

# Supervision of Employees and Persons Engaged

*For the purposes of these guidelines the term Property Agent refers to Real Estate Agents, Property Managers and General Auctioneers.*

The objective of Sections 36, 37 & 60 of the *Property Agents and Land Transactions Act 2016* and Rule 6 in the Code of Conduct is the protection of the public in connection with the conduct of a business under the Act. The nature of the business involves a range of different transactions, which require public trust and confidence in the supervision by the managing property agent.

That trust can only be realised if the internal systems of control, supervision and review are in place in the conduct of the business, and the managing property agent maintains an active compliance role in the business.

These guidelines set out suggestions in relation to supervision of employees and establishment and monitoring of compliance procedures. A failure to observe the guidelines may amount to misconduct. The guidelines do not constitute the totality of a managing property agent's duty to supervise a business.

When a property agent employs a person at any place of business the managing property agent is responsible for anything done or not done by the person in connection with the business. The Act recognises that some functions of the managing property agent may be delegated to staff within an agency, but the responsibility cannot be delegated.

## **Procedure and Checklists**

1. The property agent should have written procedures instructing employees of the agency as to their duties in regard to daily or next day banking practices of the agency with respect to the receipt of trust money. The managing property agent must be able to provide details of the process which the property agent uses to ensure employees comply with the procedures.
2. A property agent should have written procedures requiring the managing property agent to conduct a review of trust account cash flows on a monthly basis. The review must include a process which shows that the amounts banked to the trust account have been verified using the financial institution's records as source documents.
3. A property agent should have written procedures that set out the steps that all relevant staff should take to substantiate any selling or leasing price estimates which have been provided to a vendor/lessor or prospective buyer/tenant. In framing such procedures, reference should be made to the information source(s).
4. A property agent should maintain and be able to demonstrate that the property representative employed by the property agent uses a checklist in the property

sales/leasing process for each matter to ensure that the following requirements are met:

- a. All advertising material accurately describes the property concerned and that the information provided complies with the requirements of the relevant agency agreement, with the Act and Code of Conduct.
- b. Proper disclosures of conflicts of interest as required by the Act and Code of Conduct are made to clients, and where appropriate, any prospective purchaser/tenant.
- c. A property representative engaged to sell the property is aware of any restrictions on obtaining a beneficial interest in property.
- d. Detail the client instructions.

The completed checklist should be certified in writing by the managing property agent and be retained in the sales/property management file as a record.

5. The property agent should maintain documented complaint handling procedures. These procedures should include a process that ensures that all complaints about staff behaviour towards consumers, and the agency's response to those complaints, are recorded and retained. The procedure is to provide that the complaints of a financial nature are directed to the attention of the managing property agent. A separate record of the handling of financial complaints should be kept.
6. Where any of the above requirements stipulate the preparation and use of a set of documented procedures, a checklist, or a review system, the property agent should be able to produce this documentation to an authorised officer of the Property Agents Board. The property agent must also be able to produce information demonstrating the regular use and maintenance of the required documentation within the agency.

### **What level of supervision is required to ensure that these checklists and procedures are adhered to?**

The level of supervision required will of course depend upon the level of experience and competence of the employees concerned. The following pointers can be drawn from the decision of the Chief Magistrate in a decision dealing with the issue:

1. The obligation is to diligently supervise the work of the employee. Diligence implies constant and earnest effort, which will vary according to all the relevant circumstances including the nature and importance of the work involved.
2. "Supervise" means overseeing, superintending or directing.
3. Irregular and informal meetings fall short of what is required to "diligently supervise".

4. The use of a white board or other form of display to show current listings and their status may not be sufficient if it does not include a display of the detailed instructions of clients.
5. It is not sufficient simply to rely upon an employee bringing to the notice of the supervising agent any matters of concern. This is because it may well be that the employee simply does not recognise that the matter presents a possible problem or employees may be prevented by time constraints from adequately discussing areas of concern.
6. Perusing contracts and other documents after they have been signed and are in full effect may help in avoiding future errors, but does not avoid the consequences of a particular error. There should be some level of perusal of documents having legal consequences before they are signed so that errors can be picked up. This may mean that, depending on the level of experience of the property representative concerned and whether or not there has been any input by a lawyer, any contractual clause that is non-standard should be referred to the managing agent before a client is invited to sign the document.
7. The duty to supervise diligently does not necessarily mean that work or responsibilities cannot be delegated to another person. The Board recognises that diligent supervision will not necessarily guarantee that errors or lapses of judgment will not sometimes occur.