\$75.90
LATE PROVISION REPORTS PROVIDED TO THE BOARD	\$75.90

COVID- 19 Information

The Tasmanian Government has a dedicated website which is designed to advise all Tasmanians on what is happening regarding COVID-19.

Click link [here](#) to keep yourself up to date.



Interaction

The world has certainly changed over the last 12 months and there seems to have been a real shift in how people interact with each other, and sometimes it is not for the best.

The property industry has not been immune to changes, some have been good and others not so much.

It does seem that people are quick to react and do not consider or reflect before taking action.

The Board staff deal with a range of stakeholders, including but not limited to licensed property agents, applicants to be licensed, examination candidates, clients and customers of Property Agents, solicitors, government departments, financial institutions, auditors, accountants.

Some of these people are providing information, others are seeking it, some people are easy to deal with and others are extremely difficult.

For general information I suggest that property agents speak with their managing agents before making contact with the Board Office as many of the queries received could be dealt that way.

The Board's duties are prescribed in the *Property Agents and Land Transactions Act 2016* and the Board's staff perform the administrative functions in line with those duties.

To assist the Board staff in performing their duties I ask that licence holders be respectful in their interactions with Board staff and mindful of our limited resources.

Responses, information delivery and processing times are dealt with as efficiently as possible and we provide dates that examination results will be delivered to candidates and when the assessment of a licence application will occur. Staff are mindful that people are keen for this information however continuous emails and telephone calls do not speed up the process.

Take a moment, and review clause 19 of the Code of Conduct which identifies Professionalism provisions for the property agents industry in Tasmania.

Professionalism in the Property Agents Industry

(1) A property agent must at all times –

- (a) undertake all dealings to the best of his or her ability, recognising and working within the individual's skills and regulated functions; and

Professionalism

- (b) build a professional reputation based on integrity and ability; and
- (c) recognise that his or her personal conduct may affect his or her own personal reputation and that of the property agents industry generally; and
- (d) continue professional development to keep his or her own knowledge, skills and performance up to-date and improve his or her standard of dealings in the property agents industry; and
- (e) keep up-to-date on relevant codes of conduct, policies and guidelines issued by the Property Agents Board and abide by all relative business and legislative requirements, including but not limited to marketing/advertising and intellectual property; and
- (f) accept responsibility for maintaining and improving the standards of the property agents industry; and
- (g) maintain appropriate professional boundaries with clients, customers and colleagues and avoid any conduct that could reasonably be perceived to compromise the integrity of any professional relationship; and
- (h) refrain from encouraging clients, customers or colleagues to give, lend or bequeath money, gifts or property; and
- (i) report any form of conduct that could be reasonably believed to constitute unethical, professional misconduct or unprofessional conduct by a colleague to a relevant appropriate authority such as the managing agent of that colleague and/or the Industry Body and/or the Property Agents Board.
- (j) report any form of conduct that could be reasonably believed to constitute bullying or harassment of, or by colleagues to a relevant appropriate authority such as the managing agent of that colleague, and/or the Industry Body and/or the Property Agents Board; and
- (k) treat and demonstrate respect to clients, customers and colleagues; and
- (l) refrain from undertaking actions which may unfairly damage the reputation of a colleague.

Trust Accounting

Trust Account Report

If a property agent who conducts business holds money in trust the property agent is required to lodge with the Board by 31 July 2021 a Trust Account Report for the six months ended 30 June 2021.

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

The Trust Account Report is for completion by the managing property agent named on the Board's Register. Copies are available on the Board's website [here](#)

Warning – A fee of \$75.90 applies for late lodgement of each Trust Account Report.

Annual Audit Report and Checklist for the year ended 30 June 2021

Has your business held any 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* (the Regulations) 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 website 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 2021**.

Please be aware that there is a late fee of \$75.90 payable for each audit report received by the Board after 30 September 2021.

The Annual Trust Account Audit is completed by an external auditor. Copies have been sent to most auditors.

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 is available on the Board's website [here](#).

By whom and by when?

Trust Account Report is to be completed by the managing property agent and submitted to the Board no later than 31 July 2021 (**required if trust money held**).

Special purpose Audit Report and Checklist is to be completed by the external auditor.

It is the property agent's responsibility to ensure that a copy of the Audit Report and Checklist is received by the Board no later than 30 September 2021 (**required if trust money held**).

Annual Audit Exemption is completed by the managing property agent and submitted to the Board no later than 30 September 2021 (**required if no trust money held**).

Closing a trust account?

The Board has developed a final audit report and checklist for use when closing a trust account and/or winding up a business – see trust account tab on the website.

Case Study - Use of Confidential Information - The LIST

Relevant Facts

In April 2020 the Complainant received personalised correspondence addressed to him at his home address, in which was a pamphlet advertising property management services of a real estate agency business (the Real Estate Agency). The Complainant is the owner of a rental property.

The pamphlet was signed by an employee (the Employee) of the Real Estate Agency. The employee does not hold a valid property agents licence.

The Complainant's wife telephoned the Employee and enquired as to how the information identifying the Complainant as the owner of the rental property had been obtained. The Employee responded, saying she had "...accessed the LIST (Land Information System Tasmania) to get the information".

Section 83(2) of the *Property Agents and Land Transaction Act 2016* (the Act) states that when unsatisfactory professional conduct committed by a person employed by a real estate agent is '...committed with the consent...or was attributable to... default on the part of, the agent, manager...(then) the agent, manager... is also guilty of that conduct".

The complaint was made against the property agent authorised to manage (the Property Agent) the Real Estate Agency.

Ground of complaint

The ground of complaint was that the Property Agent engaged in unsatisfactory professional conduct by using, or allowing to be used, confidential information in an attempt to solicit clients.

