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Property Agents Board Information Bulletin

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TO NOTE

COMMENCING 1 JULY 2018

NEW CODE OF CONDUCT

NEW CPD PROGRAM

SUBMIT

TRUST ACCOUNT REPORT BY 31 JULY 2018

ANNUAL AUDIT BY 30 SEPTEMBER 2018

What's new

NEW Code of Conduct

One of the Property Agents Board's functions is to establish and keep under review a Code of Conduct for property agents to regulate their professional practice, conduct and discipline.

In summary, the major additions to the Code of Conduct provide a clear connection to the interactions with a property agent and his or her customers and colleagues.

Pursuant to Section 84 (3) of the *Property Agents and Land Transactions Act 2016* the Board is to consult with each body that it considers represents the interests of property agents and relevant consumers.

The Board consulted with the Department of Construction, Building and Occupational Services, the Real Estate Institute of Tasmania, Shelter Tasmania and, the Tenants Union of Tasmania.

The Board also published the draft Code of Conduct and clause by clause amendment notes and rationale on its website and invited feedback on an online portal.

Version 3 of the Code of Conduct will be provided to each licensee and will be included in the 2018-2019 license mailout. This version comes into effect on 1 July 2018. A link to the new version is also available [here](#).

Continuing Professional Development (CPD)

The Board has developed a policy to provide advice to the property agents industry in understanding the Board's Continuing Professional Development (CPD) requirements and to reinforce the importance of CPD activities.

The policy specifically aims:

- to establish clear guidance to property agents to meet the Board's CPD requirements;
- to confirm the Board's process for seeking approval for CPD activities;

- to confirm the Board's process for seeking an exemption for CPD requirements;
- to reinforce the concept that CPD is not a compliance challenge but an opportunity to maintain personal and professional confidence and proficiency.

The aim is to develop a commitment to CPD which 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 ensure the property agents industry remains professional; it is also a way of growing new knowledge, expanding each property agent's abilities and to reflect upon his or her own professional practice.

The Board is introducing the concept of industry specific and non-industry specific CPD Activities as well as CPD Activities by internal providers and external providers to the organisation.

A copy of the full policy can be found [here](#).

Fit and Proper Person Assessment

Each year the Property Agents Board licenses approximately 1,900 people/companies per year.

The Board has developed a Fit and Proper Person Assessment Policy which provides a framework to make consistent and transparent assessments of the police histories (including criminal records) of applicants for property agent licences.

Fit and Proper Person Assessment cont.

Any person wishing to become licensed can review this policy and consider how their circumstances relate to the fit and proper person test to be able to make informed decisions based on those requirements. A copy of the policy can be found [here](#).

Licence replacement fee

The Property Agents Board (the Board) is required to maintain a Register of Property Agents which includes the person's name and address of the property agent and where they are carrying out a business [ss30 – 33 of *Property Agents and Land Transactions Act 2016* (the Act)].

A property agent is defined in section 3 of the Act as follows:

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

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

The Board currently issues a hard copy licence when a new licence is granted, at renewal and when the property agent has had a 'change in details' that requires a change to the Register.

There is no requirement within the Act that a property agent must display a licence or that the Board must provide a hard copy licence to a property agent.

From 1 July 2018, the Board will continue to provide a hard copy licence to the property agent:

