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ISSUE 32

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CURRENT LEGISLATION

PROPERTY AGENTS AND LAND TRANSACTIONS ACT 2016

PROPERTY AGENTS AND LAND TRANSACTIONS REGULATIONS 2017

2022 CODE OF CONDUCT - VERSION 4

Fee units are automatically indexed every financial year and are \$1.70 for the 2022-2023 financial year.

One Penalty unit is \$181.00 for the 2022-2023 financial year.

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Licence numbers in Tasmania 2022-2023

Licence category	Renewed Licenses	New Applications for 1 July 2022	Total Licenses as at 1 July 2022
Real Estate Agency Business (P1D1)	216	2	218
Real Estate Agent (P1D2)	419	9	428
Property Management Business (P2D1)	9	0	9
Property Manager (P2D2)	5	0	5
General Auctioneering Business (P3D1)	16	0	16
General Auctioneer (P3D3)	15	0	15
Property Representative (P4)	1098	11	1109
Total	1778	22	1800

Legislative Changes 2022

Property Agents and Land Transactions Act 2016

The *Property Agents and Land Transactions Amendment Act 2020* and *Property Agents and Land Transactions Amendment Regulations 2022* were enacted on 4 May 2022.

The amendments were generally minor in nature and are summarised below.

Interpretation - Section 3 - small changes to the definition of property management business and real estate agency business;

Conditions of licence - Section 20 - addition of the following clause

2(ab) a condition requiring the licensee to notify the Board, in an approved form, of any change in the licensee's name, business address or contact details as soon as practicable after that change;

Qualifications – amendments to **Sections 25,26,27,28** and the addition of Section 28A as below:

- (1) *The Board may make a determination specifying the qualifications, including national qualifications, that the Board considers are required to be held by a person in order for the person to be granted a –*
 - (a) *real estate agent licence; or*
 - (b) *property manager licence; or*
 - (c) *general auctioneer licence; or*
 - (d) *property representative licence.*
- (2) *The Board may vary or revoke a determination made under subsection (1).*
- (3) *The Board is to ensure that a determination made under subsection (1), or a variation or a revocation of the determination –*
 - (a) *is published in a manner that the Board thinks fit before the determination or variation comes into effect or the revocation takes effect; and*
 - (b) *specifies the period for which the determination or variation is in effect or the time when the revocation takes effect; and*
 - (c) *remains published while the determination or variation remains in effect; and*
 - (d) *is made available for inspection by members of the public and property agents –*
 - (i) *at the public office of the Board; and*
 - (ii) *on the website of the Board.*

Registers - small changes **Sections 30, 31, 32, and 33** with the addition of the word “business” before address. This is to ensure that it is the business address of the property agent published not residential address.

Management of Business – small changes to Section 36, Section 37 and Section 60 to indicate that a business is required to be managed by a “natural person”.

Employment provisions - addition to Section 38 to include clause for real estate agents and property agents to be employed or contracted by a real estate agency business or property management business.

False or misleading advertising – Section 56 and Section 65 change to definition and inclusion of defence provisions.

Code of Conduct – Section 84 change to distribution requirements.

Service of Documents – Section 168 additional clause to permit the Board to serve documents by email.

Property Agents and Land Transactions Regulations 2017

The amendments to the Regulations were to repeal (take out) **Regulation 41** – this change allows the Board to make the qualification declaration as described in Section 28A of the Act.

Schedule 1 – Fees was amended and a change to the annual licence fees units were made for those fees payable before 1 April 2023 and those payable after 1 April 2023.

Fees and Charges from 1 July 2022 to 30 March 2022

	Fees
Examination Fees	\$154.70
Application Assessment Fee	\$154.70
Late provision of reports provided to the Board	\$78.20
Licence Fees - carrying on business	
Real Estate Agent carrying on business (P1D1)	\$464.10
Property Manager carrying on business (P2D1)	\$464.10
General Auctioneer carrying on business (P3D1)	\$464.10
Licence Fees – individuals	
Real Estate Agent (P1D2)	\$285.60
Property Manager (P2D2)	\$285.60
General Auctioneer (P3D2)	\$285.60
Property Representative (P4)	\$285.60

EOFY trust accounting requirements

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 2022 (**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 2022 (**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 2022 (**required if no trust money held**).