Discussion

Upon receipt of the Complaint the Property Agent raised the matter with the Employee, who confirmed to him that when speaking to the Complainant's wife she had said we had old data bases and confirmed information on the LIST.

In his submissions to the Board the Property Agent stated, "As a young company we have been heavily focused on prospecting for business and, having employed several experienced consultants, have used several older databases to introduce ourselves...".

When asked by the Investigator, the Property Agent confirmed the nature of the Real Estate Agency's subscription to The LIST, noting that it allowed access to gain very particular information on land holdings and owners and that he was aware that information from The LIST cannot be used for marketing purposes.

The Property Agent submitted that the breach of the Complainant's privacy was not an intentional act, and though not excusable, occurred during the course of routine work with the Real Estate Agency's databases. However once he was made aware of what had transpired he promptly emailed his administrative staff with information on the Privacy Act and the obligations in collecting and using information and particularly in relation to marketing.

The Board noted the advice of the Investigator that when the Complaint was brought to the attention of the Property Agent (and the Employee) they made immediate, unqualified admissions regarding how the information was obtained and the subsequent improper use of information obtained from The LIST for marketing purposes and that the Property Agent had taken appropriate steps to ensure that such an incident did not occur again.

Finding by the Board

The Board considered that the evidence indicated that the conduct may amount to minor misconduct that could be dealt with by the Board under Section 100 of the Act. Accordingly, the Board wrote to the Property Agent for a written explanation of the conduct – that, in his capacity as the managing real estate agent, the Property Agent allowed to be used confidential information obtained from The LIST to contact the Complainant in an attempt to solicit business.

The Board was satisfied that the Complaint was substantiated on the basis that the Property Agent did not exercise a standard of competence and diligence that the public is entitled to expect from a reasonably competent property agent.

The Board found that the Property Agent's failure to have a system in place to prevent confidential information from being incorrectly used for marketing purposes amounted to unsatisfactory professional conduct, but of a minor nature and cautioned the Property Agent pursuant to Section 101(6)(a) of the Act.

Case Study – poor supervision results in theft of trust money (Tribunal Decision)

Background

This matter was referred by the Property Agents Board (the Board) to the Property Agents Tribunal (the Tribunal) as it was considered that the conduct amounted to more than minor misconduct.

As this matter occurred before 1 April 2017, the relevant legislation in relation to the conduct is the *Property Agents and Land Transactions Act 2005* (the repealed Act) and the Code of Conduct (the repealed Code) appearing in schedule 2 of that Act. However, the orders and actions taken were imposed under Section 110 of the *Property Agents and Land Transactions Act 2016* (the Act).

It should be noted that the legislative requirements relating to trust money have not changed between the repealed Act, Regulations and Code of Conduct and the current legislation. The current legislative provisions are identified in the footnote.

Relevant Facts

A Real Estate Agency Business (the Agency) was registered as a Real Estate Agent at the commencement of the Repealed Act and was named in Part 1 Division 1 of the Register. There was a qualified director and real estate agent authorised to manage the Agency (the Property Agent).

In June 2007, a person (the Employee) was employed as a casual accounts officer with the Agency and after a period the employee qualified as an assistant property manager.

The Employee's role required her to among other things be responsible for the bookkeeping of the Agency. The Employee was responsible for all data entry relating to the Agency's finances, invoicing, payments of accounts and administration of bonds from tenants of properties managed by the Agency.

The Employee was also responsible for opening the mail sent to the Agency.

In May 2013, while the Employee was on leave, the Property Agent received correspondence from the Department of Justice noting that some security deposits

had not been paid by the Agency to the Rental Deposit Authority (RDA).

The Employee at the same time confessed to stealing money from the Agency.

The Property Agent engaged accountants to undertake a forensic audit, the result of which indicated that the Employee had stolen approximately \$125,191 in funds that should have been paid to the RDA.

Grounds of referral

The Board in the referral to the Tribunal alleged that the Property Agent's conduct from 1 July 2008 to 17 July 2015 identified:

- The failure to diligently supervise an employee contrary to clause 5(1) of Schedule 2 to the *Property Agents and Land Transactions Regulations 2006* (the Repealed Regulations) (Code of Conduct);
- The failure to adequately supervise the keeping of trust account records relating to trust money received and ensure the reconciliation records and schedule of ledger accounts were accurate, contrary to Regulation 6 of the Regulations;
- The failure to implement proper and appropriate trust accounting systems to ensure the requirements of the Repealed Act and Regulations relating to trust money were complied with.

Clause 6(b) of the Code of Conduct contained in the Repealed Regulations authorised an agent to delegate tasks to other persons employed or engaged to work at the authorised place of business, but also stipulated that the property agent must not delegate responsibility for any aspect of the work.

Discussion and findings of the Tribunal

The Board and the Property Agent agreed in writing supplied to the Tribunal that the Property Agent was guilty of the conduct alleged in the following Complaints:

Complaint 1: Failure to diligently supervise an employee

The Property Agent was guilty of professional misconduct as defined in section 83 of the Act in that he failed to diligently supervise an employee and failed to ensure that the Employee understood and complied with the relevant Act, Regulations and the Code of Conduct in contravention of clause 6(a) of the Repealed Regulations;

Complaint 2: Failure to implement proper and appropriate Trust Account Recording procedures

The Property Agent was guilty of professional misconduct as defined in section 83 of the Act in that between at least 2 June 2011 and 1 April 2013 he failed to implement proper and appropriate procedures to ensure compliance with legislative requirements outlined in the Repealed Act and the Repealed Regulations in relation to trust monies, including:

