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ISSUE 27

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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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# Licensing

## Licensing Numbers

A total of 1,985 licences were granted during 2018-2019 in the following categories.

| Licences                                       | 30 June 2019 |
|--|--------------|
| Real Estate Agent carrying on business (P1D1)  | 227          |
| Real Estate Agent (P1D2)                       | 423          |
| Property Manager carrying on business (P2D1)   | 9            |
| Property Manager (P2D2)                        | 14           |
| General Auctioneer carrying on business (P3D1) | 17           |
| General Auctioneer (P3D2)                      | 18           |
| Property Representative (P4)                   | 1277         |

271 licence holders determined not to renew their licence. The following table identifies the number of licenses by category that were not renewed for the 2019-2020 licence year.

| Licences                                       | not renewed |
|--|-------------|
| Real Estate Agent carrying on business (P1D1)  | 20          |
| Real Estate Agent (P1D2)                       | 26          |
| Property Manager carrying on business (P2D1)   | 2           |
| Property Manager (P2D2)                        | 10          |
| General Auctioneer carrying on business (P3D1) | 0           |
| General Auctioneer (P3D2)                      | 1           |
| Property Representative (P4)                   | 212         |

The licences granted by category as at 1 July 2019 are identified in the table below-

| Licences                                       | 1 July 2019 |
|--|-------------|
| Real Estate Agent carrying on business (P1D1)  | 207         |
| Real Estate Agent (P1D2)                       | 397         |
| Property Manager carrying on business (P2D1)   | 7           |
| Property Manager (P2D2)                        | 4           |
| General Auctioneer carrying on business (P3D1) | 17          |
| General Auctioneer (P3D2)                      | 17          |
| Property Representative (P4)                   | 1065        |

## Licensing requirements in Tasmania - overview

The *Property Agents and Land Transactions Act 2016* (the Act) is the enabling legislation.

## Regulated Functions - Real Estate Agency

In order to be able to undertake regulated functions on behalf of other people there is a requirement to be licensed in Tasmania.

Regulated functions includes carrying out all or any of the following activities pursuant to instructions received from other people:

- selling, buying, exchanging, leasing or otherwise dealing with, or disposing of, property or businesses;
- negotiating the sale, purchase, exchange, lease or any other dealing with, or the disposition of, property or businesses;
- collecting rents for property that is leased or let;
- managing property that is leased or let;

## Entry Level licence

The entry level licence in Tasmania is called a Property Representative licence.

This licence type allows the licence holder to undertake regulated functions while employed and under supervision.

*The 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:*

- 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;*
- negotiating the leasing or letting of property;*
- collecting rents for property that is leased or let;*
- managing property that is leased or let;*

## Licence requirements - property representative

The qualification required to apply for a licence is the successful completion within the past two years of an examination administered by the Board.

The applicant also has some probity (fit and proper) requirements relating to criminal history and current financial status.

## Real Estate Agent licence

In order to run a real estate agency business as defined below – the person must be a real estate agent (or hold a corporation licence with at least one company director who holds a real estate agent licence and the company also must employ a person who holds a real estate agent licence to manage the company - can be the same person or a different person).

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

- (a) selling, buying, exchanging, leasing or otherwise dealing with, or disposing of, property or businesses;*
- (b) negotiating the sale, purchase, exchange, lease or any other dealing with, or the disposition of, property or businesses;*
- (c) collecting rents for property that is leased or let;*
- (d) managing property that is leased or let;*

A person is eligible to apply for a real estate agent licence when the person has the prescribed educational qualification and two years full-time employment (or equivalent part-time employment) in the past 5 years as a property manager or property representative and also satisfies some probity (fit and proper) requirements relating to criminal history and current financial status.

The prescribed educational qualification is a Diploma of Property awarded by a registered training organisation.

To review the legislation please see –

*Property Agents and Land Transactions Act 2016*

- Section 3 Interpretation (for definitions)
- Section 16 Application for Licence
- Section 18 Suitability of applicant
- Section 25 Qualifications for real estate agent licence
- Section 18 Qualification for property representative licence

*Property Agents and Land Transaction Regulations 2017*

- Regulation 41 Qualifications
- Regulation 43 Exemptions from application of Act

*(please note that a person can manage or sell their own property without being licensed in Tasmania, but as soon as regulated activities are undertaken by a person other than the property owner then the person undertaking the functions is required to be licensed and employed – the exception to this rule is short stay accommodation - less than 90 days).*

## Licence on display

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**

## Preferred name used for marketing

If the name that a property agent uses is a preferred name or nickname is used for marketing/advertising, then have that name added to the Register.

