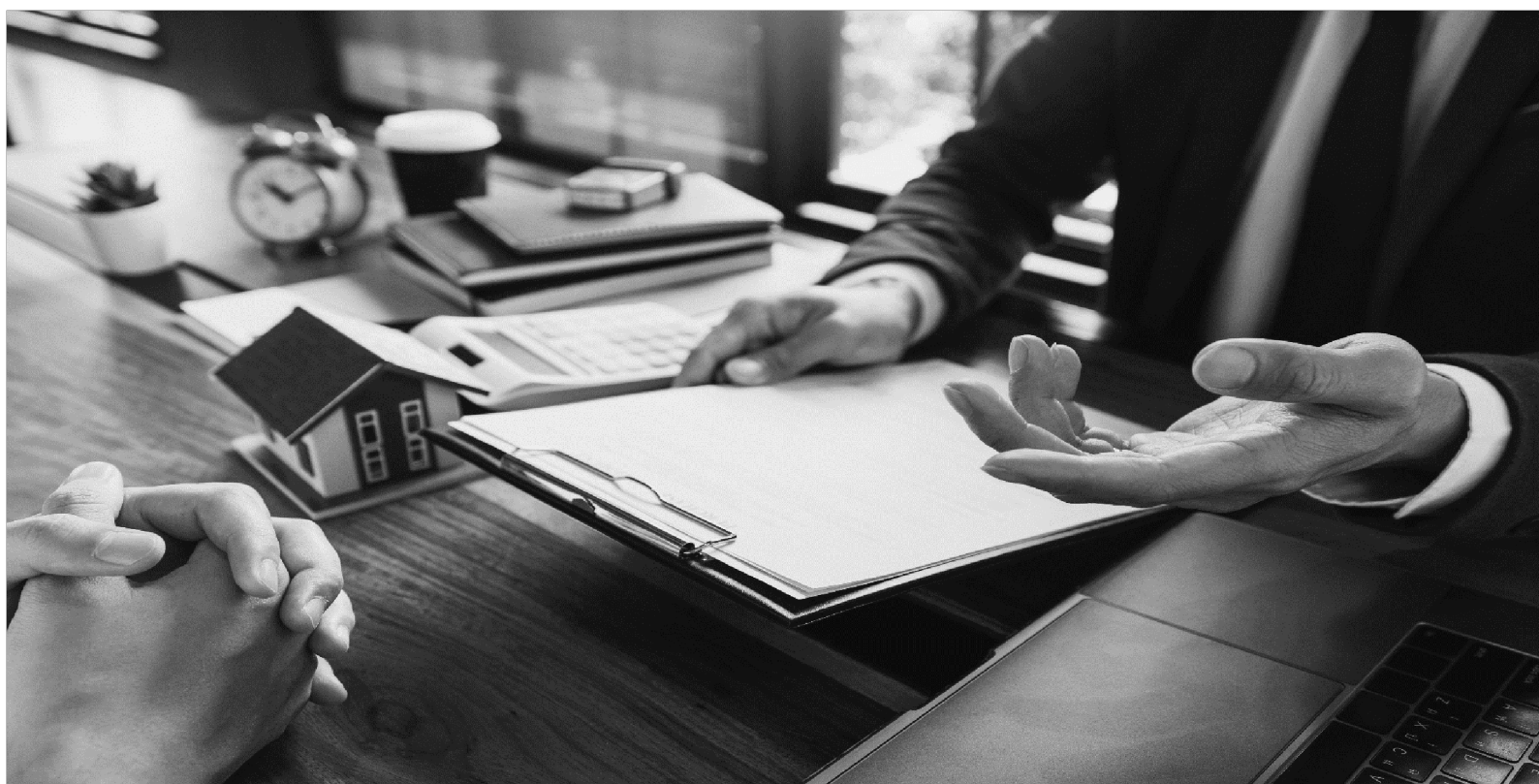


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Education



## Learner Guide

- CPPREP4001 Prepare for Professional Practice in Real Estate**
- CPPREP4002 Access and Interpret Ethical Practice in Real Estate**
- CPPREP4003 Access and Interpret Legislation in Real Estate**
- CPPDSM4004 Establish Marketing and Communication Profiles**
- CPPDSM4005 Prepare to Work with Real Estate Trust Accounts**

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## What is the Definition of ‘Agency’?

### The definition of ‘agency’?

Agency is the relationship created when one party (the principal, either vendor or landlord) instructs another party (the agent) to bring a third party (buyer or tenant) into a legal relationship.

There are several types of legally binding relationships between a principal and agent, the main two are:

List, market and sell a property      ↔      Selling Agency Agreement

List, market and manage a property      ↔      Management Agency Agreement

## Real Estate Services / Classifications

Various Types of Agency Services	Detail services provided	Licensing requirements
Residential sales	List and sell land, homes, units, duplexes, apartments, etc generally no larger than 20 Hectares.	Real Estate Licence or Certificate Registration holder.
Residential property management	Leasing and management of land, homes, units, duplexes, apartments, etc generally no larger than 20 Hectares.	Real Estate Licence or Certificate Registration holder.
Property management business development	A Senior Property Manager or Business Development Manager (BDM) whose focus is to grow the business.	Real Estate Licence or Certificate Registration holder.
Commercial/ industrial/retail sales	List and sell warehouses, offices, factory bays, commercial land, shops in arcades or street.	Real Estate Licence or Certificate Registration holder.

Commercial /industrial/retail property m'ment	Leasing and management of warehouses, offices, factory bays, commercial land, shops in arcades or street.	Real Estate Licence or Certificate of Registration holder.
Auctioneering	The Auctioneer controls the process to trade in property wherein potential buyers place competitive bids either in an open or closed format.	Either Real Estate Licence or Stock and Station Agent Licence marked 'Auctioneer accredited'.
Buyer's agent	A buyer's agent represents the buyer in a transaction. The buyer's agent has authority to act on behalf of the buyer in negotiating a Purchase and Sale Agreement with the seller's agent.	Real Estate Licence or Buyer's Agent's Licence.
Stock and station agent	Carries on business as an auctioneer of rural land or livestock or as an agent for: (a) where the land concerned consists of rural land any one or more of the things referred to in paragraphs (a)-(d) of the definition of "real estate agent", or (b) a livestock transaction	Stock and Station Agent's Licence.
Business broker	Also called business transfer agents, or intermediaries, assist buyers and sellers of privately held businesses in the buying and selling process. They typically estimate the value of the business; advertise it for sale with or without disclosing its identity; handle the initial potential buyer interviews, discussions, and negotiations with prospective buyers; facilitate the progress of the due diligence investigation and generally assist with the business sale.	Business Broker's Licence.



## **Agency Relationship / Obligation to Vendor**

The most important thing to understand about real estate agents or sales representatives is that they have been hired by the seller.

### **IMPORTANT:**

The aim of the agent is to sell the property for the seller at the best possible price, in the shortest possible time and under the best terms.

In few instances do agents receive a fee from a purchaser (buyer's agent) however, they can charge a purchaser a fee to locate suitable premises if an agreement is negotiated and the vendor is informed.

Provided the agent has followed all the principal's instructions contained in the (correctly completed and executed) agency agreement in the sale or management of the property, then the agent will be paid a commission.

**Sales Department:**                      Agent / Vendors / Purchasers

    Exclusive Agency Agreement (including Auction)

    Open Agency Agreement

    Sole Agency Agreement

**Property Management:**              Agent / Landlord / Tenant

    Management Agency Agreement

    Leasing Agency Agreement

## **Ethics**

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The client in real estate is the person who pays the agency money. This is most often the vendor or landlord; however, buyer's agents are becoming more popular. The customer is the person who does business with you but does not pay you money. This is usually the buyer or tenant. Some salespeople forget this and are more concerned about their buyer, particularly where a sale is made of another agent's listing (via conjunction). Because the salesperson does not deal directly with the vendor, they often tend to take the side of the purchaser.

### **IMPORTANT:**

Under the Trade Practices Act, the agent must be fair to the purchaser but must always have the benefit of the principal in mind.

## **Conduct of Estate Agents and Agents' Representatives**

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### **6 Fiduciary obligations**

A commercial agent must comply with a fiduciary obligation incurred as an agent.

### **7 Honesty, fairness and professionalism**

(1) A commercial agent must act honestly, fairly and professionally in the conduct of a commercial agency practice.