1. The Property Agent failed to:
 - (a) hold trust money in the trust account for the person entitled;
 - (b) to pay trust money into a trust account;
 - (c) supervise the keeping of trust account records relating to trust money received;
 - (d) ensure that the reconciliation records and schedule of ledger accounts were accurate in relation to trust money received;
 - (e) retain trust money in a trust account until the money was paid to a person entitled to it;
 - (f) issue trust account receipts that had printed on them the ABN or ACN;
 - (g) to make a payment of trust money in accordance with the regulatory provisions;
 - (h) record details of trust account receipts in a trust account cash book;
 - (i) record details of trust account payments in a trust account cash book.
2. The Property Agent submitted trust account reports to the Board that were false in that he declared that all residential bonds received had been paid to the Residential Deposit Authority within the required

timeframe pursuant to the *Residential Tenancy Act 1997* when this was not the case, contrary to the provisions of Regulation 28(5) of the Repealed Regulations.

3. The Property Agent breached the *Residential Tenancy Act 1997* in that residential bonds were required to be lodged with the RDA within three working days of receipt and the Property Agent failed to do so.

The material before the Tribunal included the results of the Board's investigation and supporting documents, and the submissions and responses of the Board and Property Agent, together with the agreement in writing between the parties that the Property Agent was guilty of the conduct alleged in each complaint.

Overall Findings of the Tribunal

Having considered the material before it, the Tribunal was satisfied and found that the Property Agent was guilty of the conduct alleged in each complaint, and that the conduct was properly characterised as professional misconduct as defined in section 83 (1) (a) of the Act:

“unsatisfactory professional conduct of a property agent, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence;”

Orders and actions taken by the Tribunal

The Tribunal took into consideration the protection of the public, general deterrence, and appropriate punishment.

In particular the Tribunal took into account:

- The seriousness of the matter and the financial ramifications of the misconduct;
- That the Property Agent had no criminal culpability in relation to the theft of the monies from his Agency;
- The financial losses incurred by the Property Agent including loss of business as a result of the Employee's fraud, audit costs to review all business and trust records and determine the quantum of the Employee's fraud and to assist Tasmania Police and associated legal costs (failing which the Property Agent would have been fined a higher amount) and the financial losses incurred by the Agency as a result of the criminal conduct of the Employee;

- That the Property Agent was the first to alert Tasmania Police and the Property Agents Board to the Employee's misconduct;
- That the Property Agent did not contest the Board's complaint;
- That the Property Agent has not been practising as a Real Estate Agent for a period of time.
- That the Property Agent had been a longstanding Real Estate Agent working in the Real Estate industry and serving the community of Tasmania.

The Tribunal also noted that the parties agreed that part of that fine should be suspended. For the above reasons, which were particular to this case and should not be seen as in any way setting a precedent for resolution of future cases, the Tribunal considered that a suspension would be appropriate.

Pursuant to section 110 of the Act the Tribunal took the following action:

The Property Agent was **reprimanded**;

The Property Agent was **prohibited** from conducting all or any part of a real estate agency business, property management business or general auctioneering business for **3 years** except that he is entitled to apply to be a property representative as defined under Section 3 the Act with a condition that he not be responsible directly or indirectly for the administration of a trust account as defined in the Act;

The Property Agent was **fined the sum of \$40,000**, of which \$25,000 was suspended for a period of 5 years on the basis that the Property Agent commits no breaches of the Act or associated Regulations.

The Property Agent was to pay to the Board the sum of **\$10,000 towards the Board's costs**.

Footnote

The breaches in this case study identified in the current legislation are as follows:

Section 134 – Trust account

Section 135 – Trust money to be paid into trust account

Regulation 6 – Supervision of trust accounts

Regulation 8 – Control of trust money

Regulation 10 – Form of trust account receipt

Regulation 12 – Trust account payments

Regulation 14 – Payments by electronic funds transfer

Regulation 16 – Receipt records in trust account cash books

Regulation 17 – Payment records in trust account cash books

Regulation 28 – Trust account reports

Code of Conduct - Clause 6 Supervision of employees and persons engaged by property agent

Residential Tenancy Act 1997 - lodgement of bonds.

Trust Accounts

A property agent who holds trust money must comply with the trust account requirements under the *Property Agents and Land Transactions Act 2016* (the Act) and the *Property Agents and Land Transactions Regulations 2017* (the Regulations). Please note these requirements are not applicable to a property agent's general working account.

Name

A property agent's trust account and trust account records **must** be in the name of the licensed property agent or the business name under which the property agent carries on business. It is the name(s) displayed in the Board's Register for that property agent who is conducting business. *It is recommended that you confirm the licensed name before you open a trust account.*

ACN or ABN

There is a requirement for the property agent's ACN or ABN to be attached to the trust account and identified on certain trust account records.

If the property agent licensed to conduct business is a company then the company's ACN must be attached to the Trust Account and trust account records.

If the licensed property agent is an individual, then the individual's ABN must be attached to the Trust Account and trust account records.

There should **not** be any additional ACN or ABN attached/linked/noted on a trust account or on trust account records (*see associated entities*).

Trust account records

Regulation 5 identifies *trust account records* as:

- Trust account receipt
- Trust account deposit record
- Trust account payments – trust account cheques or EFT payments
- Trust account cash book
- Trust account ledger
- Trust account general journal
- Statement by approved institution (bank statement)
- Reconciliation records
- Schedule of invested trust money (if trust money has been invested)

Location of trust account records

The trust account records for the property agent's business must be kept at the authorised place of business of the property agent conducting business.

The authorised place of business is the address entered in the Board's Register.

The Board may approve trust account records to be kept at a place other than the authorised place of business but approval for this must be received in writing from the Board before the records are relocated.