## Licence details up to date?

There is no cost associated with making a change to the Register, but a property agent is required to keep his or her details up to date.

Please 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

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

# Complaints and Investigations

## Complaint Enquiries

The majority of complaint enquiries are dealt with initially by telephone and Board officers encourage the complainant to resolve matters directly with the property agent and their employer before lodging a formal complaint.

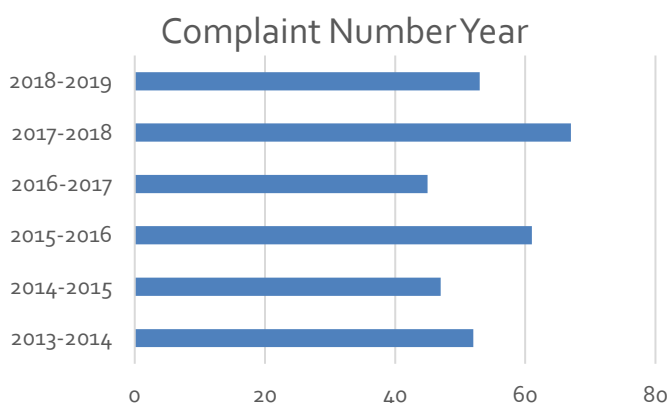
The Board's officers provide guidance on how a potential complainant might manage and resolve an issue as an alternative to lodging a formal complaint with the Board. This process involves substantial time but is cost effective in comparison to the resources required to investigate a formal conduct complaint.

On average, 62 telephone complaint enquiries are received each calendar month.

The Code of Conduct includes a requirement for property agents to maintain a dispute resolution process. The Board has observed that the industry is continuing to implement appropriate dispute resolution procedures and it is of the view that this may result in more frequent and amicable resolution of complaints as it gives an appropriate framework for grievances and concerns to be aired and dealt with in a timely manner.

## Complaints and Investigations

Complaint handling and undertaking investigations remains one of the core activities of the Board. A total of 53 complaints were received during 2018-2019. As at 10 December 2019 the Board has received 23 complaints in this financial year.



## Conduct complaint procedures

A complaint may be made about the conduct of a property agent by any person. For the Board to be able to deal with a complaint, it must be in writing. A complaint form template is available to assist the complainant to identify the conduct concerned and the identity of the relevant party complained about.

When a complaint is received by the Executive Officer a preliminary assessment is made and the grounds of complaint are established and confirmed by the complainant. Usually a copy of the complaint is sent to the property agent with the invitation to provide submissions to the Executive Officer in relation to it.

The property agent's submission is usually provided to the complainant for comment.

The complaint is then assessed by the Board's Complaints Officer as to whether the information provided is sufficient for the Board to consider the complaint or whether it should proceed to investigation.

The Complaints Officer will prepare a report which is considered by the Board, together with relevant material. The Complaint is then either summarily dismissed pursuant to Section 92 of the Act or proceeds to the investigation phase.

As the Board is required to provide both the complainant and the property agent with procedural fairness this preliminary stage can take some months to ensure that all parties are given time to respond and provide evidence and all relevant matters are considered.

If the complaint proceeds to investigation the Board continues to deal with the matter as efficiently and expeditiously as possible.

After an investigation, if the Board considers that there is insufficient evidence to substantiate the complaint, it will be dismissed under Section 100(a) of the Act.

If the evidence collated during an investigation indicates that the conduct amounts to minor misconduct, the Board may deal with the matter itself pursuant to Section 101 of the Act.

In this process detailed under section 101 of the Act, the Board may, by written notice require the property agent to provide the Board with a written explanation of the conduct as a final opportunity to persuade it against a misconduct finding.

