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ISSUE 26

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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 \$1.62 for the 2019-2020 financial year.
 One Penalty unit is \$168.00 for the 2019-2020 financial year.

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What's new

Publication of Board Decisions-Case Study

The Property Agents Board has functions to advise property agents on appropriate standards of conduct and to perform educational functions.

The Board has determined to publish those Board decisions relating to complaints that are of particular interest but in a case summary format.

The Board will ensure that it will not identify the complainant(s), the property agent(s) or the property involved in the complaint.

These de-identified case studies will be published on the Boards' website, used for inclusion in presentations and if relevant also included in the Annual Report.

Included in this Information Bulletin are two case studies relating to use of confidential information and false and misleading advertising.

Continuing Professional Development (CPD)

The Board in the 2018-2019 licence year introduced 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.

The Board acknowledges the excellent response to the CPD requirements completed and reported on the Application for Licence – Renewal forms. Well Done!

Fees and Charges from 1 July 2019

EXAMINATION FEE	\$147.40
APPLICATION ASSESSMENT FEE	\$147.40
LICENCE FEES	Full Year Fees
	1 July – 30 June
Real Estate Agent carrying on business (P1D1)	\$442.20
Real Estate Agent (P1D2)	\$147.40
Property Manager carrying on business (P2D1)	\$369.30
Property Manager (P2D2)	\$147.40
General Auctioneer carrying on business (P3D1)	\$442.20
General Auctioneer (P3D2)	\$147.40
Property Representative (P4)	\$74.50
LATE PROVISION REPORTS PROVIDED TO THE BOARD	\$74.50

Applicants who seek to become licensed during the period 1 July – 31 March will be required to pay the full licence year fee.

There is a reduced licence fee for applications received from 1 April - 30 June (during the renewal period) details available on the Board's website.

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.

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](#).

Licensing

Register of Property Agents

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 [S30 – 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;

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.

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.

Licence Replacement Fee

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.

The Board does provide a hard copy licence to the property agent:

- upon successful application for licence
- upon renewal
- when a licence condition is imposed/removed **by the Board**

If a property agent requires a copy of his or her licence in other circumstances, a fee of \$16.20 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
- the property agent requests a copy (replacement licence)

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.

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.

Licensing

Becoming a Property Representative?

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 10 working days).
3. **wait** for email notification that licence has been granted.
4. advertising and undertaking regulated functions allowed as the licence has been granted

What is a property representative?

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

The Act provides at Section 43 which 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

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:*
- acquire or dispose of property or a business;*
 - make an offer to acquire or dispose of property;*
 - make an offer to acquire or dispose of a business;*
 - enter into a contract for the acquisition or disposal of property;*
 - 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".

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

The image shows a sample of the 'Property Representative Application for Licence Form 2019-2020' from the Property Agents Board. The form is divided into several sections:

- Applicant Details:** Includes fields for Surname, Given Name, Date of Birth, Title, Other Name(s), Place of Birth, Name, and a checkbox for 'Have you been known by another name?'.
- Applicant's Personal Address and Contact Details (not PO Box):** Includes fields for Address, Suburb, Telephone, Fax Number, Email home, Email work, State, Mobile, and Postcode.
- Qualifications and Experience:** Contains three questions with 'Yes' and 'No' checkboxes:
 - Do you hold a qualification* under the Property Agents and Land Transaction Act 2016? Yes No
 - Have you held a property representative licence within the two years immediately preceding this application? Yes No
 - Do you hold, or have previously held, a licence or a registration under any corresponding law in any other State or Territory? (if yes please provide relevant details) Yes No
- Supporting Documents:** Lists documents required to be lodged with the application:
 - Evidence of educational qualification (exam letter)
 - Copy of current photographic identification (eg Driving Licence or passport)
 - Copy of national police certificate (issued within past 3 months)
- Disclosures:** Contains five questions with 'Yes' and 'No' checkboxes:
 - Have you ever been convicted of, or found guilty of ANY offences anywhere? (excludes traffic offences) Yes No
 - Are you presently under a probation order, good behaviour bond, on parole, released on licence or subject to periodic detention? Yes No
 - Have you ever been disqualified from holding a licence/registration by any occupational licensing Board, Agency, other Departments or authorities anywhere? Yes No
 - Have you had any occupational licence/registration or application refused, cancelled or suspended? Yes No
 - Are you an undischarged bankrupt or made a composition or arrangement with creditors that is still in force? Yes No

At the bottom, it says 'Property Agents Board Version 5' and 'Page 1 of 4'.