What is the relevant legislation?

Section 3 Interpretation of the Act contains some definitions that are referred to here -

- *Authorised place of business*
- *Name*
- *Register*
- *Trust account*
- *Trust money*

Part 9 of the Act discusses trust money, trust accounts and records and includes the following relevant sections -

- *Section 133 Trust money*
- *Section 134 Trust account*
- *Section 135 Trust money to be paid into trust account*

The *Property Agents and Land Transactions Regulations 2017* provides the requirements for maintaining a trust account and trust account records. Regulation 4 through to Regulation 40 relate to trust accounts and trust account records.

Associated Entities - family or unit trusts

Sometimes businesses are created with a structure using family trusts or unit trusts. Under the Act, companies (body corporate wherever incorporated) and individuals can be licensed however there is no ability to license trusts under the Act.

It is important to remember that these associated entities must not be linked to the trust account. The legislation is very specific that the trust account must be in the licensed name.

Australian Privacy Principles

What do you know about the Privacy Act 1998 and Australian Privacy Principles?

The Australian Privacy Principles (or APPs) are the cornerstone of the privacy protection framework in the [Privacy Act 1998](#) (Privacy Act). They apply to any organisation or agency the Privacy Act [covers](#).

There are 13 [Australian Privacy Principles](#) and they govern standards, rights and obligations around:

- the [collection, use and disclosure](#) of [personal information](#)
- an organisation or agency’s governance and accountability
- integrity and [correction](#) of personal information
- the rights of individuals to [access](#) their personal information

The Australian Privacy Principles are principles-based law. This gives an organisation or agency flexibility to tailor their personal information handling practices to their business models and the diverse needs of individuals. They are also technology neutral, which allows them to adapt to changing technologies.

A breach of an Australian Privacy Principle is an ‘interference with the privacy of an individual’ and can lead to regulatory action and penalties.

The following table provides a quick reference to the Australian Privacy Principles, the Principle number, Title and the purpose.

A quick guide poster is also available to download.

Information on this page is sourced from Office of the Australian Information Commissioner. Click [here](#) for further resources.

Principle No. and Title	Purpose
APP 1 Open and transparent management of personal information	Ensures that APP entities manage personal information in an open and transparent way. This includes having a clearly expressed and up to date APP privacy policy .
APP 2 Anonymity and pseudonymity	Requires APP entities to give individuals the option of not identifying themselves, or of using a pseudonym. Limited exceptions apply.
APP 3 Collection of solicited personal information	Outlines when an APP entity can collect personal information that is solicited. It applies higher standards to the collection of sensitive information .
APP 4 Dealing with unsolicited personal information	Outlines how APP entities must deal with unsolicited personal information.
APP 5 Notification of the collection of personal information	Outlines when and in what circumstances an APP entity that collects personal information must tell an individual about certain matters.
APP 6 Use or disclosure of personal information	Outlines the circumstances in which an APP entity may use or disclose personal information that it holds.
APP 7 Direct marketing	An organisation may only use or disclose personal information for direct marketing purposes if certain conditions are met.
APP 8 Cross-border disclosure of personal information	Outlines the steps an APP entity must take to protect personal information before it is disclosed overseas.
APP 9 Adoption, use or disclosure of government related identifiers	Outlines the limited circumstances when an organisation may adopt a government related identifier of an individual as its own identifier, or use or disclose a government related identifier of an individual.
APP 10 Quality of personal information	An APP entity must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.
APP 11 Security of personal information	An APP entity must take reasonable steps to protect personal information it holds from misuse, interference and loss, and from unauthorised access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances.
APP 12 Access to personal information	Outlines an APP entity’s obligations when an individual requests to be given access to personal information held about them by the entity. This includes a requirement to provide access unless a specific exception applies.
APP 13 Correction of personal information	Outlines an APP entity’s obligations in relation to correcting the personal information it holds about individuals.



Continuing Professional Development (CPD)

Aim of CPD

A commitment to CPD is critical in building and maintaining professionalism within the property agents industry. As a result, it increases levels of consumer protection and enhances public confidence and trust in property agents.

CPD is an integral part of the qualification framework which has been designed to enable property agents to continue to update their knowledge and skills in the areas of industry developments, legislative change and work practices.

CPD provides a vehicle to maintain currency of technical knowledge and is a way of ensuring the property agents industry remains professional; it is also a way of growing new knowledge, expanding each property agent's abilities and giving them an opportunity to reflect upon their own professional practice.

CPD Requirements

The Board imposes a CPD condition on all individual property agent licences. The CPD condition is identified on the property agents' licence under the word "Conditions".

The Board imposes various CPD conditions and it is imperative that a property agent is aware of the condition imposed on their own licence and that they ensure that the CPD undertaken satisfies their CPD condition.

Types of CPD Conditions

Points CPD condition

The condition on the licence will indicate that the property agent must undertake a minimum number of CPD points within the period specified.

The condition will indicate how many industry specific CPD points must be undertaken, and of those, the minimum number of CPD points that must be provided by an external provider.

Example of condition on licence:

The holder of this licence is required to undertake 12 CPD points by 30 June 2023. 8 CPD points must be industry specific and at least 4 of those industry specific points must be by an external provider.

Therefore, the condition for that property agent is broken down to be -

12 points of CPD by 30 June; which consists of:

- 8 points (of the 12 points) industry specific CPD; and
- 4 points (of the industry specific CPD) need to be delivered by an external provider.

CPP41419 Certificate IV in Real Estate CPD condition

From 1 August 2021 property representatives must complete the CPP41419 Certificate IV in Real Estate Practice.

The condition on the licence will clearly set out the requirements for that licence holder.