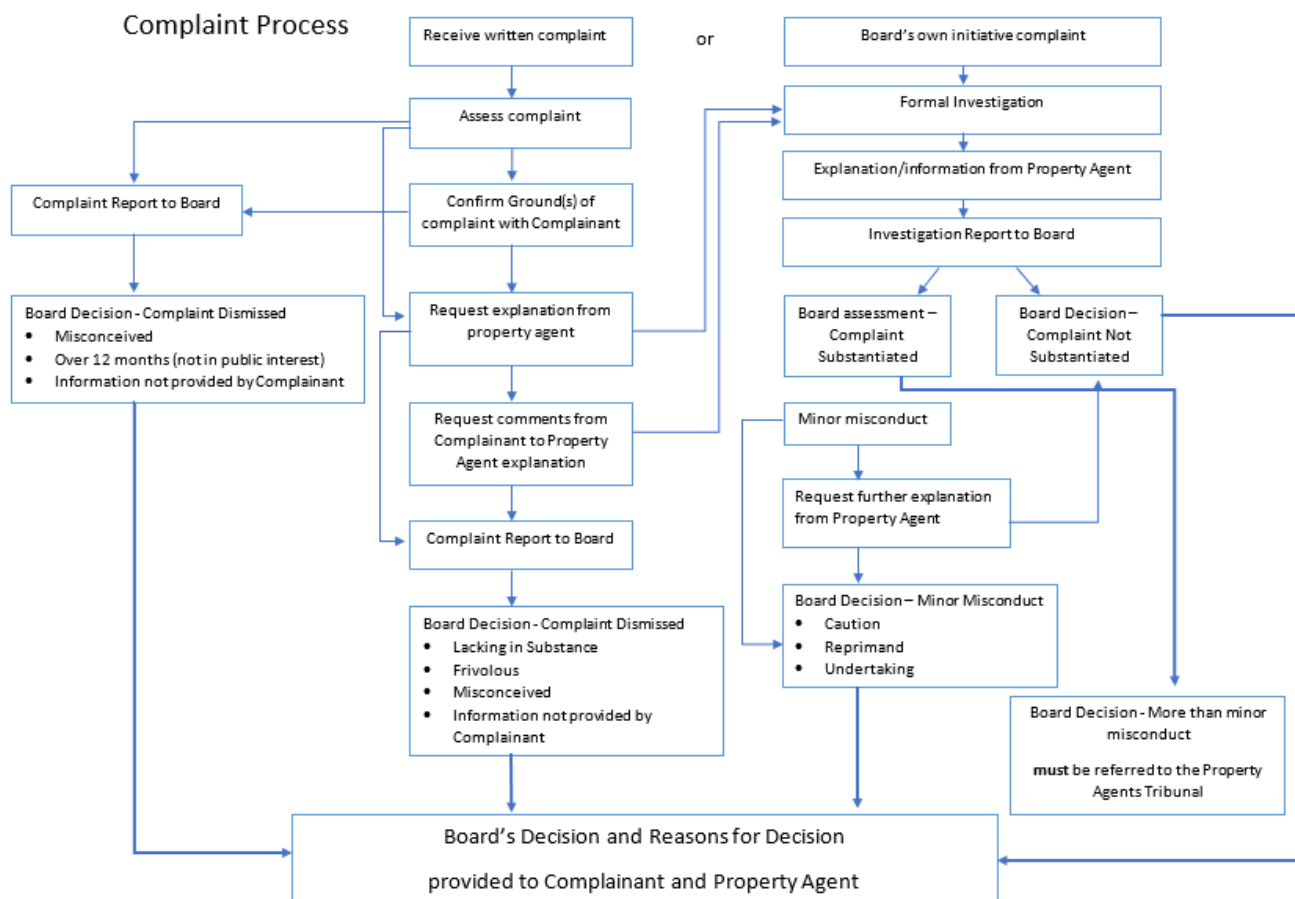
The Board considers the explanation and determines what action needs to be taken against the property agent which can include a caution or reprimand, or acceptance of an undertaking from a property agent to take or refrain from taking action specified by the Board.

If, however the Board considers that upon further receipt of the property agent’s explanation that there is insufficient evidence to substantiate the complaint, the Board must dismiss it.

The Board must refer the matter to the Tribunal if a property agent fails to comply with the notice to provide a written explanation or if the property agent requests that the matter be considered by the Tribunal or if during consideration of the written explanation that the Board considers that the conduct amounts to more than minor misconduct.