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 2022 a Trust Account Report for the six months ended 30 June 2022.

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

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

Warning – A fee of \$78.20 applies for late lodgement of each Trust Account Report.

Annual Audit Report and Checklist for the year ended 30 June 2022

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 2022.

Please be aware that there is a late fee of \$78.20 payable for each audit report received by the Board after 30 September 2022.

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](#).

Annual Audit Exemption is completed by the managing property agent and submitted to the Board no later than 30 September 2022 (**required if no trust money held**).

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 licence 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 1988 (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.

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.

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

CPD changes - 2022-2023 licence year

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. The Board has determined to bring the CPD completion date to be in line with the renewal period of **30 April**.

Therefore the CPD condition has been amended on all licenses to indicate that completion of CPD is required by 30 April.

Your licence, your CPD

Everyone has a CPD condition on their licence most property agents have 8 points of CPD to complete however not everyone has the same requirement.

CPD Type	Licence no.
8 points	1455
16 points	28
Cert IV	149
Tas Legislation	74

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

Currently 28 licence holders were provided an extension to complete last year's CPD requirement and must complete 16 points of CPD prior to 30 April 2023 in order for the licence to be renewed.

There are 149 property representatives that have the Certificate IV qualification as their CPD requirement and 74 property agents have a mutual recognition CPD requirement, that being the licence holder must complete units of study on Tasmanian legislation.

Review of CPD Activities

The Board has undertaken a review into the types of CPD activities undertaken by Property Agents in Tasmania; the types of CPD activities the Board is going to approve in the future and CPD declared by property agents as part of their licence renewal.

One of the considerations was the training material content and depending on the activity type whether it was intended to be consistent with Tasmanian Legislation and Industry practice.

Where the Board does not consider that the training material content meets an appropriate standard it will remove the approval.

Please ensure that the training activity you are about to undertake is on the approved activity list.



Online Portal CONTINUING PROFESSIONAL DEVELOPMENT

The Board introduced its online portal in March this year. Through the renewal process and the feedback received there have been some enhancements made to the portal, especially in the CPD Declaration Area.

You can declare CPD at anytime during the year once completed. Please note the Online Portal will not permit you to choose a date in the future.

There is also a new function to see what CPD you have submitted. That way it is easy to keep track! see example below:

Pending Compulsory Professional Development (C1679 - 21/07/2022)				
Code	Name	Classification	Points	Date Completed
EP5644	General Compliance (Zoom session with Executive Officer) Property Agents Board	Industry Specific	1.00	15/05/2022
EP5645	Trust Accounting and Month End Reconciliation (Zoom session with Executive Officer) Property Agents Board	Industry Specific	1.00	30/05/2022

Board conducted CPD sessions

The Board's Executive Officer conducted 8 CPD sessions via zoom in May and June. Each of these sessions were 1 hour and participants were entitled to claim 1 CPD point. Topics ranged included Code of Conduct changes, trust accounting and month end reconciliations, advertising, general compliance, complaint process.

These sessions appeared to be well received and it is planned for further sessions to be conducted. Advice on how to book will be provided to industry.

Applying for a Licence

Application Forms for a new licence

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 the 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.

The Assessment Date

The licence applicant will be advised of the application outcome on the predetermined assessment date. ie

"Your application for licence will be assessed on 2 August 2022".

If there are extenuating circumstances for an assessment to be delayed the applicant will be advised.

Licence Renewals

In Tasmania all licences expire on 30 June each year. In April each year, property agents are invited to renew their licence through a renewal process.

This year the Board launched its Online portal to coincide with the licence renewal period. Licence holders were able to change their personal details, declare the CPD completed and answer the renewal declaration questions. Approximately 2,217 licence renewal emails were forwarded between 25 and 26 March 2022.

Approximately 220 Property Agents lodged a paper renewal document, the remainder lodged through the online portal.

All property agents received at least 9 emails in relation to the 2022-2023 licence renewal process.