The condition will be placed on a property representative's licence at the time the licence is granted. The timeframe for completion will depend on when in the licence year the licence is granted.

For example, if the licence was granted on 1 November 2021 the CPD condition would read:

The holder of this licence is required to successfully complete the 5 core units of CPP41419 Certificate IV in Real Estate Practice by 30 June 2023.

The core units are

*CPPREP4001 Prepare for professional practice in real estate;
CPPREP4002 Access and interpret ethical practice in real estate;
CPPREP4003 Access and interpret legislation in real estate;
CPPREP4004 Establish marketing and communication profiles in real estate;
CPPREP4005 Prepare to work with real estate trust accounts.*

Given the commitment and cost of these units, the Board determined that this CPD would satisfy the CPD requirements for up to 24 months after completion.

Mutual recognition/knowledge and experience CPD condition

A property agent who applied under mutual recognition (MR), or who has been granted a licence on the basis that the Board was satisfied that the person had sufficient knowledge and experience of the functions of a property agent will include a condition that the property agent is to undertake four (4) CPD points on Tasmanian Legislation relating to the conduct of property agents.

The CPD requirement for a person who applies for a licence under MR and has been granted a Division 2 licence (real estate agents, property managers, general auctioneers) is the Compliance and Ethics Cluster Diploma units within the CPP51119 Diploma of Property (Agency Management):

- CPPREP5001 Manage compliance in the property industry
- CPPREP5002 Establish and monitor property industry trust account management practices
- CPPREP5003 Manage ethical practice in the property industry

The units studied for these CPD requirements must be approved by the Board as being focused on Tasmanian legislation.

Given the commitment and cost of these units, the Board has determined that this CPD would satisfy the CPD requirement for a two-year period.

If the Division 2 licence holder has already completed the three units then the Acts and Regulations unit of study (Board approved CPD Code EP2074) studied as part of the property representative exam preparation course would be sufficient to satisfy 4 points of CPD on Tasmanian Legislation relating to the conduct of property agents.

What is a CPD Activity?

CPD may take several forms such as:

- training courses, workshops or symposiums;
- distance professional developmental/education programs;
- multimedia or website-based programs;
- a conference or seminar including webinars; or
- other training types as approved by the Board.

Types of CPD Activity

Industry specific or non-industry specific

The Board has placed an emphasis on industry specific CPD activity as it assists property agents to be more effective and aware of industry developments, legislative changes and work practices. The Board requires some CPD undertaken to be directly related (industry specific) to the property agents industry.

A CPD activity is characterised as industry specific if the CPD activity

- (a) covers property agents industry topics or covers topics which (although more general in nature) provide examples/case studies relevant to the property agents industry; and
- (b) is an activity that has been created or is organised for the property agents industry.

However, the Board appreciates that there are CPD opportunities of a non-industry nature which will provide valuable professional development to a property agent. As such, the Board will continue to approve CPD activities:

- (a) if the CPD activity has relevance to the property industry;
- (b) has a significant intellectual or practical content; and
- (c) provides a professional developmental outcome to the activity.

A property agent can undertake some CPD activity of a more general nature (non-industry specific) that is not necessarily directly connected to the property agents industry.

It should be noted that CPD activities that are characterised as non-industry specific will only be allocated a maximum of 2 points regardless of the activity's duration.

Mandatory CPD activity

The Board from time to time may require all property agents to undertake a CPD activity relating to a specific topic/issue. This type of training will be called a mandatory CPD activity. If the Board requires a mandatory CPD activity, it will specify what training is required and when it must be completed.

Internal Training or External Provider

The Board has determined that each property agent must undertake some points of CPD activity from a training provider/trainer external to their organisation. The CPD point coding will display the prefix 'EP' eg EP1234. A CPD activity conducted internally will be coded with the prefix 'IP' eg IP1234.

Your licence, your CPD

Everyone has a CPD condition on their licence however not everyone has the same requirement.

Check your licence for what is required for you to maintain your licence.

Further information about CPD is available on the Board's website.

Property descriptions

Please note the following information is intended only to provide a summary and general overview on matters relating to advertising property. It is not intended to be all-inclusive nor does it constitute legal advice.

Suburb

The suburb that is identified on the property title should be the suburb that is used in advertising.

A suburb name shouldn't be created to make it more appealing or a more rural property shouldn't be advertised as being in a more well-known suburb. Eg "Howrah East" isn't Rokeby or "Mona Heights" isn't Chigwell, and Caveside is not Mole Creek. Sharing a postcode doesn't mean it is the same suburb.

False or Misleading statements

Property Agent knew when the relevant information was published that the relevant statement or representation was false or misleading.

Where there is evidence to suggest that a property agent **could have** discovered that information was false or misleading upon proper enquiry **before** making the statement or representation, but in fact made no such enquiry, the property agent is more likely to be guilty of professional misconduct or unsatisfactory professional conduct in the event the statement or representation turns out to be false or misleading

What is False and Misleading?

Section 56 of the *Property Agents and Land Transactions Act 2016* makes it an offence for property agents to represent in any way to someone else anything that the agent knows is false or misleading in relation to the letting or sale of property.

An essential element of the offence is that the property agent knew when the relevant information was published that the relevant statement or representation was false or misleading.

Section 56 does not in itself create any obligation to make enquiries or to independently verify information that is given to the property agent (eg by the client).

A property agent however has a professional responsibility to ensure so far as is reasonably practicable that information that is published in connection with the sale or lease of property or business is not false or misleading.

The obligation also extends beyond general publication to all forms of communication including direct communication to a person with whom the property agent has dealings, such as potential purchasers and tenants.