(2) Without limiting subsection (1), an agent must treat a customer honestly and fairly. **8 Skill, care and diligence**

(1) A commercial agent must exercise reasonable skill, care and diligence in the conduct of a commercial agency practice.

(2) An agent must complete all work for a client as soon as is reasonably practicable.

### **9 Agent to act in client's best interest**

A commercial agent must act in a client's best interests unless it is unlawful or unreasonable to do so.

### **10 Agent to act in accordance with client's instructions**

A commercial agent must act in accordance with a client's instructions unless it is contrary to this code or otherwise unlawful to do so. **11**

**Agent to keep client informed of developments**

A commercial agent must keep a client informed of any significant development or issue in relation to an activity performed for the client.

**12 Agent to ensure employees comply with Act and code**

(1) A commercial agent who is a principal licensee must take reasonable steps to ensure a registered employee of the agent complies with the Act and this code in relation to the agent's business.

Example—

A commercial agent in whose business the supervisor to employee ratio is so low that supervisors can have little knowledge of what staff are doing or how they are performing their work may need to employ more supervisors.

(2) An agent who is an employed licensee in charge of an agent's business at a place of business must take reasonable steps to ensure a registered employee at the place complies with the Act and this code in relation to the business.

(3) This section applies only to the extent that the Act, section 340(1)4 does not already require an agent to take the steps mentioned in the section.

**13 Representations by employees**

(1) This section applies to a commercial agent who is a principal licensee or an employed licensee.

(2) The agent must take reasonable steps to ensure an employee of the agent—

(a) if the employee does not hold a commercial agent's licence, does not falsely represent that the employee is the holder of a licence for the agent's business, or falsely use a title that suggests the employee is the holder of a licence; or

(b) whether licensed under the Act or not, does not represent that the employee is the person in effective control of the agent's business, or use a title that suggests the employee is the person in effective control of the business.

# The Real Estate Institute of Australia's 'Code of Ethics'

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Where an agency is a member of the Real Estate Institute, there is a "code of ethics" to follow which can attract penalties if they are not adhered to (such as disqualification of membership or monetary penalties).

There is no obligation for an agency to be a member of the REI, and agencies should make a determination if there is a benefit to membership which reflects the cost of membership.

The "Code of Ethics" is intended to provide guidance toward a higher level of professionalism and 'mirror' many of Rules of Conduct in the Regulations of the Act.

## **Section 1 Code Objectives**

1.1 This is the national code of conduct of the Real Estate Institute of Australia as adopted and implemented by the Real Estate Institute of Queensland and is a public statement of the principles, values and behaviour expected of members of the Institute.

1.2 The objective of this code of conduct is to promote and encourage a high standard of ethical practice by members and their employees in their dealings with other members, other agents, their employees and members of the public.

1.3 By following this code a member will not engage in conduct that is:

- a) contrary to good estate agency practice; or
- b) detrimental to the reputation or interests of the profession, the Institute or its members.

## **Section 2 Professional Standards**

2.1 In this Code:

**"Agent"** means a licensed real estate agent, strata managing agent, stock and station agent, business agent or valuer.

**"Client"** means a person who retains a member to represent their interests in a real estate transaction.

**"Customer"** means a person who transacts business with a member but does not retain their services.

**"Employee"** means a sales person, sales representative, agent's representative, property manager, body corporate manager or any other person in the employ of, or acting on behalf of, a member.

**"Fee"** includes commission, charges, or other remuneration whether monetary or otherwise.

**"Institute"** means the Real Estate Institute of Queensland.

**"Member"** means any member of the Institute, and includes any employee of a member.

**"Estate agents legislation"** means legislation in Queensland regulating real estate agents, strata managing agents, stock and station agents, business agents and valuers.

### **Duties and Obligations**

2.2 A member must have a working knowledge of agency law which sets out the duties and obligations of an agent towards the client.

### **Knowledge of the Law**

2.3 A member must have a working knowledge of:

- (a) estate agents legislation and any other regulations made under such legislation; and
- (b) other statutes and any rules or regulations in force such as Fair Trading and trade practices legislation to the extent that they are relevant to the conduct of the real estate profession.

### **Compliance with Legislation**

2.4 A member must not, in the conduct of estate agency, contravene or fail to comply with any statute, rule or regulation in force to the extent that it is relevant to the conduct of the real estate profession.

### **Good Real Estate Agency Practice**

- 2.5 a) A member must exercise skill, care and diligence in the conduct of the profession.  
b) A member must complete all work on behalf of the client as soon as is reasonably practicable.

2.5.1 A member must act in the best interests of the client except where it would be unreasonable or improper to do so.

2.5.2 A member must not induce or attempt to induce a breach of or an interference with a contract or arrangement of sale, letting or agency.

2.5.3 A member must not solicit or accept an agency if the member is aware that any other agency is in force which may obligate the client to pay two fees or expose the client to a claim for damages for breach of contract in the event of a sale taking place, unless the member gives a prior written statement to the client that the client may be liable to two fees or for a claim for damages for breach of contract if the client signs a further agency agreement.

2.5.4 A member may act in conjunction with another member if so authorised by the client.

#### Authorities and Instructions

2.6 A member must not act as agent or represent himself or herself as acting as agent on behalf of a person without authority.

2.6.1 A member must act in accordance with the instructions of a client except where to do so would be unlawful or contrary to good agency practice.

2.6.2 An agent must not:

- a) advertise or offer for sale or lease any real estate or business at a price or on terms different from that authorised by the client; or
- b) advertise or offer to purchase or lease on behalf of a client any real estate or business on terms different from that authorised by the client.

2.6.3 The price at which a member offers a property shall be in accordance with the instructions of the client. However, if the member considers that the price asked by a client is more or less than fair market value, the member shall advise the client accordingly.

#### **Fair Conduct**

2.7 A member must act fairly and honestly and to the best of his or her knowledge and ability with all parties in a transaction.

2.7.1 A member must not mislead or deceive any parties in negotiations or a transaction.

2.7.2 A member must not engage in harsh or unconscionable conduct.

### **Supervision of Employees**

2.8 A member or the person in effective or nominal control of the agency must properly supervise the agency business and take reasonable steps to ensure that employees of the agency comply with the provisions of estate agents' legislation, this code of conduct and other relevant statutes, rules and

### **Verifying Information** regulations

where applicable to them.

2.8.1 If an employee fails to comply with the provisions of estate agents' legislation, this code of conduct or other relevant statutes, rules or regulations where applicable then, for the purposes of section 2.9.1 of this Code, the member or the person in effective control of the agency business shall have the onus of proving that he or she complied with the requirements of that section.

2.9 Prior to the execution by the client of any contract relating to the sale or lease of any real estate or business, the member must make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent member would have ascertained in order that the member may avoid error, exaggeration or misrepresentation.

2.9.1 It is the duty of a member to act in a professional manner and to ascertain all available pertinent facts concerning the property for which the member accepts the agency so that in providing the service the member may avoid error, exaggeration or misrepresentation.

2.9.2 When a member receives instructions to offer real estate for sale the member shall take all reasonable steps to verify the ownership of the property and the property description.

### **Best Interests of the Client**

2.10 A member must not accept an engagement to act, or continue to act, where to do so would place the member's interest in conflict with that of the client.

## **Confidential Information**

2.11 A member must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer, except for information that an agent is required by law to disclose.

2.11.1 A member must communicate all offers to the client as soon as practicable

## **Commissions and Expenses**

2.12 A member must not accept or demand any commission from any person, other than the client, in respect of any service performed or to be performed by the member, being a service in respect of which the member receives commission or is entitled to receive commission from the client.

2.12.1 A member must not demand, retain or receive a discount or rebate which relates to a service by a stakeholder or tradesperson, or to advertising, in connection with a transaction or a service provided by the member unless the member has obtained the written consent of the client to the seeking or retaining of the discount or rebate by the member.

2.12.2 A member must not demand, retain or receive a commission for a service or transaction which is greater than the amount agreed with the client.

2.12.3 If a member is entitled to seek reimbursement from a member of any expense which the member has incurred, the member shall promptly supply to the client all relevant information and material which the client may reasonably require as to the amount of the expense, and to be satisfied that the expense was properly incurred by the member.