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 2019 a Trust Account Report for the six months ended 30 June 2019.

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 \$74.50 applies for late lodgement of each Trust Account Report.

Annual Audit Report and Checklist for the year ended 30 June 2019

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 2019**.

Please be aware that there is a late fee of \$74.50 payable for each audit report received by the Board after 30 September 2019.

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 2019 (**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 2019 (**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 2019 (**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, click [here](#) .

Trust Accounting

Trust Money - What is it?

Trust money is defined in Section 133 of the Act. It says that Trust money is money that is received by the property agent conducting business on behalf of a party to negotiations which the property agent is involved or as a stakeholder or on behalf of another person as rent for property that is leased or let.

In the simplest terms, trust money can be considered as deposits, bonds and rent.

Trust Money - What it isn't!

Commission isn't trust money. Therefore, if there is a balance of commission due for the sale of property, that payment should not be made into the Trust Account.

The balance of commission (whether being paid by the vendor's solicitor or the vendor) should be paid into the property agent's general working account.

Commission and Management Fees

Commission and Management fees are payment for work performed. Sometimes the commission is paid by release of the sales deposit on a contract for sale and management fees are taken from rent paid however if additional payment is received then it should be paid into the agency's general working account.

Monthly Reconciliations

Do you know what to look for with the Monthly Reconciliation?

Regulation 21 provides that the trust account must be reconciled at least once in each calendar month.

The trust account is reconciled by calculating the balance of the trust account cash books, preparing a schedule to reconcile the balance of the cash books with the balance of the trust bank account and preparing a schedule of the ledger accounts.

There is different software available for use in the property industry and the format may look different however there are legislative requirements to be complied with.

As an example, a simple reconciliation report will look like –

1 Bank Statement

Balance as per statement 30 June 2019		\$135,000.00
add	deposits in transit	\$0.00
less	unpresented cheques	\$0.00

Adjusted Statement balance **\$135,000.00**

2 Cashbook Journals

Balance brought forward 31 May 2019		\$170,500.00
add	total receipts	\$25,000.00
deduct	total payments	\$60,500.00

Closing Balance as at 30 June 2019 **\$135,000.00**

3 Client Ledger/Trial Balance

Total balance from individual client ledgers as at 30 June **\$135,000.00**

The adjusted bank statement balance, the closing balance of the cashbook and the client ledger should all agree (be the same).

It is the property agent authorised to manage the business who must supervise the keeping of the trust account records and ensure the reconciliation records and schedule of ledger accounts are accurate and within 2 days after the making of the reconciliation record endorse the records with a statement that the record is complete and accurate and sign and date the document.

So, before signing the reconciliation document here are some things to consider –

- Does this month's opening balance agree (is the same) with the last month's closing balance?
- Have you looked at the bank statement?
- What do you know about any unpresented deposits?
- What do you know about any unpresented cheques?
- What are the adjustments?
- Are there any reverse receipts or payments?

Trust Accounting / Compliance

Misappropriation

Misappropriation (stealing) does exist; it can be prevented or at least minimised; it can happen within your organisation; the stress of dealing with it is enormous!