The extent to which a property agent may be obliged to make enquiries to obtain information about relevant matters, or take steps to independently verify information given to the agent by a client or obtained from any other source will depend on a variety of considerations which might include, for example:

- the identity of the client
- the apparent reliability of information supplied by the client or the reliability of any other source
- the nature of the transaction
- the nature of the property
- the importance of the information in the context of the transaction.

Where there is evidence to suggest that a property agent could have discovered that information was false or misleading upon proper enquiry before making the statement or representation, but in fact made no such enquiry, the property agent is likely to be guilty of professional misconduct or unsatisfactory professional conduct in the event the statement or representation turns out to be false or misleading.

The Case Study – false and misleading advertising demonstrates the application of the Act.

Case Study - false and misleading advertising

Relevant Facts

A property representative (the Property Agent), employed by a Real Estate Agency listed a property for sale (the Property).

The advertising material was titled "A LITTLE PIECE OF PARADISE!" The first line of the text read, "This charming 1906 Colonial farmhouse plus 1 bedroom converted dairy, offers a wonderful rural lifestyle."

The features of the Property were highlighted in dot point format, including but not limited to:

- "3 generous sized bedrooms & media room/4th bedroom
- Roomy main bathroom with bath & separate shower
- 2nd bathroom has toilet & shower
- Separate studio (converted dairy), ideal for accommodation/Airbnb".

The marketing material contained a floor plan that was titled 'Self Contained Unit'. The rooms were named on the floorplan as kitchen/dining, bath and lounge/bedroom. However, Property Agent did not include the building size in her marketing material.

Before submitting their offer the Complainants enquired with the Property Agent whether all building works at the Property had been approved by Council, to which the Property Agent responded by email, 'The owners have advised that everything has been council approved to the best of their knowledge.'

The Complainants negotiated to purchase the Property via email on 29 February and 1 March. The negotiations culminated in an offer of \$650,000 being submitted, subject to five conditions, one of which was, "confirmation with Council that there is no unapproved work on the property of any concern to us."

The Property Agent informed the Complainants via email on 1 March that the vendors had accepted the offer. The Property Agent then advised that the contract would be drafted and forwarded their conveyancing solicitor, who incidentally also acted for the vendor.

The Property Agent subsequently prepared a contract for sale (the Contract), which included an annexure containing the Complainant's conditions. The condition regarding confirmation that there was no unapproved work on the Property was worded as follows:

"WARRANTY AS TO COUNCIL COMPLIANCE

- The Vendors warrant that there are no outstanding Council/building permits or certificates which may be required for any structure or improvements constructed on the property herein. If this warranty is breached, the purchaser may request the Vendor to obtain any outstanding certificates at the Vendors cost.
- The Vendor consents to the purchaser and/or the purchaser's agent inspecting all council plans and approvals."

The Contract was forwarded to the Complainants' solicitor and was subsequently signed by both parties.

During the settlement period (in early May) it was ascertained by the Complainants' solicitor that the 'converted dairy' was not approved by the Council. Retrospective attempts were made by the vendors to have the conversion approved as an 'Art studio', which would not allow the structure to be used as a separate unit or a bedroom.

It was also ascertained that the manner in which the condition was drafted in the Contract amounted to a 'warranty' being provided, which was not time limited and did not allow the Complainants to withdraw from the Contract should the condition not be met.

The Complainants further alleged that the 'warranty' was not a standard clause in the Real Estate Institute of Tasmania's (the REIT's) Standard Form of Contract.

The inclusion of the "Separate studio (converted dairy)" was a primary factor in the Complainants' decision to purchase the Property on the basis that it would supplement the accommodation of the main house and generate income as Airbnb accommodation.

Ground of complaint

The ground of complaint was that the Property Agent's conduct amounted to unsatisfactory professional conduct as she engaged in false and misleading advertising.

Discussion

The building in question was described by the Property Agent in the marketing material as a *'1 bedroom converted dairy'* and *'Separate studio (converted dairy), ideal for accommodation/Airbnb'*.

The Complainants formed the impression from the advertising material that the *'converted dairy'* could be used as an additional bedroom to supplement the accommodation provided by the main house or as a self-contained *'unit'* from which they could derive income by renting it as holiday accommodation. The Board considered that the Complainants' interpretation of the material was reasonable.

The Property Agent said that the manner in which the *'converted dairy'* was advertised was *'...on instructions from the Vendors and it is our position that the advertising is not misleading and in fact is accurate, as described by the Vendors.'*

Based on the available evidence the Board disagreed with the Property Agent's statement that the advertising was not misleading.

It was the Board's understanding that when listing a property, most property agents obtain:

- a Vendor Disclosure Statement, which requires the vendor to answer numerous questions regarding the property, including whether all works have been approved. This document, which is signed by the vendor, is not mandatory but is recommended; and
- a copy of the Property Information Sheet from the Government LIST, which indicates the main rooms of a property. On that basis, it should be evident if the property presented by the vendor is not in accordance with what is recorded on the Property Information Sheet. If a discrepancy exists a competent property agent would make appropriate enquiries to clarify the discrepancy.

The Property Agent advised that she had obtained neither a copy of the Property Information Sheet and a Vendor

Disclosure Statement. This was considered by the Board to be unusual.

However, the Property Agent said that she did obtain a CoreLogic Report (which provided some information about a property such as listing, sales and rental history and development permit activity where available).

The Property Activity statement contained in the report indicated that Development Approvals had been granted to build garages/sheds at the Property on 31 August 2011 and 31 October 2012, which were different in size and value to that of the *'converted dairy'*.