2.12.4 A member shall not seek or retain reimbursement of an expense which the member has incurred in respect of advertising, signboards, printed material, and promotions unless:

- a) the client has agreed in writing to pay the expense; and
- b) the agreement specifies a maximum amount which the member may seek or retain by way of reimbursement.

## **Tenancy**



2.13 A member must immediately notify the owner when the member becomes aware of a significant breach or repeated breaches of the tenancy agreement.

2.13.1 A member managing a rental property must fully complete inventory and inspection reports and provide such reports to the owner in accordance with the terms of the property management agreement.

### **Notifying Managing Agents**

2.14 If a member accepts an engagement to sell any real estate and is or becomes aware that another member is the managing agent of that real estate, the member must immediately give written notice of the appointment to the managing agent, unless otherwise instructed, in writing, by the client.

### **Fraud and Misrepresentation**

2.15 It is the duty of every member to protect the public against fraud, misrepresentation or unethical practices in connection with real estate transactions.

### **Member's Responsibility**

2.16 No instructions or inducements from any client or customer will relieve a member from the responsibility of strictly observing this code of conduct.

### **Disputes**

2.17 A member must make every effort to minimise disputes with other members, agents, and members of the public and to resolve complaints or disputes that do arise as expeditiously and as fairly as possible. It shall be a breach of this Code for a member, in dispute with a fellow member in relation to this Code, to resort to action at law before submitting the matter to the Institute for adjudication in the first instance.

### **Member's Employee Representations**

2.18 An employee of a member must not intentionally represent himself or herself as the holder of a real estate agent's license or the person in effective control of the estate agency business or a corporation that is the holder of a real estate agency license.

In summary, it is the professional courtesy shown to one another.

## Glossary – Common Real Estate Words, Terms & Phrases

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You will be required to familiarise yourself with the following terms, as defined by the Act.

**"AGENCY AGREEMENT"** means an agreement pursuant to which a licensee performs or agrees to perform services in the capacity of a licensee.

**"AGENT"** means:

- A licensed real estate agent (Sales or Leasing), or
- A Property Manager (Agents Representative holder) CANNOT be referred to as an 'Agent'
- A licensed stock and station agent, or
- A licensed business agent, or
- A licensed strata managing agent, or
- A licensed community managing agent, or
- A licensed on-site residential property manager

**"AUCTION"** means the sale of property by any means (including the Internet) whereby:

- a) the highest, the lowest, or any bidder is the purchaser, or the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser, or
- b) There is a competition for the purchase of the property in any way commonly known and understood to be by auction.

**"AUCTIONEER"** means any person:

- a) a license holder who, in the course of trade or business and at an auction (or a proposed auction), acts as an auctioneer or sells for reward (whether monetary or otherwise) any land or any livestock, or
- b) Who sells or offers for sale, or who attempts to sell, any land or any livestock by way of auction, or
- c) Who engages in any other activity that is prescribed for the purposes of this definition.

**"BUSINESS AGENT"** means any person (whether or not the person carries on any other business) who for reward (whether monetary or otherwise) carries on business as an agent for exercising any of the following functions:

- selling, buying, or exchanging or otherwise dealing with or disposing of businesses or professional practices or any share or interest in or concerning or the goodwill of or any stocks connected with businesses or professional practices,
- negotiating for the sale, purchase or exchange or any other dealing with or disposition of businesses or professional practices or any share or interest in or concerning or the goodwill of or any stocks connected with businesses or professional practices,
- any other function that is prescribed by the regulations for the purposes of this definition.

**"BUSINESS DAY"** means a day other than a Saturday, Sunday, public holiday, or bank holiday in QLD

**"BUSINESS ASSISTANT AGENT"** means a person (other than the holder of a business agent's license) who, as an employee of a business agent or a corporation that employs a business agent:

- exercises any function of a business agent, or
- engages in any other activity that is prescribed by the regulations for the purposes of this definition.

**"COMMUNITY MANAGING AGENT"** means a person who is engaged or appointed, for monetary or other reward, to exercise functions of an association constituted for a scheme under the Community Land Development Act 1989 , or any other function that is prescribed by the regulations for the purposes of this definition, but does not include:

- the proprietor of a lot within the scheme, or

- the secretary or treasurer of the association, or
- a person authorised by the management statement for the scheme to exercise the functions of the secretary or treasurer of the association, or
- a person who maintains or repairs any property that the association is required to maintain and keep in repair

**"CORPORATIONS ACT"** means the Corporations Act 2001 of the Commonwealth

**"DE FACTO PARTNER"**, in relation to a person, means the other party to a de facto relationship (within the meaning of the Property (Relationships) Act 1984 ) with the person

**"DIRECTOR-GENERAL"** means the Director-General of the Department

**"DISQUALIFIED PERSON"** has the meaning given by section 16

**"EMPLOYEE"** includes any person employed whether on salary, wages, bonus, commission, fees, allowance or other remuneration and includes a director or member of the governing body of a corporation.

**"INDIVIDUAL"** means a natural person and does not include a corporation.

**"LAND"** includes:

- a) a lot within the meaning of the Strata Schemes (Freehold Development) Act 1973 or the Community Land Development Act 1989 and a leasehold interest in a lot within the meaning of the Strata Schemes (Leasehold Development) Act 1986 , and
- b) shares that, under a company title scheme, entitle their holder to the possession of premises.

**"LICENSE"** means a license under this Act.

**"LICENSEE"** means the holder of a license under this Act.

**"LICENSEE'S RECORDS"** has the meaning given in Part 8 (Records).

**"LIVESTOCK"** includes horses, cattle, asses, mules, sheep, swine, camels, goats, alpacas, ostriches, emus, and such other animals as may be prescribed by the regulations.

**"LIVESTOCK TRANSACTION"** means the purchase, sale or other disposal of livestock, whether or not an auction is involved.

**"MONEY"** includes an instrument for the payment of money in any case where the instrument may be paid into a bank or other authorised deposit-taking institution.

**"MONEY RECEIVED FOR OR ON BEHALF OF ANY PERSON"** includes money held for or on behalf of any person, whether originally received for or on the person's behalf or not.

**"PRINCIPAL PLACE OF BUSINESS"** means, in relation to a licensee carrying on business at more than one place, the place of business specified in the license as the licensee's principal place of business.

**"QUALIFIED REPORT"** a discovery by the auditor of a breach of the Act or Regulations, any discrepancy relating to the trust account or a failure to keep records in a manner that enables them to be properly audited.

### **"REAL ESTATE AGENT"**

A real estate agent is used:

- for a real estate transaction – i.e., the purchase, sale, exchange, lease, assignment, or other disposal of land, whether or not an auction is involved or
- for inducing or attempting to induce or negotiating with a view to inducing any person to enter into, or to make or accept an offer to enter into, a real estate transaction or a contract for a real estate transaction or
- for the introduction, or arranging for the introduction, of a prospective purchaser, lessee, or licensee of land to another licensed agent or to the owner, or the agent of the owner, of land or
- collecting rents payable in respect of any lease of land and otherwise providing property management services in respect of the leasing of any land or
- for the sale or purchase of rural land with an area of up to 20 hectares or
- for a buyer or
- for the sale of residential premises in a retirement village.

A license holder who wishes to act solely as a BUYER'S AGENT may have a condition placed on their license noting that they may only act as a buyer's agent.

But does not include a person who carries on business as an auctioneer or agent in respect of any parcel of rural land unless the regulations otherwise provide.

**Note:** This definition is not limited to the selling of land and extends to an agent acting on behalf of the buyer of land (a buyer's agent). As noted in section 168 of the Retirement Villages Act 1999, a selling agent acting on the sale of residential premises in a retirement village must be licensed as a real estate agent under this Act.

**"REAL ESTATE TRANSACTION"** means the purchase, sale, exchange, lease, assignment or other disposal of land, whether or not an auction is involved.

**"RECORDS"** includes books, accounts, and other documents.

**"REGISTERED MANAGER"** means a registered strata manager, registered community manager or registered on-site residential property manager;

"Registered on-site residential property manager" means a person (other than the holder of an on-site residential property manager's license or the holder of a real estate agent's license) who, as an employee of an on-site residential property manager or a corporation that carries on the business of an on-site residential property manager:

- a) exercises any of the functions of an on-site residential property manager, or
- b) engages in any other activity that is prescribed by the regulations for the purposes of this definition.