Not renewed – full year data

Property Agents were invited to advise that Board at any stage through the renewal process if they were not intending to renew the licence. 114 property agents advised that they were not intending to renew their licence and another 183 licenses were not renewed due to the licence renewal being incomplete.

This table indicates the number of licenses per category that were not renewed for the 2022-2023 licence year.

Real Estate Agent carrying on business (P1D1)	21
Real Estate Agent individual (P1D2)	48
Property Manager carrying on business (P2D1)	0
Property Manager individual (P2D2)	0
General Auctioneer carrying on business (P3D1)	1
General Auctioneer individual (P3D2)	1
Property Representative (P4)	226

Licensing changes

Name on licence

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.



UPDATE PERSONAL INFORMATION

Changing personal details

A property agent is required to keep his or her details up to date. Such changes may include:

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

Use the Online Portal to change your personal details by clicking on the “ID” icon shown above.

If a change of name is due to change in marital circumstances 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 should be email to board@propertyagentsboard.com.au



CHANGE EMPLOYER DETAILS

On the move? Another upgrade to the Board’s Online Portal is the ability to change employer details.

Click on the icon, simply type the name of your new employer in the “new employer search” until you see it in the list or if you are no longer associated with an employer tick the “I am no longer employed”.

NEW EMPLOYER *

I AM NO LONGER EMPLOYED

NEW EMPLOYER *

- EIS Property **Hobart**
- First National Real Estate Kingston
First National Real Estate **Hobart**
First National Real Estate **Hobart** & Kingston
- Harcourts **Hobart**
- Harrison Agents **Hobart**
- Hobart** Buyers Agents
- McGrath **Hobart** Estate Agents
- My **Hobart** Home
- NAI Harcourts - **Hobart**
NAI Harcourts Tasmania
- One Agency **Hobart**
One Agency Clarence
- Petrusma Property Management

You can enter the licence name or the business name.

Written Appointments

Written Appointments

A property agency business creates a legal relationship with its client by entering into an agreement.

For the purposes of the Act, the document is called an “appointment” but within industry there are many different names used for this document, such as listing agreement, sole agency agreement, management agreement, sales agreement, etc.

Whatever terminology is used, the document creates the relationship and terms between the agency and the person who is going to pay for the agency services.

For a document used by property agents to be a valid document, it must contain certain information that the client has agreed to.

A property agent is only entitled to receive remuneration for services provided by the property agent in the capacity of a property agent if there is in place a valid written appointment of the property agent.

In simple terms, the document must contain certain information that the client has agreed to and that meets all of the requirements of Section 44 (real estate agents) Section 46 (property managers) and Section 80 (general auctioneers) of the *Property Agents and Land Transactions Act 2016* (the Act).

For each business type the appointment must include the following:

1. Be in writing;
2. Sets out services;
3. Identifies the property;
4. Clearly indicates how any valuable consideration (commission/management fees) is to be calculated;
5. Nature and extent of expenses and how those expenses will be recouped;
6. How either party to the agreement may terminate the agreement;
7. The property agent must have the client’s signature on the agreement and must give the client a copy of the agreement;
8. The property agent must have proof that the client was given a copy of the agreement.

For **sales agreements** there are further requirements:

- The termination clause can only be to a **maximum of 30 days’** notice. It can be less than 30 days but no more. Termination can be initiated by either party.

The agency is still obliged to continue to work for the client until the termination period expires; and

- The agreement can be for no longer than **120 days** (this time limit doesn’t apply to agreements involving property development).

For property management agreements there are further requirements:

- The Termination clause has a **minimum of 30 days’** notice. The termination period can be more than 30 days but no less. Termination can be initiated by either party.
- The agency is still obliged to continue to work for the client until the termination period expires.

If the components of an agreement are not complied with, then entitlement to receive commission or recover expenses from the client is in jeopardy.

Extending a sales authority – 120 days

Unless the sale relates to property development the maximum period for 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 and a new authority should be completed.

Who owns a listing?

An agreement to sell or manage property is between the business and the client.

If a property agent leaves an employer the agency agreement and client stays with the employer.