NOT APPROVED

There were several issues which the Board considered should have prompted the Property Agent to make further enquiries after being told by the vendors that all works had been approved *'to the best of their knowledge'* including:

- The very statement that it was only to the best of the vendors' knowledge that all works had been approved;
- The fact that there was a substantial discrepancy between the CoreLogic Report (which indicated that the Property comprised 3 bedrooms and 1 bathroom) and the Property *'as presented'* by the vendors (which comprised 3-4 bedrooms and 2 bathrooms in the main house, plus a further bedroom and bathroom in the *'converted dairy'*); and
- The fact that the Property Activity Summary contained in the CoreLogic Report did not appear to indicate that Development Approval had been granted to convert the Dairy to sleeping quarters.

The Board does not consider it to be the responsibility of a property agent to ensure that a property they list meets with the Building Code or has been approved by local council. However, it is of the opinion that a property agent should be diligent when gathering information about the property, including obtaining a Vendor Disclosure Statement from the vendor and a Property Information Report from the Government LIST.

It was the Board's opinion that there were sufficient inconsistencies to warrant further enquiries being made by the Property Agent before advertising the attributes of the Property in the manner that she did, rather than to simply

advertise them *'as instructed'* by the vendors or *'as it [the Property] appeared'* to her.

However no evidence was provided by the Property Agent to indicate that this occurred.

The Board also noted that a purchaser was obliged to undertake their own due diligence when purchasing property, rather than to rely solely upon the information provided by the property agent to sell on behalf of the vendor. However, that obligation should not absolve the property agent from their responsibility to accurately represent the property.



Finding by the Board

The Board considered that the evidence indicated that the conduct may amount to minor misconduct (false and misleading advertising) that could be dealt with by the Board under Section 100 of the Act and invited her to make further submissions.

In her submissions the Property Agent disputed the Board's suggestion that the outbuilding appeared not to have Council approval of any kind on the basis that the Corelogic report *"...clearly states it had 'Development Approval' from the Council..."* and the vendors expected that all building works had been inspected by Council because the builder responsible was a qualified Master Builder.

The Property Agent further submitted that it was not her intention to provide misleading information and, based on the presentation of the 'converted dairy', she assumed that the outbuilding could be used as an additional bedroom or a self-contained unit

A submission was also provided on behalf of the Property Agent by her solicitor who stated that the information in question was provided by the vendors.

He further noted that the advertisement contained the disclaimer that the information was furnished by the vendors and was not verified by the Property Agent, who did not have a belief one way or the other in regard to its accuracy.

He further submitted that the same principles applied as those of a High Court case (*Yorke v Lucas 1985*) where it was determined that a corporation which purports to do no more than pass on information supplied by another cannot properly be said to be itself engaged in conduct that is misleading or deceptive.

The Board considered the submissions provided by and on behalf of the Property Agent. However, for the above stated reasons, it was satisfied that the conduct of the Property Agent falls short of the standard of competence and diligence that a reasonable member of the public was entitled to expect from a reasonably competent property agent.

The Board was satisfied that the ground of the Complaint was substantiated. Accordingly, pursuant to Section 101(6) of the Act, the Board cautioned the Property Agent.

Applying for Licence

Application Forms

Application for Licence forms are available on the Board's website.

Licence Types

In Tasmania there are four different licence types available. Real Estate Agents, Property Managers, General Auctioneers and Property Representatives.

The licenses for Real Estate Agents, Property Managers and General Auctioneers can be divided into conducting business or not conducting business (known as individuals).

Property Representatives cannot conduct business.

Lodging an application

A complete application form includes the application form together with the appropriate accompanying documents and payment of fees.

Each application form indicates the documentation to be submitted and the fees to be paid.

Receiving an application

Upon receiving an application for licence a preliminary review is undertaken. This preliminary review provides to the applicant, confirmation that the application has been received, it advises if there are any missing or incorrect documents and it advises when the application will be assessed (the assessment date).

The assessment date is designed to provide certainty to the applicant of when the license will be granted or refused.

Granting or Refusing an application for licence

On the assessment date the licence applicant will receive notification of whether the licence has been granted or refused.

If the licence is granted the applicant will receive a copy of their licence together with other relevant information.

If the licence is refused the applicant will receive information regarding the grounds that the application has been refused.

Processing times

The licence applicant will be advised of the application outcome on the predetermined assessment date. Every effort is made to process licence applications as soon as practicable unless there are extenuating circumstances at which time the applicant will be advised of any delay.

Licence Trivia

Currently there are 1541 individuals holding a property agent licence in Tasmania.

- 929 licence holders are female
- 661 licence holders are male
- 1 licence holder identifies as gender natural

Number of first names starting with the letter -

A	139	N	60
B	67	O	6
C	101	P	53
D	94	Q	2
E	53	R	101
F	11	S	145
G	45	T	81
H	35	U	0
I	13	V	14
J	176	W	15
K	114	X	1
L	63	Y	10
M	133	Z	8

Most popular first name

David
Michael
John
Rebecca

Most popular middle name

Jane
Louise
John

Longest name = 40 characters

Shortest name = 5 characters

145 people don't have a middle name.

Examinations

The Property Agents Board conducts examinations for the qualification of property representatives.

Registering for an Examination

Examination candidates must register no later than 7 days prior to the Thursday examination through the booking form on the Board's website.

Candidates will receive an e-mail to confirm their exam booking. The examination fee invoice will be attached and the email will contain further relevant information regarding the examination.

Examination Commencement Times

Examinations begin at either at 9.30 am or 10.00 am depending on the location.

Afternoon sessions are scheduled on an as needed basis.

Examination duration

Candidates should allow up to 3 hours 15 minutes to complete the examination.

Examination Results

After a Candidate has undertaken an examination an email will be forwarded to the Candidate advising them the date that they will receive the exam result.

Every effort is made to provide results as soon as practicable.