**"REGISTERED PERSON"** means the holder of a certificate of registration under this Act.

**"REGISTERED STRATA MANAGER"** means a person (other than the holder of a strata managing agent's license) who, as an employee of a strata managing agent or a corporation that carries on the business of a strata managing agent:

- a) exercises any of the functions of a strata managing agent, or
- b) engages in any other activity that is prescribed by the regulations for the purposes of this definition.

**"RESIDENTIAL PROPERTY"** has the same meaning as in Division 8 of Part 4 of the Conveyancing Act 1919

**"RURAL LAND"** means land that is used or apparently intended to be used for gain or profit for grazing of livestock, dairying, poultry farming, viticulture, orcharding, beekeeping, horticulture, the growing of crops of any kind, vegetable growing or any other purpose declared by the regulations to be a rural purpose.

**"STRATA MANAGING AGENT"** means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), exercises any function of an owners corporation within the meaning of the Strata Schemes Management Act 1996 or any other function that is prescribed by the regulations for the purposes of this definition, not being:

- a) a person who:
  - i. is the owner of a lot to which the strata scheme for which the owner's corporation is constituted relates;

- ii. is the lessee of a lot to which the leasehold strata scheme for which the owner's corporation is constituted relates;
- iii. is the secretary or treasurer of the executive committee of the owners corporation;

and who exercises or performs only functions of the owner's corporation required, by the by-laws in force in respect of the strata scheme or leasehold strata scheme for which the owners corporation is constituted, to be exercised or performed by the secretary or treasurer of that executive committee or of the owners corporation, or

- b) a person who maintains or repairs any property for the maintenance or repair of which the owners corporation is responsible.

**"TRUST ACCOUNT"** means a trust account required to be kept under this Act.

1. Where a person carries on business as a business agent and also carries on business as an agent for the collection of instalments of principal or interest payable under bills of sale given in respect of businesses or professional practices or under contracts for the sale on terms of businesses or professional practices, a reference in this Act to any such person acting as, or carrying on the business of, a business agent includes a reference to that person carrying on business as an agent for the collection of those instalments.
2. Where a person carries on business as a real estate agent and also carries on:
  - a) business as an agent for the collection of instalments of principal or interest payable under mortgages of land or under contracts for the sale on terms of land, or
  - b) business as an agent for the collection of amounts payable in relation to any premises to a company by a person who is the holder of shares in the company and who, by reason of the person's holding those shares, is entitled to possession of those premises, or
  - c) the business of arranging for the erection of buildings for or on behalf of other persons,

a reference in this Act to any such person acting as, or carrying on the business of, a real estate agent includes a reference to that person carrying on business as an agent for the collection of those instalments or amounts or to that person carrying on the business of so arranging for the erection of buildings.

3. Where a person carries on business as a stock and station agent and also carries on business as an agent for the collection of instalments of principal or interest payable under mortgages of rural land or under contracts for the sale on terms of any such land,

a reference in this Act to any such person acting as, or carrying on the business of, a stock and station agent includes a reference to that person carrying on business as an agent for the collection of those instalments.

**"CLAIM FUND"** maintained under this Act which supports consumers who have experienced financial loss as a result of agent misconduct.

## Various Acts, Regulations and Registers

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### New training requirements for the real estate industry

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15 December 2020

#### New training requirements for the real estate industry

The Office of Fair Trading (OFT) has approved new training requirements for people wanting to enter the real estate industry.

The new training, as part of initial licensing requirements, follows an independent review of the national property services training package.

Before approving the new training, the OFT consulted on its potential impact with a range of industry bodies and stakeholders including the Real Estate Institute of Queensland (REIQ), Australian Resident Accommodation Managers Association (ARAMA), and the Australian Livestock and Property Agents Association (ALPAA).

Fair Trading Executive Director Brian Bauer said it is important to ensure qualifications for licence requirements are contemporary, meeting the needs of industry and expectations of



people using critical real estate services. The new training requirements also remove units of competency that are obsolete and duplicative.

“Queensland has 14,647 licensed real estate agents and 19,659 registered salespersons, and the OFT issues approximately 5,000 new real estate agent licences and registrations annually,” Mr Bauer said.

“People using services provided by the real estate industry need to be confident their property and financial interests are protected by licensees operating with the right blend of integrity, expertise and professionalism.”

Antonia Mercorella, CEO of the REIQ has supported the new training requirements.

Ms Mercorella said, “The Real Estate Institute of Queensland is committed to excellence in teaching, learning and to developing outstanding industry professionals across the full range of real estate disciplines on offer.

“Integral to that commitment is constantly exploring the academic landscape to ensure our courses and programs reflect today’s real estate industry.

“It’s pleasing to see the Office of Fair Trading’s new training requirements not only recognise the significance of the work undertaken by real estate professionals but also better reflect modern day real estate agency practice.

“The introduction of higher scholastic standards provide an enhanced understanding of consumer protections, improved professionalism and ultimately, a higher calibre of educated Queensland real estate professions.

“When you’re charged with selling or managing what’s likely to be our most important asset, people have an expectation for the credentials that qualify you to that role.”

Trevor Rawnsley, the CEO of ARAMA, has also endorsed the collaborative nature of these reforms.

Mr Rawnsley said, “The review and subsequent updating of licensing education for resident letting agent’s in Queensland has resulted in a modern, more relevant set of training requirements offering more flexibility and more opportunities for skills transfer.

“These improvements will result in better education for agents and ultimately better outcomes for the consumer.”

Anyone wanting to obtain a real estate licence will be required to complete the new training ahead of applying for the following registration and licence classes:

- auctioneer (property)
- chattel auctioneer
- limited real estate agent – affordable housing
- limited real estate agent – business letting
- real estate agent
- real estate salesperson and
- resident letting agent.

Property agent licensees operate under the *Property Occupations Act 2014* and chattel auctioneer licensees operate under the *Motor Dealers and Chattel Auctioneers Act 2014* (MDACA).

The new training requirements do not impact people who hold current registrations and licenses.

A transition period in 2021 means the OFT will continue to accept qualifications from the previous training package – the ‘CPP’ training package - until 30 September 2021. From October 2021, only the [new training package](#) will be accepted as the eligibility requirement for a licence or registration.

## **Australian Consumer & Competition Commission – ACCC**

**Commonwealth Body** [www.accc.gov.au](http://www.accc.gov.au)

- Administers and enforces the trade practices Act 1974 based on
- Education – gives information to consumers via publication
- Negotiations – advising particular industries of their liabilities in relation to any potential breaches of the Act
- Litigation – prosecutions for breaches of the Act

## Trade Practices Act, 1974 and Competition and Consumer Act, 2010

### Commonwealth Statute

[www.austlii.law.uts.edu.au/au/legis/cth/consol\\_act/tpa1974149/](http://www.austlii.law.uts.edu.au/au/legis/cth/consol_act/tpa1974149/)

<https://www.legislation.gov.au/Details/C2021C00010>

- Preserves competition of private enterprise to benefit consumers •
- Strengthen consumer protection

## Australian Consumer Law and Fair Trading Act, 1989

State Act <https://consumer.gov.au/consumers-and-acl/other-consumer-protections/queensland>

- Mirrors the trade practices act on a state level

## Office of Fair Trading (OFT)

### State Body

<https://www.qld.gov.au/law/fair-trading>

- Performs functions as required in the Property Occupations Act 2014.
- Applications for objecting and/or granting license applications
- Complaints & disciplinary procedures
- Appeals against disciplinary procedures
- Administer the property services compensation fund
- Review statements of commissions claims

## Property Occupations Act 2014, and Regulations

### State Body

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2014-022>

- Sets standards and rules of conduct for property professionals

- Sets out requirements that are aimed at increasing consumer confidence ●
- Regulates by imposing annual Continuing Professional Development Programs ●
- Requirements for:
  - licenses
  - certificates of registration
  - auctioneer accreditation
  - corporate licenses

**The Act** regulates agents' conduct and competence required to carry out the profession. The Act's regulatory framework includes industry licensing, disciplinary procedures, and consumer protections.

**The Regulations** provides the detail for agents to carry out their responsibilities under the Act. It helps to ensure property agent business is ethical and financially accountable to support the Act's role in supporting fair dealings between agents and consumers.