Trust Account Reconciliation Records

The *Property Agents and Land Transactions Act 2016* (the Act) and the *Property Agents and Land Transactions Regulations 2017* (the Regulations) outline the specific legislative requirements in relation to holding trust money and trust account records.

Trust Account Reconciliation

Regulation 21 provides that a property agent must reconcile the property agent's trust account at least once in each calendar month.

The Regulation then states that the account is reconciled when the totals of the trust account cash books, the bank statement, and the ledger accounts all match – separate advice notes are available to discuss these terms.

Proprietary systems

There are many different proprietary systems that provide trust accounting solutions, and any direction provided by the Board must be robust enough to encompass various circumstances.

All property agents that hold a trust account must comply with Regulation 21 of the Regulations regardless of how the trust accounting records are created.

Keeping of Trust Accounting Records

The Regulations provide for where trust account records are to be kept (Regulations 23); that Records may be prepared and stored electronically (Regulation 24); as well as retention and disposal of trust account records (Regulation 25).

Month end Reconciliation Records

A Month End Reconciliation Record should be a “point in time” document. The Month End Reconciliation Record should contain detail of all the information that makes up the reconciliation figures and held in month order. It is not appropriate for the components of a Month End Reconciliation Record to be separated at any time.

There is a requirement for the month end reconciliation record to provide certain information.

The Board has formulated this advice to ensure that property agents comply with the requirements for month end reconciliation records.

A month end reconciliation record must include:

- A “summary sheet” that identifies the balance of the cash books, the bank statement and the ledgers and which contains the endorsement and physical signature of the managing agent that the record is complete and accurate;
- the schedule of the cash books;
- the bank statement;
- the schedule of ledger accounts; and
- **if** the property agent holds invested trust money, the schedule of invested money.

Depending on the size of the business and the type of business being undertaken will determine the size of the month end reconciliation record.

To assist property agents, the Board will authorise property agents to create a condensed Month End Reconciliation Record which is printed and kept at the authorised place of business and permit the full Month End Reconciliation Record to be stored electronically.

Month End Reconciliation Record: Condensed

The condensed record is an abbreviated version of the full month end reconciliation record (which is still required to be kept). It must be printed and held as a hard copy at the authorised place of business for a full financial year after audit.

The Condensed Month End Reconciliation Record consists of:

- the “summary sheet” which has the three-way match of bank balance, cashbook and ledgers. The Reconciliation Record is physically signed with the endorsement by the property agent that the record is “complete and accurate”. For good practice, the preparer of the reconciliation should also sign the reconciliation record.
- a copy of the financial institution statement identifying the month end balance;
- the cashbook balance;
- the Trial balance indicating the balance in each ledger account; and
- the schedule of invested money, if appropriate.

Authorised Place of Business

While most property agents interact with clients and customers in places other than an authorised place of business, as this is the nature of property industry transactions, there are still strict legislative requirements that must be adhered to.

There is no provision within the Act for anything other than a business to be operated from an authorised place of business.

This means the legislation does not provide for such things as “mobile business”, “no shopfront business”, “Satellite Office”, “Virtual Office”.

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

For the purpose of this example we will concentrate on real estate agency business.

Real estate agency business means 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.*

Legislative Requirements

Section 36 of the Act provides that a real estate agency business must be carried on at an authorised place of business (Section 37 for Property Management Business and Section 60 for General Auctioneering Business).

Section 52 of the Act provides that a real estate agent must display at each authorised place of business, in a conspicuous position where it may be easily read, a notice stating the agent's name and the fact that the agent is a real estate agent (Section 53 for Property Management Business and Section 63 for General Auctioneers).

Section 54 of the Act provides that a real estate agent must ensure that advertisements published in connection with the business must contain the real estate agent's name and the address of the agent's authorised place of business. (Section 55 for Property Management Business and Section 64 for General Auctioneering Business)

All property agents have a requirement to ensure that when they advertise the name of the business and address of the business is included in the advertisement. This includes electronic publishing and the use of social media.

The Board publishes the Register of Property Agents conducting business on its website.