- Upon successful application for licence
- At renewal

- When there is a licence condition imposed or removed by the Board

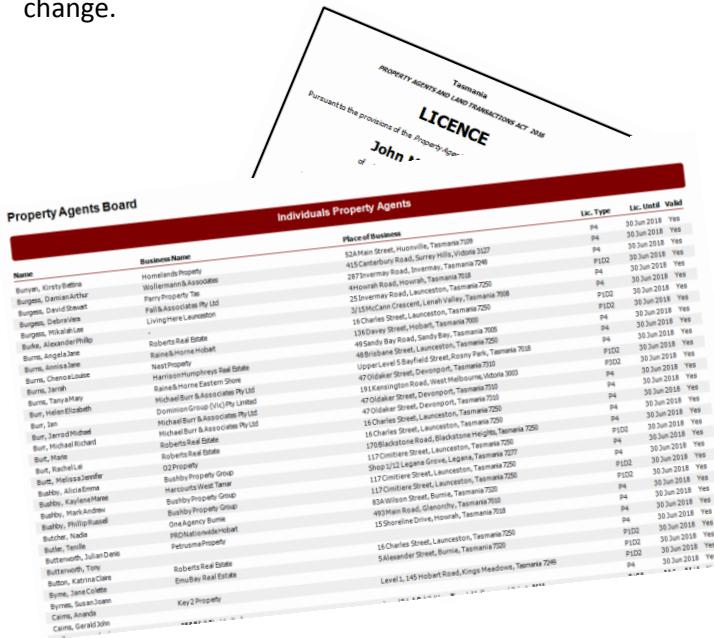
The Board has determined that if a property agent requires a copy of his or her licence in other circumstances, a fee will be imposed to produce an amended or a replacement licence during a licence period (1 July - 30 June). Such circumstances are as follows:

- If the property agent changes his or her employer
- If the property agent changes his or her residential address
- If the property agent changes his or her name
- If the licence of the property agent has not changed since it was issued in a licence period, but the property agent requests a copy for some reason (replacement licence)

To ensure consistency with the imposition of other fees as imposed by the Board relating to licensing, the Board will adopt a policy in accordance with the fee unit system.

The Board has determined that the reissue of a licence during a licence period will incur an administration fee of \$15.80 based on 10 fee units. Fee units are automatically indexed every financial year and are \$1.58 for the 2018-2019 financial year.

Please note that the property agent who has requested a change of details to the Register will be notified by email once the Board Register has been updated to reflect the change.



Compliance – penalty v infringement

Legislative Penalty v Infringement

Under certain provisions of *the Property Agents and Land Transactions Act 2016* (the Act) and *Property Agents and Land Transactions Regulations 2017* (the Regulations) a penalty can be imposed for a breach of that particular provision.

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 \$159.00, therefore the penalty for this breach is a fine not exceeding \$7,950.00. 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 (\$795.00) or 10 penalty units for a body corporate (\$1,590).

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 is not included in the advertisement. The infringement penalty could be 5 penalty units for an individual or 10 penalty units for a body corporate (company).

2. A property advertised in a suburb different to that named on the title. That is, the property agent is representing the property in a way that the agent knows is false or misleading. The infringement penalty for an individual is 50 penalty units (\$7,950) or 100 penalty units for a body corporate (\$15,900).
3. 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, penalty \$15,900;
 S38(3) for the individual penalty is \$1,590 and
 S38(4) for the individual penalty is \$1,590.
4. The Board’s Registers show that a person is a licensed property representative, however her licence is not connected to a real estate agency business. The agency is advertising her as an employee. The infringement penalty that applies is \$1,590 for the individual and the body corporate is \$3,180.
5. A monthly trust account reconciliation not being endorsed with a statement that the record is complete and accurate or signed. The infringement amount is \$795 for the individual and the body corporate is \$1,590.
6. A real estate agent not providing written notice to the Board within 7 days of opening a trust account. The infringement amount is \$795 for the individual and for the body corporate is \$1,590.
7. 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 \$1,590.

A list of penalty units and infringements is published on the Board’s website [here](#).

Compliance – 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 2018 a Trust Account Report for the six months ended 30 June 2018.

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 \$72.70 applies for late lodgement of each Trust Account Report.

Special purpose Audit Report and Checklist for the year ended 30 June 2018

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

Regulation 31 of *Property Agents and Land Transactions Regulations 2017* (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 web site or hard copies are available on request.

The Property Agent must provide their trust account records to their auditors within sufficient time for the audit to be completed and the report lodged with the Board **by 30 September**.

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

The Annual Trust Account Audit is completed by an external auditor

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

Annual Audit Exemption

If your business has not held money in trust Regulation 32 provides for an exemption to Property Agents from having to lodge an audit report if they lodge a declaration stating that they did not receive, or hold, any trust money during the audit year.

That exemption declaration 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 2018 (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 2018 (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 2018 (required if no trust money held).

Licensing – Property Representatives

The category of licence for property representatives came into effect on 1 April 2017. The following information steps out the legislative requirements as there appears to still be some confusion as to when a person can undertake regulated functions.