The possibility of an employee stealing any money from a property agent, let alone trust money, is a daunting thought, especially when you believe you know all your employees quite well. There are many measures you can take to improve your chances of not falling prey to stealing: -

- Implement internal controls such as effective management oversight, regular bank reconciliations, separation of responsibility for cash receipt and banking functions.
- Share tasks among employees or subject to regular review by an independent party or ensure, as far as possible, that bookkeeping work is shared among individuals and is not constantly the sole responsibility of one person.
- Ensure employees take annual leave and be suspicious of the motives of an employee who does not wish to take annual leave.
- Ensure all monies received are banked intact and that there is no “lapping” that is, the inclusion of today’s cash to replace what was not banked yesterday.
- Ensure that bank reconciliations are undertaken more regularly than once per month as required by the regulations. Depending on the number of entries a weekly, or possibly a daily, reconciliation may be advisable.
- Do not sign off on reconciliations, etc. that “look alright”. Instead of giving the figures a brief overview, devote time to substantiate each line of the reconciliation, each buffer/holding/suspense/clearing type account content and check the supporting documentation.

Also ensure that last month’s Trust account closing balance agrees with the current month opening balance.

Remember you are signing the reconciliation off as being complete and having accurate content.

Most important of all in small business is to maintain a vigilant oversight of what your employees are doing because you should know your business better than anyone and therefore should be able to recognise warning signs.

Unclaimed Moneys

Unclaimed moneys are funds that are due to a person, company or organisation that have not been received or claimed and, after a statutory period of time, become unclaimed.

The Treasurer is the holder of unclaimed money in Tasmania under the provisions of the [Unclaimed Money Act 2015](#).

Treasury accepts unclaimed money on behalf of the Treasurer and makes payments to the legal owners of the unclaimed money on receipt of appropriate proof of entitlement.

If you are holding unclaimed money refer to the Guidelines and template for lodging unclaimed money with Treasury. For more information visit [Treasury](#).

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.

Compliance

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 contact details on the email may have been adjusted to 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 has 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 and yourself*” section of the Information Bulletin is credited to the ACCC.

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Qualifications

New National Training Package

The new Training Package (CPP Property Services Training Package) for the Property Industry was endorsed in March 2019.

The change has required the Board to consider its impact on the prescribed educational qualifications for licences under the Act.

The Board noted there was no transitioning between the current qualifications and the newly endorsed qualifications and that all Registered Training Organisations (RTOs) had until March 2020 to finalise qualifications from the now superseded training package.

Qualification changes

Current prescribed education qualification

Register	Licence Type	Qualification
Part 1	Real Estate Agent	Diploma
Part 2	Property Manager	Diploma
Part 3	General Auctioneer	4 units of competency; and an examination
Part 4	Property Representative	an examination

The prescribed educational qualification for Real Estate Agents and Property Managers will remain as the Diploma.

The Board considered the current requirement for General Auctioneers and determined that the prescribed educational qualification should be comparable with other licence types conducting business. The Board determined to request a change to the prescribed educational qualification for general auctioneers to be a Diploma.

The Board understands that the Certificate IV qualification reflects the role of real estate professionals who apply knowledge of real estate practice legal agency and compliance requirements, ethical standards and consumer preferences to conduct real estate functions.

The Board will request a legislative change to require property representatives to complete the CPP41419 Cert IV in Real Estate Practice within three years of obtaining his or her licence.

The proposed qualification packaging would be to complete the 5 core units and Group A and Group B then select any three electives.

Proposed prescribed educational qualification

Register	Licence Type	Qualification
Part 1	Real Estate Agent	Diploma
Part 2	Property Manager	Diploma
Part 3	General Auctioneer	Diploma
Part 4	Property Representative	an examination administered by the Board; and CPP41419 Certificate IV within 3 years

Legislative changes required

The Board determined to implement the following Legislative changes would be required:

- (a) General auctioneers prescribed educational qualification; and
- (b) The Certificate IV to be a qualification in the Regulations for Property Representatives to maintain their licence; and that they must complete a Certificate IV within 3 years of the date that their licence was granted.

The Board also considered that property Representatives who had completed their Certificate IV could be exempt from CPD for the following 2 years of completion.