This publication indicates the licence name, the business name and the place of business. It should be noted that only the first business name and the first authorised place of business is published if the licence holder has multiple names and addresses

The Regulations provide for requirements of trust accounting records, where the trust account records are to be kept and how they can be inspected by an authorised officer of the Board which includes the entry into the authorised place of business at any reasonable time.

Property Agents Board		Property Agents Conducting Business	
Name	Business Name	Place of Business	Lic. Type Lic. Until
Downton Investments Pty Ltd	Downton Property	180 Campbell Street, Hobart, Tasmania 7000	P1D1 30 Jun 2022
Edwards Windsor Pty Ltd	Edwards Windsors Real Estate	Level 2 88 Brisbane Street, Hobart, Tasmania 7000	P1D1 30 Jun 2022
Eighteen Fitzroy Pty Ltd	Little City Group	18 Fitzroy Place, Sandy Bay, Tasmania 7005	P1D1 30 Jun 2022
EIS Property (Tas) Pty Ltd	EIS Property Hobart	229 Elizabeth Street, Hobart, Tasmania 7000	P1D1 30 Jun 2022
EIS Property Sales Pty Ltd	EIS Property	229 Elizabeth Street, Hobart, Tasmania 7000	P1D1 30 Jun 2022
Elders Real Estate (Tasmania) Pty Ltd	Elders Towns Sheving	58 Elizabeth Street, Launceston, Tasmania 7250	P1D1 30 Jun 2022
Elders Rural Services Australia Limited	Elders	153 Richard Street, Western Junction, Tasmania 7212	P1D1 30 Jun 2022
Endurance (Tas) Pty Ltd	Kate Storey Realty	153 Arthur Highway, Dunalloy, Tasmania 7177	P1D1 30 Jun 2022
ESLogistics Pty Ltd	Century 21 Banks Property Group	139 William Street, Devonport, Tasmania 7310	P1D1 30 Jun 2022
Estate Management (Tas) Pty Ltd	L.J. Hooker St Helens	36 Cecilia Street, St Helens, Tasmania 3026	P1D1 30 Jun 2022
Fairfax (Fair) Fay Medallie	Fay Business Agents	17 Bannisdale Court, Eltham, Victoria 3095	P1D1 30 Jun 2022
Fair & Associates Pty Ltd	Fair & Associates Pty Ltd	4 Howrah Road, Howrah, Tasmania 7018	P1D1 30 Jun 2022
Finn Services Pty Ltd	Finn Services Pty Ltd	29 Balfour Street, North Geelong, Victoria 3215	P1D1 30 Jun 2022
Finnangan Residential Pty Ltd	Flex Realty Pty Ltd	57 Main Road, Wivenhoe, Tasmania 7320	P1D1 30 Jun 2022
Flex Realty Pty Ltd	Flex Realty Pty Ltd	108A Tamar Street, Launceston, Tasmania 7250	P1D1 30 Jun 2022
Freemint Investors Pty Ltd	Freemint Investors Pty Ltd	1 level 17 701 Keith Street, Sydney, New South Wales 2000	P1D1 30 Jun 2022

Legislative Breaches and penalty

Legislative Penalty v Infringement v Conduct Complaint

Under certain provisions, the Act and the Regulations a penalty can be imposed for a breach of that particular provision, by issuing an infringement or disciplinary action can be take through the complaint progress.

For example:

A breach of Section 36 Management of real estate agency business, subsection (1) is:

Penalty:

Fine not exceeding 50 penalty units.

The value of a penalty unit is currently \$181.00, therefore the penalty for this breach is a fine not exceeding \$9,050. To enforce this type of penalty the Board would be required to initiate legal proceedings.

However, in addition to this type of penalty the Act also provides for an infringement offence.

That is, the Board may serve and issue an infringement notice on a person or body corporate if the Board reasonably believes that the person or body corporate has committed an infringement offence.

The Infringement amount for Section 36(1) of the Act is 5 penalty units for an individual (\$905) or 10 penalty units for a body corporate (\$1,810).

The Executive Officer has written to property agents to advise them of matters which have been brought to her attention and would be considered an infringeable offence.