Please note that examination results will not be provided before the date advised.

Documentation permitted in examination

Property Agents and Land Transactions Act 2016
Property Agents and Land Transaction Regulations 2017
 Code of Conduct
Residential Tenancy Act 1997

These documents can be highlighted. Handwritten notes* relevant to the legislative provision are accepted. (*Please note from 1 January 2022 only highlighting will be permitted – no handwriting or other markings).

Supervisor discretion

The Examination Supervisor has discretion to remove any documents from an examination candidate if the Examination Supervisor considers the handwritten (or other markings) on the permitted documentation is inappropriate.

Extra documents will not be available for use.

Examination Candidate

It is expected exam candidates will comply with examination conditions and instructions provided by the Examination Supervisor.

On the Day

Candidates should have

- photographic identification
- pens
- highlighter (optional)
- simple calculator
- permitted documentation

Candidates should be mindful of examination conditions and noise that will interrupt other candidates.

Candidates should not approach the Examination Supervisor during the examination unless handing up the completed paper (assistance from the Examination Supervisor is not permitted).

Candidates should leave the examination area as soon as they have handed in the examination paper.

Candidates should not approach the Examination Supervisor after the examination has concluded.

Licensing

Person's Name

The Board has determined the Register will contain the Full Legal Name, that is first name, (any) middle name(s) and surname.

The Board has also determined that a preferred name or nickname for marketing/advertising can be added to the Register.

Some property agents are using a different name to that recorded in the Board's Registers. This could be due to change in marital circumstances (reverting back to a maiden name or taking on a partner's surname) or shortening a first name or surname, using a nickname or another preferred name in their marketing/advertising.

Details up to date?

There is no cost associated with making a change to the Register.

A property agent is required to keep his or her details up to date and therefore must advise the Board of a 'change of details' so the Register can be amended. Such changes may include:

- Employer change
- Change of name
- Change of residential address
- Contact details

If a change of name is due to change in marital circumstances attach evidence of the name change such as a copy of a valid passport or current driver's licence that reflects his or her new legal name.

Carrying on Business?

The use of social media is a great medium to get a message out there and market yourself and your business. But a word of caution: property representatives must not call themselves a "real estate agent" or "property manager".

These are prescribed terms and to say or imply that you hold that licence when you do not is misleading and deceptive, and you may be in breach of the Act for holding yourself out to be able to carry out work that you are not licensed to do so.

The term PROPERTY AGENT may be used as this term includes a real estate agent, property manager, general auctioneer and property representative.

Further, unless a person is named in the Board's registers as being able to conduct business, he or she must not state or imply that they have their own agency business eg "John Smith Property" or "John Smith Real Estate". This includes terminology used on Facebook pages. The Board has published Social Media Guidelines to assist the industry. These guidelines together with other useful information is available on the Board's website [here](#)

Licence conditions - Check them out

Take some time out now to ensure that you have complied with or are on track to comply with any condition that has been placed on your licence. All conditions are printed on your licence.

Mutual Recognition

In Australia, each state and territory administer its own occupational licences for property agents. The basic principles under the *Mutual Recognition Act 1992* is that a person holding a licence in one jurisdiction is entitled to apply for a licence in another jurisdiction without the need to undergo further testing or examination.

It should be noted that obtaining a licence under mutual recognition is not an automatic process. Individuals must apply for recognition of their existing licence/s by lodging a mutual recognition application which can be found on the Board's website and pay the applicable fees and provide other supporting documentation.

Advertising/Marketing/Agreements

Advertising - the business name and address

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

Further the Code of Conduct at clause 11 (2) provides a property agent must ensure that, as far as reasonably practicable, any advertising or promotional material (including any material in any social media post or advertisement) and any other sign, notice or advertisement includes a clearly legible statement of the name and address of the property agent's business in respect of which the property agent is licensed.

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

***name** in respect of a property agent conducting business, means the name shown in the Register - being the business name.*

***authorised place of business**, means the address in the Register where the property agent may carry on business.*

As an example, if the Board was a licensed real estate agency business. Any publication would have included the words:

Property Agents Board (as the name)
Level 1, 15 Victoria Street, Hobart (as the authorised place of business).

Termination Provisions

Remember that there is a minimum and maximum termination period in sales and property management agreements.

Termination of sales agreements can be **no more than 30** days.

Termination of property management agreements can be **no less than 30** days.

Approaching a person already under agency

The Australian Competition and Consumer Commission (the ACCC) made rulings with regards to an agency being able to contact a person who is a client of another agency.

In 1998, the ACCC took action against the Western Australian Real Estate Institute that restricted its members from approaching a vendor already under agency: -

“As a result of the ACCC action, the particular anti-competitive Rules and Rules of Practice have been removed to ensure that the Real Estate Institute of Western Australia's (the REIWA) professional standards no longer breach the Act. The changes mean that member agents can compete more actively by, for example, allowing REIWA real estate agents to provide information about their services to home-owners even if the sellers have already signed up with another agent. This will allow home-owners to be better informed about their options. Agents may also offer consumers incentives such as prizes and reward points that were previously not allowed.”

The Property Agents Board does not consider a property agent providing promotional material to a vendor as being misconduct. However, it is important to ensure that material provided does not contain advertising or information that is false or misleading or that a client of another agency is encouraged to cancel a valid contract outside the provision of the original agreement.

Further, it is important to note the provisions in the Code of Conduct relating to conflicts of interest, rights and responsibilities and second commissions.

Extending a sales authority - 120 days

The maximum period of a sales authority is 120 days. The Act specifies that an agreement expires after 120 days.

This means that an agency agreement cannot be extended (even by mutual agreement between the parties) past 120 days.