What is a property representative?

Section 3 of the *Property Agents and Land Transactions Act 2016* defines-

Property representative or "representative" means a person who holds a valid property representative licence;

What are regulated functions?

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

- (a) inducing or attempting to induce, or negotiating with a view to inducing, people to do all or any of the following:
 - (i) acquire or dispose of property or a business;
 - (ii) make an offer to acquire or dispose of property;
 - (iii) make an offer to acquire or dispose of a business;
 - (iv) enter into a contract for the acquisition or disposal of property;
 - (v) enter into a contract for the acquisition or disposal of a business;
- (b) negotiating the leasing or letting of property;
- (c) collecting rents for property that is leased or let;
- (d) managing property that is leased or let;

These are known generally as "regulated functions".

Before undertaking regulated functions STOP

The Act provides at Section 43 states:

A person must not perform the functions of a property representative unless the person is a property representative.

Penalty:

Fine not exceeding 500 penalty units.

This means the person must have a valid property representative licence before undertaking regulated functions.

Employment

Section 38(3) of the Act provides for employment of property representatives and states –

"(3) A person must not, by any means, hold himself or herself out as being a property representative employed or contracted by a real estate agent named in Part 1(1) of the Register or a property manager named in Part 2(1) of the Register, or by a body corporate, unless the person is so employed or contracted.

Penalty:

Fine not exceeding 100 penalty units.

What does this mean in a practical sense? A person CANNOT be shown/advertised/represented that he or she can undertake regulated functions.

Using titles such as "Associate", "Property Assistant" "Personal Assistant", "home finder", "property management", "sales associate", "property officer", "Asset Manager" to the lay person means that you work in this industry.

The last thing that a newly licensed property agent wants is an infringement to launch his or her career in the property industry and impact on the professional indemnity insurance of the business.

Therefore, the onus is on the property agent to ensure that he or she gives the Board sufficient time to process new applications before he or she commences undertaking regulated functions or changes employers.

Steps - newly entering industry (employed)

1. Achieve a successful result in the property representative examination.
2. Submit an application for licence - property representative with supporting documentation and fees (can take up to 2 weeks).
3. **Wait** for email notification that licence has been granted.
4. Advertising and undertaking regulated functions allowed.

Steps - changing employers

1. Submit changing details form – individual.
2. **Wait** for email notification that Registers have been changed (can take up to 3 business days).
3. Advertising and undertaking regulated functions allowed.

What is considered sufficient knowledge and experience of the functions of a property representative?

A person may be considered as having sufficient knowledge and experience of the functions of a property representative to be able to carry on that occupation if that person applies for a property representative licence **within two years** of the date of expiry of their previous licence.

Condition on licence

The person will be required to undertake an additional 4 points of continuing education in the first year of re-licence (12 points in first year).

Variation

The Board may consider submissions that a person has sufficient knowledge and experience to be licensed if that person has been unlicensed for more than 2 years upon that person providing written submissions to the Board.

National Police Record Check

The Property Agents Board must be satisfied that all applicants hold relevant qualifications and are a fit and proper person to hold a property agent licence.

In order to satisfy the fit and proper person test, the Board with reference to section 16 of the *Property Agents and Land Transactions Act 2016* has determined as follows:

For all Tasmanian residents seeking to apply the Board will only accept National Police Record checks issued by Tasmania Police. Here is a link to the Tasmania Police website: [here](#)

For all **interstate applicants** who do not have a Tasmanian return address or are not currently residents in Tasmania, those applicants will need to apply to a person in their State or Territory who holds a similar position to the Tasmanian Commissioner of Police. Links below:

[Australian Capital Territory](#)

[New South Wales](#)

[Northern Territory](#)

[Queensland](#)

[South Australia](#)

[Victoria](#)

[Western Australia](#)

Please note that the National Police Record Check that accompanies the application must be issued no earlier than 3 months from the date that the application is lodged with the Board.

In completing the relevant form for the National Police Record check, the purpose category for seeking the certificate is "general employment".

Certificates from other police check providers will not be accepted by the Board for licensing purposes.

WARNING FRAUD

information is provided as a guide only

Cyber Crime

Due to the volume of transactions and the amount of money involved in property transactions, property agents are an increasing target for cyber criminals.