## Anti-Discrimination Act 1991

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1991-085>

## Queensland Human Rights Commission

<https://www.qhrc.qld.gov.au/>

In Queensland it is against the law to discriminate against a person based on the following:

- age
- breastfeeding
- employment activity
- gender identity
- disability
- industrial activity
- lawful sexual activity
- marital status
- parental status or status as a carer
- physical features
- political belief or activity
- pregnancy

- race
- religious belief or activity
- sex
- sexual orientation
- an expunged homosexual conviction
- personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

## Property Law Act, 1974

<https://www.legislation.qld.gov.au/view/pdf/inforce/2021-06-18/act-1974-076>

Section 5 – Application of the Act: (1) This

Act shall—

- (a) apply to unregistered land; and
  - (b) apply to land under the provisions of the Land Title Act 1994, including any lease of such land, but subject to that Act; and
  - (c) apply to estates, interests, and any other rights in or in respect of land, granted, created or taking effect under any Act or any repealed Act provisions of which continue to apply with respect to this Act, but subject to the provisions of such Act; and
  - (d) without limiting the generality of paragraph (c)—
    - (i) subject to the provisions of the Coal Mining Act, apply to land under that Act; or
    - (ii) subject to the provisions of the Land Act, apply to land under that Act; or
    - (iii) subject to the provisions of the Mineral Resources Act, apply to leases, and any other rights in or in respect of land, granted, created or taking effect under that Act.
- (2) Where, by this Act, including this section, a provision is expressed to apply to land or interests in land under the provisions of a particular Act, such expression shall not be construed to mean that the provision—
- (a) applies exclusively to such land; or
  - (b) does not apply to property other than land

## **Residential Tenancies and Rooming Accommodation Act 2008**

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2008-073>

This Act governs the relationship between landlords and tenants. It sets out the rights and responsibilities of both parties.

This act also details the processes and laws around rental property requirements and commencement, during and completion of rental tenancy agreements.

### **Residential Tenancy Databases – Section 458 (RTRA Act)**

The legislation has been introduced to regulate the use of tenant databases to:

- Ensure that listed tenants have access to their personal information
- Amend incorrect information
- Tenants objections are listed
- Delete listings within the specified time frames

### **Privacy Amendment (Enhancing Privacy Protection) Act, 2012**

**(Extracts from the NSW Privacy Act 2014) – Personal Information**

[www.oaic.gov.au/privacy/privacy-act/privacy-law-reform](http://www.oaic.gov.au/privacy/privacy-act/privacy-law-reform)

A real estate agency contains a lot of information that must be kept confidential including:

- Commercially sensitive information e.g., profit and loss statements, business plans and tax information
- Personal records – e.g., substantiating income / expenditure on rental application
- Personal information about clients – e.g., reason for their move
- Security details such as alarm codes
- Sale prices of properties – especially if we are advertising a price sold above reserve.
- An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.
- An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection.

- If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.
- An organisation must take reasonable steps to destroy or permanently de identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

**From 12 March 2014, there have been changes to the Privacy Act, known as the**

### **13 AUSTRALIAN PRIVACY PRINCIPLES (APP)**

1. Allows credit providers to access, use and disclose more credit information about consumers
2. Provide consumers with more rights in relation to their credit information

#### **What changed?**

A new set of principles covering the handling of personal information by businesses has been introduced.

The changes affect how businesses can:

- handle and process personal information
- use personal information for direct marketing
- disclose personal information to people overseas

The Privacy Act changes also give the Information Commissioner the ability to:

- investigate serious breaches (including the right to impose penalties on businesses)
  - assess the privacy performance of businesses.

To comply with the Privacy Act from 12 March 2014, businesses need to have a clear and up to date privacy policy that is easily available. For details of all changes to the Privacy Act, visit the Privacy law reform page on the OAIC website.

The Act may also apply to a small business if it has an annual turnover of more than \$3 million and either:

- trades in personal information
- provides services under a Commonwealth contract

- runs a residential tenancy database
- is related to a larger business
- is a reporting entity under the Anti-Money Laundering and Counter-Terrorism Financing Act.
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## **PART 1 – CONSIDERATION OF PERSONAL INFORMATION**

### **1. Open and transparent management of personal information**

Australian Privacy Principle 1—open and transparent management of personal information;

### **2. Anonymity and pseudonymity**

Individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an APP entity in relation to a particular matter;

## **PART 2 – COLLECTION OF PERSONAL INFORMATION**

### **3. Collection of solicited personal information**

An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities;

### **4. Dealing with unsolicited personal information**

The entity must, within a reasonable period after receiving the information, determine whether or not the entity could have collected the information under Australian Privacy Principle 3 if the entity had solicited the information;

### **5. Notification of the collection of personal information**

At or before the time or, if that is not practicable, as soon as practicable after, an APP entity collects personal information about an individual, the entity must take such steps (if any) as are reasonable in the circumstances;

## **PART 3 – DEALING WITH PERSONAL INFORMATION**

### **6. Use and disclosure**

An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless the



individual would reasonably expect the organisation to use or disclose the information for secondary purposes;

#### **7. Direct marketing**

If an organisation holds personal information about an individual, the organisation must not use or disclose the information for the purpose of direct marketing;

#### **8. Cross-border disclosure of information**

The entity must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information;

#### **9. Adoption, use or disclosure of government related identifiers**

An organisation must not adopt a government related identifier of an individual as its own identifier of the individual unless: (a) the adoption of the government related identifier is required or authorised by or under an Australian law or a court/tribunal order;

### **PART 4 – INTEGRITY OF PERSONAL INFORMATION**

#### **10. Quality of personal information**

An APP entity must take such steps (if any) as are reasonable in the circumstances to ensure that the personal information that the entity collects is accurate, up to date and complete;

#### **11. Data security**

An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification, or disclosure. They must also take reasonable steps to destroy or permanently de-identify personal information it no longer needs;

### **PART 5—ACCESS TO, AND CORRECTION OF, PERSONAL INFORMATION**

#### **12. Access**

If an organisation holds personal information about an individual, it must provide the individual access to the information on request by the individual unless the information is other than health information that would pose a serious or imminent threat to the life or

health of any individual or impede the application of law;

**13. Correction of personal information**

The entity must take such steps (if any) as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose for which it is held, the information is accurate, up to date, complete, relevant and not misleading.

For further information telephone: 1300 363 992

email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) write: GPO

Box 5218, Sydney NSW 2001 or visit our

website at [www.oaic.gov.au](http://www.oaic.gov.au)

## Legal Structures of an Agency

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There is significant business, taxation, and investment benefits in setting up a legal structure to protect assets, maximise tax benefits and thereby increasing the value of the asset portfolio. The following legal structures offer numerous benefits:

### **Company/Corporation:**

The most common form of ownership of a small business in VIC as it offers the strongest protection.

- Limited liability
- There are no succession or continuity problems and additional credibility with others.
- A company is seen to be a separate identity and is registered through the Australian Securities and Investment Commission (ASIC).

Company Directors have authority and influence over the organisational governance of the companies they manage. Their position as director is one of significant responsibility. Australian Securities and Investment Commission (ASIC) and the Australian Taxation Office (ATO) hold the role of director in extremely high esteem and have rules in place of strict adherence.

Failure to comply with their requirements may mean a director is issued with a Director Penalty Notice, a scheme to ensure the company complies with their Pay-As-You-Go and superannuation guarantee contribution obligations. Directors have a legal responsibility to achieve the required lodgement and payment dates for their obligations. These measures are in place to ensure employee entitlements are paid promptly.

Failure to meet the company's obligations in full by the due date, means each director becomes **personally liable** to a penalty amount equal to the unpaid amount.

### **Sole traders:**

- One person may choose to own their own real estate business however, all the debts and liabilities of the business lay solely with the owner

### Partnership:

- Two or more people may form a partnership however they are jointly and severally responsible for all the debts and liabilities of the business – even if one is unaware of the debt.
- It is advisable that a solicitor draws up a partnership agreement and that each and every party to the agreement understands their responsibilities

### Trust:

- Protection of assets
- Maximising taxation benefits
- Legal division of income, and
- Succession and continuity of ownership

## Franchise, Network or Go It Alone?

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There are pros and cons to all of these. Do you join a franchise (e.g. L J Hooker) and reap the benefits of group buying power, wide public exposure such as national advertising versus paying a set % of your income to the franchisor. Often there is little democracy in a franchise.