Examples

1. A real estate agency business advertises a property for sale in the real estate guide and the authorised place of business was not included in the advertisement. The infringement penalty could be 5 penalty units for an individual or 10 penalty units for a body corporate.
2. A person was advertised on the agency and realestate.com.au websites as a "property representative" and is showing the properties that the individual has listed for sale.

However, whilst that individual had successfully passed the Property Representative examination and applied for a licence, the licence wasn't granted at the time of the advertisement.

The possible Infringements amounts are:

- S38(1) for a body corporate the infringement penalty \$18,100;
- S56 for a body corporate the infringement penalty \$18,100;
- S38(3) for the individual the infringement penalty is \$1,810;
- S38(4) for the individual the infringement penalty is \$1,810; and
- S43 for the individual the infringement penalty is \$9,050.

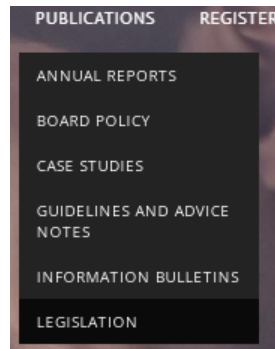
3. The Board's Register show that a person is a licensed property representative, however that licence is not connected to a real estate agency business. The agency is advertising the person as an employee. The infringement penalty that applies is \$1,810 for the individual and the body corporate is \$3,620.
4. A monthly trust account reconciliation not being endorsed with a statement that the record is complete and accurate or signed. The infringement amount is \$905 for the individual and the body corporate is \$1,810.
5. A real estate agent not providing written notice to the Board within 7 days of opening a trust account. The infringement amount is \$905 for the individual and for the body corporate is \$1,810.
6. A real estate agent not having executed written agency agreements (listing authorities) for all of the property listings as is prescribed under Section 44 of the Act. The current infringement amount for Section 44(6) for a body corporate is \$1,810.

2022 Code of Conduct – Version 4, the changes

The new Code of Conduct came into effect on 1 January 2022.

Accessing the Code of Conduct and other legislation

The Board publishes the Code of Conduct on its website. The PUBLICATIONS tab on the menu leads you to the LEGISLATION and other publications such as case studies, guidelines and advice notes, Board Policy documents, Information Bulletin and Annual Reports.



Alternatively there is a button on the Home page titled 2022 Code of Conduct Version 4. Clicking this button will lead you directly to the webpage dedicated to the Code of Conduct and where you can find additional information and all advice notes.



Clause 1 - Definitions

protected title means “real estate agent”, “property manager”, “general auctioneer” and “property representative”;

Clause 6 - Supervision of Employees

(1) A real estate agent, property manager, or general auctioneer, who manages a property agent’s business –

(a) **must** diligently supervise the work of all other persons employed or engaged to work in that business and must ensure that they **and all persons employed or engaged to work in that business** understand and comply with the Act, the regulations and this Code of Conduct;

(2) **A property agent must notify the real estate agent, property manager or general auctioneer who manages the property agents’ business within 7 days of notification by the Board that a conduct complaint has been made against them.**

Rationale for change Clause 6 - Supervision of Employees

The property agent who manages a business must supervise the work of the people employed or engaged to work in that business and is to ensure that everyone understands and complies with the *Property Agents and Land Transactions Act 2016*, the *Property Agent and Land Transactions Regulations 2017* and the Code of Conduct.

The Act provides that the Board is to only notify “the property agent who is the subject of a conduct complaint”. The Act does not provide for the Board to make the managing property agent aware of conduct complaints against individual property agents.

As a real estate agent, property manager, or general auctioneer, who manages a property agent’s business is to diligently supervise the work of all other persons employed this clause in the Code of Conduct provides the mechanism for the supervising property agent to be made aware of a conduct complaint.

The property agent who is subject to a complaint should notify the property agent named in the Board’s Register as the person authorised to manage, this should not be confused with internal positions of a department manager or the like.

Clause 7 - Dispute Resolution

A property agent must have **available** in the property agent’s authorised place of business a written **or electronic** document outlining –

- (a) the manner in which a customer or a client may make a complaint against –
 - (i) the conduct of a property agent; or
 - (ii) the operation of the property agent’s business; and
- (b) the procedure that will be undertaken by the property agent to resolve the complaint.