A moment to check the validity of emails and bank account details or reverting to making payment through a bank cheque are simple ways to ensure the funds are going to the intended recipient.

The Board has referred one matter to the Tribunal which relates to the Property Agent not having sufficient processes in place to protect trust money.

There are a few simple steps to consider that could save thousands. Such as:

- Before transferring money, bank account details should be checked by calling the agency/client/customer to verify they are correct.
- Introduce a dual authorisation/verification system.
- Do not use contact details contained in emails that ask for money to be deposited into a particular account as the call could be diverted to the scammers.
- Do not use words such as “money”, “trust account”, “bank account”, “deposit” etc in the subject line of the email.
- Educate clients and customers to be vigilant to fraud. Instruct clients/customers to phone if they receive an email requesting money be sent to a particular account in order to verify its authenticity.

Commonwealth Bank have published a report which is a summary of their investigations into all forms of email payment fraud. It provides a checklist of basic countermeasures which might be a useful resource to help protect your business. View it [here](#)

Another informative article highlighting fraud in the real estate industry can be found [here](#)

Protect your business and yourself

The Australian Competition & Consumer Commission's (ACCC) Scamwatch reports that scammers swindled nearly \$4.7 million from Australian businesses in 2017.

There is an excellent website which provides latest news and alerts. This website is a useful tool as it provides details such as the types of scams, common examples, warning signs and how to protect yourself. Go to [scam watch](#)



Hacking

Hacking occurs when a scammer gains access to your personal information by using technology to break into your computer, mobile device or network.



Identity theft

Identity theft is a type of fraud that involves using someone else's identity to steal money or gain other benefits.



Phishing

Phishing scams are attempts by scammers to trick you into giving out your personal information such as your bank account numbers, passwords and credit card numbers.



Remote access scams

Remote access scams try to convince you that you have a computer or internet problem and that you need to buy new software to fix the problem.

Material obtained for the protect your business section of the Information Bulletin is attributed to the ACCC.

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National Training Package proposed changes

Proposed New National Training Package

Artibus Innovation has been commissioned by the Australian Government to support the Industry Reference Committee (IRC) for Property Services in its work reviewing, renewing and developing vocational education and training (VET) package.

A technical advisory group (TAG), chaired by Danielle Andrews from the Real Estate Institute of Australia has been established by the Property Services Industry Reference Committee (IRC) to oversee the project and provide technical input. The TAG includes representatives from employers, employees, industry, Registered Training Organisations (RTO) and regulators.

There are three qualifications under review:

- Cert III in Property Services which has been developed as entry into the industry at an administration level;
- Cert IV in Property Services which has been fully redeveloped to be a licensing qualification;
- Diploma in Property Services which has been fully redeveloped to provide a professional development pathway and to house higher skill endorsement.

A major change has occurred to incorporate skill sets to support additional licence classes/endorsements.

The skill sets have been developed in areas such as-

- Residential Property Sales
- Residential Property Management
- Property Management Business Development
- Commercial Sales and Leasing
- Commercial Property Management
- Auctioneering
- Buyers Agent

This approach has focused on occupational analysis as a basis for rebuilding the qualifications and unit structures to align with current and emerging work practices and to support a more consistent regulatory approach.

It may also see a streamlining of the training requirements and an opportunity for regulators to simplify licensing requirements and reduce red tape while supporting a clear pathway for new entrants into the industry.

The three qualifications will change as follows:

Current

CPP30211 Certificate III in Property Services
CPP40307 Certificate IV in Property Services (Real Estate)
CPP50307 Diploma of Property Services (Agency Management)

Proposed

CPP31218 Certificate III in Real Estate Practice
CPP40018 Certificate IV in Real Estate Practice
CPP50118 Diploma of Property (Agency Management)

Property Agents Board

Board's Website

The Board continually reviews, updates and improves the contents of its website to provide the most up to date information for the property industry on property regulation matters in Tasmania.

The Board recommends all property agents access this section regularly to keep informed of latest developments.

Your feedback is important to us and if you have any suggestions for improvement on the website we look forward to receiving your views via our contact us enquiry form which can be located [here](#).