Whereas, a network (e.g. First National) is usually governed by a committee of the network principals. Again, there is a buying power, however it is limited by the number of offices actually in the network – and their spending ability. Going it alone offers total freedom to do as you wish, however you are a single entity and will pay more for signboards, advertising, website listings and so on.

## Licensing Requirements

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With the introduction of the new educational reforms, the structure of Queensland real estate business will change. The minimum requirement to work in a real estate office is now a real estate salesperson registration, to achieve this candidates must demonstrate competency in

12 units from the CPP41419 Certificate IV in Real Estate Practice (CPP41419). This registration allows for work in both sales and property management areas of the agency.

To be able to own or run an agency candidates must have completed the Real Estate Agent qualification, which is 19 units, therefore meeting the requirements and obtaining a Certificate IV in Real Estate Practice (CPP41419).

## Eligibility for License or Certificate of Registration

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For a registration the person must be:

- at least 18 years of age
- a fit and proper person
- have the Statement of Attainment with the prescribed units of competence
- have a national police check that has been issued not more than 6 months prior
- be issued with an Authority to Act by the Officer In Effective Control

Also they must:

- not be a disqualified person.

### **To gain an Real Estate Agents License the person must be:**

- **At least 18 years of age**
- **A fit and proper person**
- **Has the qualification** required for the issue of the license
- **Has paid any contribution or levy** payable that is due and payable. Part of the licensing fee goes to the compensation fund, so the fee must be paid before a license is granted.

Also they must:

- **Not be a disqualified person**

OFT now send out renewal notices for property related licenses by email. If you are a license or certificate holder and your license records include a valid email address, you will be sent by email:

- your renewal notice

- your new or renewed license or certificate.

Remember, it is an offence for you to act as or carry on the business of a licensed agent if you do not hold a current license/certificate under the act.

### **Fit and Proper Person:**

The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities.

However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

### **Disqualified person / Not fit and proper person:**

- Has a conviction for an offence involving dishonesty that was recorded in the last 10 years. The Director-General may ignore the conviction if he deems necessary;
- Is an undischarged bankrupt or a director or person involved in a corporation that is the subject of a winding up order;
- At any time in the last three years preceding the application for the license or certificate of registration was an undischarged bankrupt or insolvent debtor;
- At any time in the last three years preceding the application for the license or certificate of registration was involved in a corporation that was the subject of a winding up order;
- Is a mentally incapacitated person;
- Is disqualified from holding a license or certificate of registration under a corresponding law;
- Is in partnership with a disqualified person;
- Has a disciplinary matter underway;
- Is a corporation that is under the winding up of an administrator;
- Has failed to pay a levy or contribution to the compensation fund;

- Has failed to pay any penalties or fines payable under the Act;
- Has failed to provide an auditor's report for the trust account - \$5,500 penalty;
- Is in breach of any of the provisions of the Act.

An unlicensed agent who carries out work that must be done by a licensed agent can be held responsible for errors.

## Legislative, Ethic And Conduct Standards

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### **Obligations and Duties of a Real Estate Agent:**

There are two common law obligations placed on agents when dealing with third parties.

They are:

- To act in a fair and reasonable manner
- To refrain from exaggeration, deception or misleading conduct

### **Contractual Obligations:**

To perform in accordance with the terms and conditions of the agency agreement.

### **Summary of Duties and Obligations of Real Estate Agents to Principals:**

- To comply with instructions, perform in terms of the agreement and act within the authority of the agreement
- To act personally and only delegate if authorised
- To act in the principal's interest
- To make full disclosure of any personal interest
- To make no secret profit, gain or commission
- To exercise due care, skill and diligence
- To look after the principal's property (including money) as if it were their own
- To keep separate accounts of their transactions and promptly account for monies received
- To preserve confidentiality of any information that is acquired as a result of the agency agreement.

## What can buyers expect from a real estate agent or sales representative who is employed by the seller?

- The agent must be licensed or hold an agents representative registration
- The agent must have a written contract with the owner to sell the property
- If a prospective buyer makes a written offer on a property, the real estate agent or sales representative must present the offer to the seller
- The real estate agent or sales representative must have a complete copy of a contract for sale of land held at the agency's office
  
- The real estate agent or sales representative should try to find out important information about a property, such as: - Whether there are any restrictions about the use of the property. Where an extension is obviously badly built, real estate agents should make enquiries with the local authority about the legality of the extension
- If the real estate agent suggests a purchaser use a service provider, e.g. a termite inspector or conveyancer, the agent must advise in writing if they have any connection with that supplier.

## Common Law Duties

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Common Law is derived from custom or judicial precedent such as decisions handed down from previous cases

### Legal and Ethical Obligations

Under common law principles the above requirements are 'mirrored'. The agent has a duty to:

- Follow the principal's reasonable instructions
- Act in good faith
- Act in the principal's best interests
- Make a full disclosure of any personal interest in a business relationship
- Exercise a duty of skill, care and due diligence in any dealings on behalf of a principal
- Maintain the principal's confidentiality
- Care for the principal's property as though it was your own
- Faithfully account for all monies held on behalf of a principal



●  
Let's look in detail at some of the common law duties:

**Follow the principal's reasonable instructions:** Of course we must treat the principal with the utmost respect and follow instructions, provided however, that those instructions do not contravene the act and are legal.

**Act in good faith:** Be at all times focused and efficient and carry out the tasks that were expected of you in the sale or management on behalf of the principal.

**Act in the principal's best interest :** The agent's obligation is they must act in the best interest of the owner at all times. This obligation extends to obtaining the highest price for a property that the market can produce and leasing their properties to the best possible tenant and obtaining a fair market (not necessarily the highest) rent for it.

**Duty of care:** This is an obligation placed on you as a representative of the agency to provide informative decisions based on skill and knowledge and to protect all clients from harm.

**Confidentiality:** Sensitive information may be given to you, i.e. mortgagee in possession, divorce, etc. This information cannot be used to create an uneven ground for negotiation. For instance – a salesperson cannot disclose why the principal is selling as this may weaken his position in the negotiating arena. The buyer having knowledge, say of a divorce or mortgagee in possession, will ultimately offer a lesser price than if this information was not disclosed. Should the principal decide to disclose such information, then the agent must at all times have these instructions in writing. Remember! You are working in an area where people's private lives and personal business affairs are intimately involved so you must remain trustworthy at all times.

**Respecting others' property:** Real estate is a minefield of litigation and so it comes as no surprise to find that common law duties are paramount when placing a principal's property in your care. Another area of common law duty is "Open for Inspection". Some people tend to have little respect for other people's property and again your responsibility is making sure nothing is damaged or stolen, particularly when the interest in the property is great or children are allowed to run around. Make sure the property is left the way it was found.

**Fiduciary:** A duty of confidence and trust, being honourable. Essentially to act in good faith.

## Equity Law

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Equity can be broadly described as being just or fair, whereas the legal meaning of the term equity refers to the rules determined to mitigate the severity of the common law rules and those issues that are not covered under the common law jurisdiction. The major principles that govern Australia legal system include equality before law and justice.

The system itself and lawmakers endeavor to achieve equal results for every individual living in Australia. Also, it focuses on ensuring the protection of all by making just and fair decisions. In other words, the courts, government and law enforcers as well as individuals work to achieve an ideal sense of justice and fairness.

In Australia, legal system equality means treating each person the same. Everyone enjoys the same opportunity and rights, and nobody is disadvantaged. As such, the aim of equity in Australia's legal system ensures each person is treated in the same way no matter who they are. The system must not come up with a different decision because an individual is poor or rich or because a person comes from a different nation. It means that each person has a right to access the legal system and law equally as no one is above it no matter the position they hold in the society.

Read more at: <https://bigassignments.com/samples/role-and-impact-of-the-rules-of-equity-in-australia-legal-system>

## Statute Law

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Legislation is written law enacted through a legislative or statutory body such as a State, Territory or the Federal Government. In Australia we are governed under the British Westminster rules of law.

## Consumer Protection – Contract Law

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The focus on consumer protection has meant that many of the practices of agents have now been standardised and the consumer must be given printed guides prepared by the OFT, which sets out the rights and responsibilities of both agent and client.

**Interests in Property:** Agents must give full disclosure of any interests in property, whether they are financial or personal. They must give warnings about investment advice, cooling off periods and rebates.