Rationale for change Clause 7 - Dispute Resolution

From time to time customers or clients of a real estate agency business may wish to make a complaint.

A complaint can be against an individual working in the business or it can be about a policy or procedure adopted by the business.

A property agent business must have a document which explains the complaint procedure.

There is also a requirement for the property agent to make all reasonable efforts to resolve a complaint and within a reasonable timeframe.

Clause 9 - Information Disclosure

(1) A property agent –

(a) must not disclose information relating to the affairs of a client obtained while acting for the client (and that obligation continues after the completion of the transaction) unless the client consents in writing to the disclosure or the property agent is required by law to make the disclosure; and

(2) A property agent –

(a) must not disclose information relating to the affairs of a customer obtained in the course of the property agent's business that the customer requests to keep confidential (and that obligation continues after the completion of the transaction); and

Rationale for change Clause 9 - Information Disclosure

The information disclosure clause in the Code of Conduct relates to the interaction between the property agent, the client and the customer and what, when and how information is disclosed.

The Code provides that a property agent should not disclose information relating to the client or customer unless the consent is provided or unless it is required by law.

The information disclosure provisions also highlight the manner in which a person behaves (conduct) because it is not always what a person says that provides meaning, it can be the way in which something is said or even certain gestures.

The information disclosure provisions relate to when a property agent is working for the client and interacting with the customer **and** after the interaction has been finalised.

A property agent can promote themselves or the listings/sale etc achieved however it is important to de-identify information of a client or customer.

Clause 12 – Conflict of interest, rights and responsibilities

(11) A property agent must not initially advertise a property at a price lower than the property agent knows the client will consider as an acceptable offer.

(12) When a property agent receives more than one offer on a property, the property agent then should commence the multiple offer process, unless the client instructs otherwise. The process is as follows -

(a) When a second offer is made on a property for sale, that second offeror must be advised that there is already an offer on the property and that the terms and/or conditions that the second offeror is submitting should be their best terms and conditions, this process should be duplicated for any subsequent offer received.

(b) The first offeror should then be advised that another offer has been made on the property and be given the opportunity to amend the price offered and or conditions of their initial offer to purchase.

(c) The property agent should advise the offerors when the offers are going to be presented to the client, and that it will be the client's decision whether they accept an offer or make a counteroffer to any or all of the purchasers or reject them all.

(13) A property agent must disclose to a customer or client that the property agent or the property agent's business has an interest in a service/contractor business that is going to be used by the customer or client.

Rationale for change Clause 12 – Conflict of interest, rights and responsibilities

(11) relates to the advertising price of a property when it is initially advertised for sale. This clause is designed to ensure that the property agent will not "underquote" the property.

The initial advertised price should be within a range that the client considers as an acceptable offer.

Rationale for change Clause 12 – Conflict of interest, rights and responsibilities cont..

Anecdotally a vendor will initially say, “I won’t sell for anything less than X dollars” or “I can’t sell unless I get X dollars”, and depending on whether it is a buoyant market where properties sell easily or a soft market where properties are slower to sell this position may change.

There is a difference between the price that a vendor will accept and the price that a vendor wants on a property. This amount can change depending on the vendor’s priorities. This clause is designed to ensure that the initial advertised price on the property is set around a level which can commence negotiations between the vendor and potential purchasers regardless of a soft or buoyant market.

(12) describes the multiple offer process used in Tasmania. In a buoyant market there can be considerable competition between purchasers to secure ownership of a property. The multiple offer process has been developed by the property industry in Tasmania to deal with multiple purchasers competing for the same property.

The multiple offer process is not designed to stop the counter offer process between a vendor and purchasers but it is designed to ensure that all parties are aware that they are in competition and that they may or may not get another opportunity to amend the offer made.

It is the vendor who decides whether they wish to use a multiple offer process and if they wish to negotiate with one or more purchasers. It is important to remember that other purchaser’s offers will not be disclosed to another purchaser.

When the property agent’s client is the vendor, the property agent’s duty is to obtain the best price and conditions possible for their client. At the same time the property agent must act in a fair, honest and reasonable manner towards the customers (in this scenario, purchasers).