Therefore, if the Board considers that the complaint cannot be summarily dismissed, or dismissed after investigation as there is insufficient evidence to substantiate the complaint, or that the conduct is more than minor misconduct, it must under Section 100(c) of the Act refer the complaint to the Tribunal.

The only exception to this is if while considering a conduct complaint the Board believes that the evidence it has indicates that a person has committed a criminal offence. In that case the Board must suspend its consideration of the complaint and provide the evidence to the Commissioner of Police.



At any time during the complaint process the Board believes that the evidence it has indicates that a person has committed a criminal offence, the Board must suspend its consideration of the complaint and provide the evidence to the Commissioner of Police.

This flow chart demonstrates to complaint process.

# Auctioning - sale and purchase of firearms

## *Firearms Act 1996*

All auctioneers should be fully aware of the requirement to trade firearms through a licensed firearms dealer.

This requirement exists irrespective of whether any firearm is considered to be a firearm exempt from registration or licensing requirements.

Tasmania Police have advised the Board that there has been an increasing number of enquiries to Tasmania Police Firearms Services in relation to the legal requirements of selling/purchasing firearms manufactured prior to the year 1900 particularly whether the transaction is compliant with Commissioners Exemption No. 4 (the Exemption).

The exemption allows the possession of pre-1900 firearms that are not designed to discharge cartridge ammunition or for which cartridge ammunition is not commercially available from a number of provisions of the *Firearms Act 1996*, namely:

- the requirement to hold a firearms licence for that firearm;
- the requirement to register that firearm;
- the safe storage requirements as per Section 85 of the *Firearms Act 1996*.

It should be noted that there is **no exemption** from the requirement for firearms sales (dealing) to be sold other than through a licensed firearms dealer.

Section 11 (1) of the *Firearms Act 1996* provides -

*(1) a person is guilty of an indictable offence punishable under the Criminal Code if the person deals in firearms without holding a firearms dealer licence.*

To deal includes, as well as a number of other things, buying/selling firearms or firearms parts.

The exemption does not alter any other legislative requirements and therefore any “dealing” transaction in relation to firearms or firearms parts **MUST** be conducted through a licensed firearms dealer.

Tasmania Police believe that there may be a misconception that sale of pre-1900 firearms (often referred to as antique firearms) do not need to be completed through a firearms dealer due to the exemption of registration, however this is incorrect and could lead to a person being charged under section 11(1) of the *Firearms Act 1996*.

Further, Section 106 of the *Firearms Act 1996* states

*A person must not cause an advertisement for the sale of any firearm, firearm part or ammunition to be published unless –*

- (a) the person is a licensed firearms dealer; or*
- (b) the proposed sale is to be arranged by or through a licensed firearms dealer.*

Tasmania Police have advised the Board that in recent times some auctioneers may have been permitting the unlawful advertising and sale of firearms, especially those believed to be pre-1900. This practice must cease immediately.

**At a practical level Tasmania Police suggest that no firearm should be accepted for sale unless offered for sale by a licensed firearms dealer.**

For further information regarding the lawful sale of firearms, contact the Tasmania Police Firearms Services.

Email [firearms.services@police.tas.gov.au](mailto:firearms.services@police.tas.gov.au)

Web [www.dpfem.tas.gov.au](http://www.dpfem.tas.gov.au) [www.police.tas.gov.au](http://www.police.tas.gov.au)

# Examinations

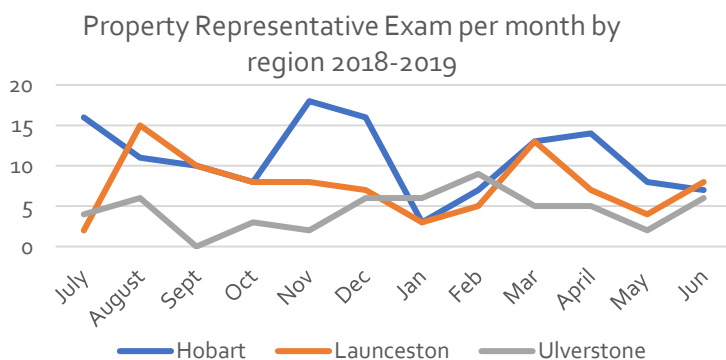
## Examinations

The property representative examination is an entry level examination which is designed to touch on a wide range of information. The examination is designed for the candidate to demonstrate a sufficient level of knowledge and understanding of the property industry as the expectation is that the person will build on this knowledge once working in the industry.