**Contract Law:** A contract is simply a legally binding agreement between two or more parties. The essential elements of a legally binding contract are:

- Agreement – offer and acceptance
- Consideration – \$ payment of the purchase price
- Intention – to create legal relations/creation of legal relationship
- Capacity – to know what they are doing, capabilities ● Certainty – terms of the agreement are sufficiently certain ● Requirements – can be enacted upon.

**Agents Forms:** The PAMD Act 2000 requires that forms approved by the Commissioner be used in relation to specific activities.

These are:

**Form 6: Appointment or re-appointment of a property agent:** This must be completed by a property agent and their client to have a valid appointment, Agents cannot represent their client and therefore sell or rent their house unless they have been properly appointed.

**Form 7: Disclosure of beneficial interest form** – for buyers' and sellers' agents disclosing to buyers and sellers any relationship that the agent may have with people to whom the buyer or seller is referred for professional services. The purpose of this form is to deal with concerns about Beneficial interest, and must be presented to the seller prior to the sale.

**Form 8: Disclosure to potential buyer:** Property agents and developers must complete this form to detail to the prospective buyer if they have any relevant interests in the sale.

## Unconscionable Conduct

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### **Unconscionable Conduct:**

- The parties meet on unequal terms because of some special disadvantage of the weaker party
- That disadvantage is evident to the stronger party
- The stronger party takes unfair advantage of this situation to gain a beneficial bargain

### **Unconscionable Behaviour:**

- Fail to ensure clients with limited reading skills, or limited English, understand and agree to contracts
- Use a friend or relative of the client to influence the client's decision
- Take advantage of the client's sickness, age or disabilities
- Include false statement in contracts
- Create one-sided contracts

## **Beneficial Interest**

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The written acknowledgement must be provided in the 'Disclosure of beneficial interest form'. This form is to be retained in the sales file. Penalties for breaches of Section 144 include up to three years gaol and a \$27,570 fine. In addition, a court can order an estate agent to pay over any commission received from the vendor.

### **Where a beneficial interest can be defined includes:**

- You or your associate\*
- A proprietary corporation of which you (or your associate) are a member
- A corporation over which you (either individually or jointly with your associates) or your associate can exercise control. You can exercise control if you have the capacity to determine the outcome of decisions about the company's financial and operating policies
- A corporation of which you (or your associate) are an executive officer
- If the estate agent is a corporation, an executive officer of that corporation or an associate of the executive officer
- The trustee of a discretionary trust of which you (or your associate) are a beneficiary

- A member of a firm or partnership of which you (or your associate) are also a member
- Another person carrying on a business for profit or gain where you or your associate have a right to participate in the income or profits of that business.

Associates are:

- Employee of an estate agent (when they act on behalf of the estate agent)
- Spouse, domestic partner, parent, brother, sister or child of an estate agent
- Child of an estate agent's spouse or domestic partner.

## Equal Opportunity Employment

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Equal Opportunity Employment (Commonwealth Authorities Act), 1987

[www.legislation.gov.au](http://www.legislation.gov.au)

An Act to require certain Commonwealth authorities to promote equal opportunity in employment for women and persons in designated groups and for related purposes, the current compilation #20 came into being on the 1 July 2016.

- All eligible members of the community have a fair chance to gain a position
- Selection is based on an applicant's ability to perform the work required of the position, and
- The best person (in terms of knowledge, skills and abilities) is selected for the role.

### Some definitions under the Act:

**designated group** means any of the following classes of persons:

(members of the Aboriginal race of Australia or persons who are descendants of

- indigenous inhabitants of the Torres Strait Islands;
- (persons who have migrated to Australia and whose first language is not English, and the
- children of such persons;
- persons with a physical or mental disability;
- any other class of persons prescribed by the regulations for the purposes of this definition.

**discrimination means:**

- a) discrimination that is unlawful under the Racial Discrimination Act 1975 or the Sex Discrimination Act 1984; or
- b) discrimination by which a person with a physical or mental disability is, because of the disability, treated less favourably than a person without the disability.

**employee** means a natural person appointed or engaged:

- a) under a contract of service, whether on a full time, part time, casual or temporary basis; or
- b) under a contract for services. **employment matters** includes:
  - a) recruitment procedure, selection criteria, appointment or engagement of persons as employees;
  - b) promotion and transfer of employees;
  - c) training and staff development for employees; and
  - d) conditions of service of employees.

**program**, in relation to a relevant authority, means an equal employment opportunity program designed to ensure that appropriate action is taken by the authority:

- a) to eliminate discrimination by it against; and
- b) to promote equal opportunity for:
  - women and persons in designated groups in relation to employment matters.

## Supervision of a Real Estate Business

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**IMPORTANT: IT IS ASSUMED THAT EVERY WRITTEN RECORD AT THE REGISTERED OFFICE OF THE PRINCIPLE IS MADE BY OR WITH THE AUTHORITY OF THE LICENSEE.**

**IMPORTANT: THE PRINCIPLE OF AN AGENCY MUST ADEQUATELY SUPERVISE THEIR STAFF AND IS RESPONSIBLE FOR THEIR CONDUCT AT ALL TIMES.**

The Officer In Effective Control should have management and control mechanisms in place to ensure agents comply with the requirement of the Act.

**Supervisory Requirements:**

The main focus of the supervisory requirements was based on a continued abuse of the trust account.

**The Commissioner can appoint a manager to carry on the business of an agent whose license has been suspended or cancelled, or who is no longer able to properly manage the business, to prevent disadvantage to existing clients.**

- A lack of knowledge of trust accounting
- Failure to monitor and review trust accounts regularly
- Failure to monitor staff
- Comply with audit requirements
- Fraudulent conduct

The *Property Occupations Act 2014* requires each place of business to be under the supervision of a licensee:

- As for the importance of the physical presence
- To properly supervise employees
- To establish procedures to ensure the provisions of this Act
- To monitor the conduct of business
- To ensure procedures are complied with

### **Supervision when Principal is absent on leave:**

If a Principal needs to be absent, either due to reasons of illness or recreational leave, it is difficult to provide a definitive length of absence after which an alternative principle should be appointed. However, existing supervision guidelines already require agents to have systems in place.

## **Key Personnel**

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**Employee Records:** A licensee must keep records of the name and residential address of all employees for a period of three years after the person has ceased to be an employee.

- **Licensee in Charge / Principal**

**Without an exemption, each place of business must be in the charge of a licensee, who is responsible for the business carried on there, including supervision of all employees.**

Employers are ordinarily responsible for the acts of their employees, with some exceptions. At common law it is referred to as **'vicarious liability'**.

The definition of vicarious is:

**If you act in someone's stead, you take his or her place, at least temporarily. The oldest meaning of "vicarious," which was first recorded in 1637, is "serving in someone or something's stead."**

The Act specifies that the licensee is responsible for anything done or not done by an employee:

- Within the scope of the employee's authority or
- For the benefit, or the purported benefit, of the licensee or the licensee's business.

An individual licensee is responsible for the supervision of their own place of business. A licensee who has more than one place of business must employ a licensee in charge at each other place of business unless they hold an exemption. A corporation that holds a corporation license must employ licensees to be in charge of each of the corporation's places of business.

There are also many administrative positions, especially within larger agencies. These are usually covered under the Clerical Award however, if they deal with introducing the public to property, or handling trust accounts they are required to hold a Certificate of Registration as a minimum.

### **License 'Lending'**

It is a criminal offence to 'lend your license' to another person or corporation. This means that you do not hold the position of Licensee-in-Charge at that agency but have 'lent' it for that purpose whether there is any monetary gain or not. Often it is because the real Licensee-in-Charge would not be able to obtain the required license or has already been disqualified from doing so.

**Reception** (Director of First Impressions if you are an LJH agency)



The face of the agency, often the first point of contact with the public so needs to be knowledgeable, well presented and able to deal with both the internal and external clients with grace and tact.

### **Property Management**

- Property Manager – responsible for the main functions of property management.
- Property Officer – graded 1, 2 or 3 depending upon experience and generally works under the supervision of a property manager. If under 21yrs of age, a sliding scale applies down to 18yrs.

### **Sales**

- Salaried – paid salary only or salary plus commission bonus.
- Probationary – paid a minimum of the prescribed rate of salary for a salesperson.
- Commission only – paid commission only but the employee must be a licensed agent.