The Board agreed to the following in relation to the **Diploma of Property Services**, that-

- (a) the CPP50307 Diploma of Property Services (Agency Management) had been superseded by CPP51119 Diploma of Property (Agency Management);
- (b) it adopts the CPP51119 Diploma of Property (Agency Management) as the prescribed educational qualification under the Act;
- (c) it would permit the CPP50307 Diploma of Property Services (Agency Management) to continue to be the equivalent to the prescribed educational qualification under the Act **until 30 June 2020**.

Education

Case Study - Confidential Information

Relevant Facts

A property agent sent texts to their clients about the sale of properties which were sold by a different real estate agency business. Some of the properties mentioned in the text were negotiated on a confidential basis and all publicly available information relating to the sale of those confidentially negotiated properties did not reveal the agreed sales amount at the time that the texts were sent.

Ground of complaint

The ground of complaint was that the property agent published information about the sales of confidentially negotiated sales to third parties and used information that was only available to licensed property agents and that the property agent disclosed information that was not yet publicly and readily available.

Discussion

The property agent indicated that the sales prices were available on a paid subscription-based platform (SBP) and the sales data which is released by REIT on a monthly basis and therefore the information is not confidential.

The SBP receives the sale price for every property in Australia from the local State and Territory Governments. This information is provided for the needs of the public and is provided to the SBP and other property data portals to display.

However, the SBP advised that it also received sale prices prior to being provided by the Government from agents directly and via real estate agent portals such as domain.com.au. In some instances, this may include an undisclosed sale price. These prices are visible to real estate agents only (not other users) and have a double asterisk next to the price (i.e.**\$100,000) with the following warning:

*** Denotes Agents Advice sale not derived from Government sources with an undisclosed sale price. Users are not permitted to pass undisclosed sales information on to any third party, however it may be used in preparation of an appraisal.*

At the times that the texts were sent, the SBP representatives confirmed that the sales prices of the confidentially negotiated properties were marked as undisclosed sales price on its platform.

REIT also confirmed that the REIT Property Report is not published in a manner for the public to access and that it provides its members with guidelines regarding the use of these property reports and the data contained within them. Members are advised regularly that sales information contained in the REIT Property Reports are not to be reproduced to promote their agency but can be used in listing presentations for market appraisals.

Finding by the Board and actions taken

The Board determined that the complaint was substantiated as 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 as the property agent chose to ignore the restrictions of using the sales data on the SBP and the guidelines regarding the use of sales data obtained from REIT for appraisals only and not to be reproduced for marketing purposes, at the time the texts were sent, the confidential sales data was clearly not publicly and readily available.

The property agent's conduct was characterised as unsatisfactory professional conduct, but of a minor nature and the Board cautioned the property agent pursuant to section 101(6)(a) of the *Property Agents and Land Transactions Act 2016* (the Act) and accepted an undertaking given at the request of the Board pursuant to section 101(6)(b) of the Act that the property agent will not distribute information that is confidential and not publicly available.

Education

Case Study - False and Misleading Advertising

Relevant Facts

The property for sale comprised a residence on a block of land, which adjoined a council reserve. A driveway on the council reserve lead from the street to the front of the residence, which was orientated sideways on the block, that is the front of the residence faced the adjoining reserve rather than the street. At the end of the driveway was space for two cars to be parked.

The Complainants attended a group inspection at a property and were handed a marketing brochure but not a copy of the property title by the selling property agent on arrival. The brochure displayed four icons which provided a summary of the property's features, including the size of the land and the number of bedrooms, bathrooms and car spaces. The motor vehicle icon had the number '2' next to it, inferring that there were two car spaces. The brochure contained no mention of car spaces in the written description of the property, nor were any car spaces included on the floorplan. There was a disclaimer that the real estate agency business took no responsibility for any inaccuracies and that all interested parties should make their own enquiries to verify the information.

The Complainants made an unconditional cash offer to purchase the property through the Selling Agent, which was accepted. After settlement the Complainants became aware that the two car parking spaces at the front of the Property were on council land and not contained within the property's boundaries.

Ground of Complaint

The ground of complaint was that the listing property agent engaged in false or misleading advertising by promoting the property as having two car parking spaces, when the advertised spaces were not contained within the property's boundaries.