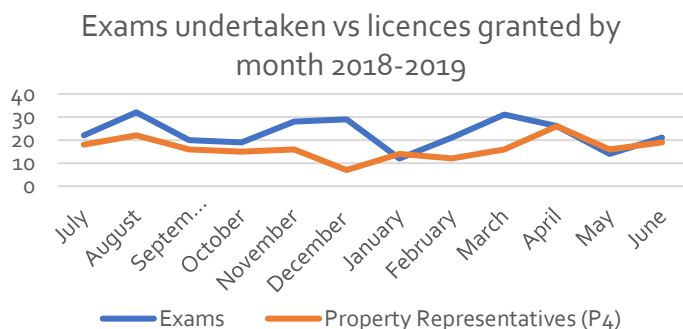
A total of 292 examinations were conducted during 2018-2019. 252 candidates undertook the property representative examination and 40 attempted an enabling examination.

## Examination attempts

Eighty one percent of candidates were successful on their first attempt, thirteen percent of candidates required a second attempt and 6 percent of candidates required a third examination attempt.



There is a reasonable correlation between the examinations undertaken each month and the number of property representative licences that are granted, as evidenced in the figure below



## Book an Examination

The Board conducts examinations monthly in the south, north and north-west. To sit, examination candidates must register and pay a fee.

Candidates will receive confirmation by e-mail of his or her examination booking which will include further information regarding the examination.

Booking an examination is completed through the Board's website and must be received by 1:00pm on the Tuesday prior to the Thursday examination.

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

Further information regarding the examination process can be found on the Board's website [here](#).

## Examination Schedule - Jan - June 2020

|            | Jan  | Feb  | Mar  | Apr  | May  | June |
|------------|------|------|------|------|------|------|
| Hobart     | 16th | 6th  | 5th  | 2nd  | 7th  | 4th  |
| Launceston | 23rd | 13th | 12th | 23rd | 14th | 11th |
| Ulverstone | 30th | 20th | 19th | 30th | 21st | 18th |

## Enabling Examinations

This type of examination was available from 1 April 2017 to 30 June 2019. From 1 July 2019, a property agent will be required to undertake the full licensing examination to have a condition removed from their licence.

# 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 January 2020 a Trust Account Report for the six months ended 31 December 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.

## Monthly Reconciliations

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 this-

### 1 Bank Statement

|                                       |        |                     |
|---------------------------------------|--------|---------------------|
| Balance as per statement 30 June 2019 |        | \$135,000.00        |
| add deposits in transit               | \$0.00 |                     |
| less unrepresented cheques            | \$0.00 |                     |
| Adjusted Statement balance            |        | <b>\$135,000.00</b> |

### 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  |             | <b>\$135,000.00</b> |

### 3 Client Ledger/Trial Balance

|  |  |                     |
|--|--|---------------------|
| Total balance from individual client ledgers as at 30 June |  | <b>\$135,000.00</b> |
|--|--|---------------------|

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

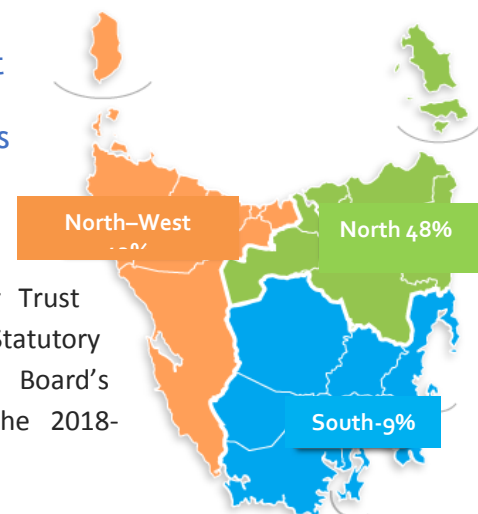
It is the property agent authorised to manage the business who must supervise the keeping of the trust account records and ensure the reconciliation records and schedule of ledger accounts are accurate and within 2 days after the making of the reconciliation record endorse the records with a statement 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 unrepresented deposits?
- What do you know about any unrepresented cheques?
- What are the adjustments?
- Are there any reverse receipts or payments?