(13) provides that a property agent must disclose to a customer or a client that the property agent or the property agent’s business has an interest in a service or contract that is going to be used by the customer or client. An example of this would be that an owner of a property management business is also an owner of a maintenance business which is used by the property management business.

There is no suggestion that the rates charged by the maintenance business would not be on commercial terms, but the disclosure provides for full transparency.

Clause 14 – Records access and transfer

(1) This clause applies if a property agent –

.....

(b) is advised by the client that another property agent is, or will be, managing the property or business for the client; or

(c) is advised by the client that the client or if having been sold, the new property owner is, or will be, managing the property or business.

(2) If a new property agent is engaged by a client to manage the client's property or business or if the client or new property owner is to take over management of the property or business, the current property agent must ensure that all records relating to the management of the property or business by the property agent are shared with the new property agent, client or new property owner to facilitate the transfer of the management of the property or business to the new property agent, client or property owner.

Rationale for change Clause 14 – Records access and transfer

Records access and transfer allows movement of property management records from the existing property agent managing the property or business to another property agent, the existing owner or if the property or business has been sold the new property owner.

Clause 16–Unsatisfactory professional conduct

Examples of behaviour that might constitute unsatisfactory professional conduct include, but are not limited to –

(h) a property agent unreasonably delaying the undertaking or completion of work for a customer.

Rationale for change Clause 16 – Unsatisfactory professional conduct

This addition is to indicate that unsatisfactory professional conduct can also relate to the interaction that a property agent has with a customer.

Clause 19 – Professionalism in the Property Agents Industry

(1) A property agent must at all times –

(m) report to the Board in writing within one-month detail of any matter which occurs and may affect their ability to work as a property agent or maintain a property agent licence.

(2) A property agent –

(a) must not refer to themselves by using a protected title or a name that is not shown on their licence; and

(b) must not hold themselves out to have a licence they do not have; and

(c) must not represent in any way to someone else anything that the property agent knows is false or misleading in relation to prospecting for business.

Rationale for change Clause 19 – Professionalism in the Property Agents Industry

Property Agents have a responsibility to report to the Board conduct that could be reasonably believed to constitute unethical, professional misconduct or unprofessional conduct.

There is a requirement for a property agent to report to the Board in writing any matter that may affect their ability to work as a property agent or to maintain a property agent licence.

The matters that may affect the ability to work or maintain a property agent licence include but are not limited to drug offences, bankruptcy or entering a composition or arrangement with creditors (commonly known as a Part IX Debt agreement, Fraud or Dishonesty, offences related to persons or property.

The industry uses many different names to describe different roles. The clauses in 19 (2) of the Code of Conduct are designed to ensure that a property agent is not holding themselves out as being licensed at a category of licence that the person does not have.

As well as the protected title, a property agent should not use a title such as Estate Agent if that person only holds a property representative licence. The term Estate Agent is not a protected title in Tasmania however it does represent a certain level of licence which would be equal to that of a real estate agent.

The Board's preferred position is the title used by the licence holder is the one that is printed on that person's licence, ie real estate agent, property manager, general auctioneer or property representative, or alternatively the generic term, Property Agent.

It is also important for a property agent to remember that when they are promoting themselves or their business that the advertisement doesn't create a false or misleading impression.

As an example, if a property agent advertised that 550 properties had sold in their area in the last 6 months in a manner that suggested that their agency sold all 550 properties (when in fact the 550 properties were sold by 10 different property agency businesses) then that could be considered as false and misleading.

Another example is when a property agent changes agencies and advertises properties sold under the new agency banner (when they were actually sold while employed by their previous employer).

Accessing the previous Code of Conduct

The 2022 Code of Conduct – Version 4 button on the Board's Website Home page will lead you directly to the webpage dedicated to the Code of Conduct.

This page also gives you access to the former Code of Conduct - Version 3 for reference purposes.

Please note that conduct between 1 July 2018 until 31 December 2021 will be considered against Code of Conduct – Version 3, a property agent's conduct after the 1 January 2022 will be measured against the 2022 Code of Conduct – Version 4.