Discussion

The property agent listed the Property and prepared marketing material in the form of printed brochures and an online listing.

Both contained the number '2' next to the motor vehicle icon, which is a normal feature of marketing material, indicating that there were two car parking spaces. The online listing also contained the words, "*Garaging / carparking: Off street*" in the body of the text.

The listing property agent was aware that the car parks were not on the Property title but was responsible for the preparation of marketing material for the sale of property which advertised that the property included two car parking spaces.

Finding by the Board and actions taken

The Board found that to indicate that there were two car spaces alongside the motor vehicle icon in the advertising material is not considered unreasonable. However, the listing property agent should have qualified in both the printed brochure and the online listing that the car spaces were not within the property's boundaries, irrespective of any disclaimer regarding the accuracy of the information provided. Although the Complainants had an obligation to undertake their own due diligence in respect to the purchase of the property, that obligation should not have absolved the listing property agent accurately describing the features and inclusions of the property within the marketing material.

The Board determined that the complaint was substantiated as 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. Whilst it was accepted by the Board that there may not have been any intent on the part of the listing property agent to mislead potential purchasers in respect to the parking, it was known that the car parking spaces were not on the property title and therefore the advertising was false or misleading.

The property agent's conduct was characterised as unsatisfactory professional conduct, but of a minor nature and the Board reprimanded the property agent pursuant to section 101(6)(a) of the *Property Agents and Land Transactions Act 2016*.

Compliance

Written Appointment

A property agent 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.

What constitutes a **valid written appointment** for the purposes 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)?

In simple terms, the document must contain certain information that the client has agreed to and that meets all of the requirements of S44 for real estate agency businesses, S46 for property management businesses or S80 for general auctioneering businesses.

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

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.

Compliance

Whose listing is it?

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

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

What are expenses incurred on behalf of the client?

As identified above, an agency can recover expenses incurred on behalf of the client, if the client has authorised the agency in writing as part of an appointment document. These “expenses” could be in the form of fees, charges or expenses.

Fees

A fee is the cost of a service provided by a Real Estate Agent or Property Manager. A fee can be charged for a service not normally considered a part of normal activities when selling, managing, or renting properties.

As an example a fee could be charged for the following services -

- Supervising and inspecting major repairs and renovations, lodging building plans, and overseeing building applications;
- Reading meters;
- Co-ordinating advertising consultants, copy writers, photographers, graphic artists and designers;
- Co-ordinating a marketing campaign that involves detailed market analysis, project or development feasibilities;
- Consulting with architects, engineers and designers on behalf of a client;
- Providing written reports that do not involve the sale, management or rental of a property.

Charges

A charge is a cost incurred while performing duties on behalf of a client. Charges are common in a continuing agency such as property management.

Examples of charges are -

- Bank fees;
- Telephone, fax, and postage;
- Courier services;
- Photocopying;
- Travelling costs for the collection of rent or inspection of properties.

Expenses

An expense is where the Real Estate Agent or Property Manager has incurred a financial liability on behalf of a client.

Expenses could be -

- Promotional fees which include advertising and marketing costs;
- Searches;
- Other consultancy fees such as decorators, tradespeople, pest control, building inspectors, etc;
- Appointment of an auctioneer.

Commission paid

Section 45 outlines details of when a real estate agency business is entitled to claim commission after a written appointment expires.

The provisions state that when the agreement finishes (on expiry or if terminated) and if within the next 90 days the vendor sells the property to a purchaser introduced during the agency period, the agency is entitled to claim commission but from day 91 the agency has no claim.

BUT

When the agreement finishes (on expiry or if terminated) and the vendor enters an agency agreement with a different real estate agency business and the property sells to a purchaser introduced during the original agency, the first agency is not entitled to commission.

Compliance

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.

Want more?

There are some great resources available for more information.



ASIC
Australian Securities & Investments Commission



Tasmanian Government



REIA
REAL ESTATE INSTITUTE OF AUSTRALIA