## Inspections Trust Account and Statutory records

Forty-four Property Agents had an inspection of their Trust Accounts and Statutory Records by the Board's Inspector during the 2018-2019.



## Trust Account Reports

Around 263 trust account reports were received for the two periods ended 31 December and 30 June. This number can fluctuate slightly as trust accounts may be opened or closed during the reporting period or may not hold any money for the specified period and therefore a report is not required.



# 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, this date has been extended to September 2021; however the Board still seeks to implement the qualification changes.

## 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 licence 3 years |

### Legislative changes required

The Board determined to implement the following Legislative changes that 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 2021**.

## Case Study -Communicating rent increases

### Relevant Facts

The Complainant had been renting a property through the Real Estate Agency in excess of a decade. During this timeframe the Complainant indicated the property had been managed by a number of different property agents employed at the Real Estate Agency.

The information provided by both the Complainant and the Property Agent indicated that the owner of the Property sought to increase the rent by \$50.00 per week.

The Complainant stated that she had requested the property agent managing the property at the time try to negotiate with the owner for a lower increase.

The owner agreed to an increase of \$10.00 per week.

The Complainant alleged that the Real Estate Agency did not communicate the amount of the rent increase or when the increase was to commence.

The Complainant alleged that because she was not notified of how much the rent was to increase or and when the increase was to commence, she had not adjusted the direct debit amount. The Complainant stated because of this the additional rent had over time depleted the rent paid in advance.

### Ground of Complaint

The ground of complaint was that the Property Agent failed to act in a fair, honest and reasonable manner in that a rent increase was not communicated to the Complainant.

### Discussion

The Property Agent posted a letter and lease renewal on 7 December 2017, indicating that the rent would be increasing by \$50.00 effective on 6 March 2018.

The Complainant asked the property representative if a lower rent could be negotiated.

The Real Estate Agency records indicated that the Property Agent negotiated a lower increase of \$10.00 per week on 8 February 2018 and the Complainant agreed that this occurred.

On 21 February 2018 the property representative prepared an amended lease renewal and letter which indicated the rent increase was due to commence on 6 March 2018. This lease was hand delivered to the Complainant.

As there was a delay of the lease being returned by the Complainant (and as the date of the renewal had passed), therefore a new lease was prepared with a start date of 3 April 2018 which was signed and returned by the Complainant on 9 April 2018. The rent was increased by \$10.00 per week.

The Real Estate Agency provided to the Board signed copies of Residential Tenancy Agreements and lease extension schedules. The Board noted that the lease extension schedules were signed and dated by the Complainant and each set of documents indicated the amount of rent to be paid and the date the agreement was to take effect. The Board noted that there was only one increase in rent during the period of the complaint and that was an increase of \$10.00 per week.

### Finding by the Board and action taken

The Board considered the Complainant was notified of the rental increase and the date on which the increase was to take effect.

The Board also considered that the Complainant was provided with enough notification of the increase in rent to enable a change to her payment arrangements.

Accordingly, the Board determined that the Complaint against the Property Agent be dismissed pursuant to section 92 of the *Property Agents and Land Transactions Act 2016* as the complaint was lacking in substance.

## Case Study - access to property and quiet enjoyment

### Relevant Facts

The Complainant entered into a 26-week lease on a property. At the conclusion of the lease, the owner wished to use the property as their residence. However, the Property Agent initially failed to issue a valid notice to vacate which resulted in a delay of 4 weeks before the property would become available to the owner.

After a valid notice to vacate was issued the Complainant alleged that she and her family were not afforded quiet enjoyment of the Property on the basis that the Property Agent insisted that tradesmen be allowed to enter to sand and polish the floorboards, undertake painting and prepare quotes for floor coverings as well as requesting that the landlord be allowed access to a section of the garage where the landlord's possessions were being stored.

The Complainant said that the works amounted to renovations, not essential maintenance. The Complainant further claimed that the Property Agent did not accept their refusal to allow entry for renovations and quotes, which required the Complainant to obtain legal assistance to prevent tradesmen from entering the Property without permission.

### Ground of complaint

The ground of complaint was that the property agent failed to act in a fair, honest and reasonable manner to the Complainant and her family as tenants.

### Discussion

The evidence indicated that the Complainant and her partner and/or legal representative provided repeated assertions to the Property Agent that that the nominated works were not required repairs and that the Complainant would not be allowing entry for the work to be undertaken on the basis that they expected quiet enjoyment and use of the Property until the day of vacation from the property.

However, despite these protests by the Complainant, the Property Agent continued to contact the Complainant and her partner via texts and emails to organise dates when tradespeople would attend the property to undertake work that the owner wished to have completed prior to residing in the property.

During the discussions the Property Agent advised that access to the property was valid as notice was given under the *Residential Tenancy Act 1997*, however this is for an owner or their nominated representative to attend.

The Property Agent subsequently organised a routine quarterly inspection under the *Residential Tenancy Act 1997*. The Complainant did not give permission for any parties other than staff of the Property Agent's Agency to enter the property for the purpose of the inspection. At this inspection time the Property Agent also requested that access to the locked storage bay be provided to the owner so he could store additional belongings. After seeking legal advice, the Complainant agreed to provide access on one occasion but advised that any further requests for access were required to be negotiated with 2 days written notice.

The evidence confirmed that the Property Agent had not arranged tradesmen for the purpose of meeting commitments under the residential tenancy agreement, rather for them to undertake renovations for the owner, who would be occupying the Property after the Complainant vacated.

The Board considered that the Property Agent's notification to the Complainant that floor sanders and painters would be attending the Property on given dates are instructions rather than requests.

### Finding by the Board and actions taken

The Board determined that the complaint was substantiated as the Property Agent's conduct in regard to the continued attempts to require the Complainant and her partner to allow tradespersons to undertake work other than required maintenance during the term of the Agreement was not of a standard of competence and diligence that the public is entitled to expect from a reasonably competent property agent.

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* (the Act).

# Agency Agreements

## Termination Clauses

For **sales agreements**:

- 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**:

- 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.

## Sales authority - 120 days maximum

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.

## Whose listing is it?

An agreement to sell (listing authority) or manage property (management agreement) is between the agency business and the client. It is not an agreement between the individual property agent and the client.

If a property agent changes employment the listing authority or management agreement must remain with the agency business (until it expires or is terminated on the terms as identified by the agreement).

Similarly, if a client has an issue with a property agent who is dealing with the property, the client could seek to have another property agent of the agency business act for them rather than to terminate the agreement to sell or manage property.

## Commission paid on termination or expiry of agreement.

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

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 to commission.

### 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.

## 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.

The Property Agents Board does not consider a property agent providing promotional material to another agency's vendor as being misconduct. However, it is important to ensure that material provided does not contain advertising or information that is false or misleading.

An agency must not encourage a client of another agency to cancel a valid agreement outside the provision of the original agreement. Further, clients must not be encouraged to terminate an agreement when a property agent changes employment to a new agency.

# Infringements

## 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 \$168.00, therefore the penalty for this breach is a fine not exceeding \$8,400.00. 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 (\$840.00) or 10 penalty units for a body corporate (\$1,680).

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 (\$8,400) or 100 penalty units for a body corporate (\$16,800).
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 \$16,800;
  - S38(3) for the individual penalty is \$1,680 and
  - S38(4) for the individual penalty is \$1,680.
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 \$1,680 for the individual and the body corporate is \$3,360.
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 \$840 for the individual and the body corporate is \$1,680.
6. A real estate agent not providing written notice to the Board within 7 days of opening a trust account. The infringement amount is \$840 for the individual and for the body corporate is \$1,680.
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 \$1,680.

# 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.

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](#).

## Annual Report

The Board's annual report for 2018/2019 has now been tabled in the Tasmanian Parliament and a copy together with previous annual reports can be found [here](#) where you will find further information about the Board's activities.

Merry  
Christmas

The Board and its staff  
wish you all a very  
Merry Christmas and  
a happy, healthy and  
prosperous 2020

## Christmas Closing

The Board Office will be close from Friday 20 December 2019 until Monday 6 January 2020.

For matters which require urgent attention during this period, the Executive Officer may be contacted on 0412 608 459.