### **Sales & Administrative Support / Business Development Officer (BDO)**

Usually deals with the correspondence concerning the sale of properties. Business Development Officer's task is to grow the business, often through 'cold calling', letter box drops, etc.

### **Sales Manager**

Included in this position is the monitoring of the overall sales department, to motivate staff to meet their targets. Sales peoples' performances are monitored closely to ensure profitability for the agency, and for the sales people too.

When problems arise with shortfalls on targets, etc. we can:

- Role play conversations / actions with potential vendors.
- Examine methods of searching & sorting comparable.
- Have someone else in the office speak to vendors who didn't list with us to find out how we could have improved – third party phone call.
- Is there an agency doing something 'different' (e.g. lower commission, discounted marketing) and taking the business from you?

## Office Manager

Often doubles as the property manager, or is a director of the company. They are responsible for the overall management of the agency.

## Accounts Manager

Not all agencies will have an accounts manager, this person usually deals with the payment of invoices, organizing contractors and may oversee the running of the trust account.

# Wages And Allowances

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[www.fairwork.gov.au/awards-and-agreements/awards](http://www.fairwork.gov.au/awards-and-agreements/awards)

As for most industries, wages and employment conditions are structured under the **Industrial Relations Act and Regulations and, in particular the:**

- Real Estate Industry Award 2020

Generally, the award is reviewed every four years.

## Classifications and Weekly Wages

Source: 11 August 2019 extract from

<https://www.fairwork.gov.au/my-account/my-news/changes-to-the-real-estate-award>

There have been a number of changes to award classifications and wage rates. In particular, the introduction of:

- a new Real Estate Employee Level 1 (Associate Level) classification which covers employees previously classified as property sales, management and strata/community title management associates. Their weekly wage is:
  - for first 12 months: \$728.20
  - after first 12 months: \$768.60.
- a new Real Estate Employee Level 2 (Representative Level) classification which covers employees previously classified as property sales, management and strata/community title management representatives. Their weekly wage is \$809.10.

- a new Real Estate Employee Level 3 (Supervisory Level) classification which covers employees previously classified as property sales, management and strata/community title management supervisors. Their weekly wage is \$890.60.
- a new Real Estate Employee Level 4 (In-charge Level) classification which can include licensees in charge and agency managers. Their weekly wage is \$930.50.

Remember minimum wages are reviewed and can change from 1 July every year, so it's important to come back to our website and check these rates.

**Remuneration:** Wages, vehicle allowance and phone allowance are all currently regulated under the state award. Staff employed in either sales or property management may be paid a bonus/commission for successful results or reaching set targets. Performance bonuses, such as commission-based pay structures provide the opportunity for an employee to earn substantial remuneration if they apply themselves and become successful.

Salespeople are often employed on a debit/credit type pay structure where wages (including super – currently 9.5% of your ordinary earnings – and tax) are debited against the commission income earned by them. If commission earned exceeds debited wages, the balance is paid to the salesperson as commission income and above their wages and allowances.

An example as at July 2019 (USE THE LINK FOR ANY UPDATES)

14.1 The minimum weekly wage for an adult employee engaged full-time:

<u>Classification</u>	<u>Minimum weekly wage \$</u>
Level 1 Associate —first 12 months of employment at this classification	\$776.30
Level 1 Associate—after 12 months of employment at this classification	\$819.40
Level 2 Representative	\$862.50
Level 3 Supervisory	\$948.80
Level 4 In-Charge	\$992.00

14.3 Junior employees

(a) Where the law permits junior employees to perform the work covered by this award they will be entitled to the percentage of the applicable adult minimum weekly wage for their classification, as set out below:

Age % of adult rate

At 18 years 60%

At 19 years 70%

At 20 years 80%

At 21 years 100%

(b) A junior employee may not be employed on a commission-only basis

Vehicle allowances are calculated by the engine capacity and age of the vehicle.

An example as at July 2019:

Vehicles less than 5 years old:

Up to and including 1600cc Standing charge \$79.60 + per kilometre \$0.13 OR Lump sum \$146.15	1601cc - 2600cc Standing charge \$109.10 + per kilometre \$0.15 OR Lump sum \$187.91	Over 2600cc Standing charge \$113.52 + per kilometre \$0.17 OR Lump sum \$203.57
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Vehicles older than 5 years

Up to and including 1600cc Standing charge \$40.45 + per kilometre \$0.13 OR Lump sum \$109.61	1601cc - 2600cc Standing charge \$60.55 + per kilometre \$0.15 OR Lump sum \$140.92	Over 2600cc Standing charge \$66.03 + per kilometre \$0.19 OR Lump sum \$167.03
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## 18.2 Motor vehicle allowance—alternative

(a) Instead of the provisions contained in clause 18.1, the employer may elect to pay the employee a \$0.78 per kilometre allowance for all use of the employee's own motor vehicle in the course of employment, to a maximum of 400 km per week.

### Telephone Allowance

Where the employer requires the employee to use their own mobile phone in the course of employment, the employer and employee must agree in writing on a method of payment for reimbursement of the costs of using that mobile phone in the course of their employment. This agreement must be reasonable when considering the employee's use of the mobile for work related purposes. As a guide, the previous maximum amount of this allowance was \$50 per month.

Neither vehicle nor telephone allowance is paid whilst the employee is on leave.

## Employment Agreement / Letter of Appointment

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An employer must provide the employee with a written employment agreement or letter of appointment containing **the terms and conditions as set out in the award. This document also sets out the employee’s work tasks, hours, remuneration and any additional commission structure (e.g. debit / credit or targets) as well as who their support officer / buddy will be and who is their direct supervisor.**

For commission-incentive employees the agreement will also set out their expected targets and % share.

The employee must sign the agreement on or before the day of commencing work, and the employer must provide the employee with a copy signed by both parties within 14 days. This agreement is basically a contract of employment between the parties. This agreement is then lodged with REEF.

### **A Contractor or NOT a Contractor?**

In November 2019 the Commissioner found that the relationship between the applicant and the respondent was one of “employee” and “employer” – that is, the applicant was not an “independent contractor”, carrying on a business of her own under a contract of services ([96], [112], [116]-[119]). The Commissioner accepted that the “principal criterion” in making such a distinction remains the employer’s “right of control of the person engaged”, however, it noted this is not the sole determinant ([102]).

In recent times, courts have favoured consideration of a variety of criteria including, amongst other things, the mode of remuneration, the provision and maintenance of equipment, the obligation to work, the deduction of income tax, the right to delegate work, the right to dictate hours and place of work, and the right to exclusive services of the person engaged (*Stevens v Brodribb Sawmilling Company Pty Ltd* [1986] HCA 1; (1986 160 CLR 16, cited at [103]). It is important to remember that it is the “totality” of the relationship that must be considered – these factors are merely a guide ([107], [112]).

**This information is supplied in the resource merely as a guide and is not to be relied upon for legal purposes.**

**The Real Estate Employers Federation (REEF):**

[www.reef.org.au](http://www.reef.org.au)

REEF is an industrial union of employers registered under the Industrial Arbitration Act as having the right to represent employers in the real estate industry to negotiate award terms and conditions.

**Australian Property Services Association (APSA):**

[www.myapsa.com.au](http://www.myapsa.com.au)

The APSA is an employee organisation which represents the real estate industry in VIC; it is a trade union of employees registered under the Industrial Relations Act. It represents employees in industrial relations matters such as the negotiating of award terms and conditions.

Some of the issues the Association has assisted and helped members resolve are:

- Assisting with contracts of employment/employment agreements
- Representing members either by negotiating with the employer or attending court to obtain unpaid wages, holiday pay and commissions
- Advice on employment and professional issues
- Negotiating award and employment conditions with peak employer bodies.

**Note: This content has been supplied for information only, and does not confer any recommendation.**

## **Commission - Only Salespersons or Employee Licensed Agents**

### **Fair Pay Commission Rules:**

Those employees NOT eligible for this scheme are those:

- under 21yrs of age
- traineeships

- casual employees

Safeguards to protect these arrangements on behalf of salespersons are they:

- Must have been working in the industry for at least twelve months
- Must have a performance criterion in place showing the earnings over the past twelve months satisfy the Pay Scale
- Must be in writing and lodged with the relevant employment advocate
- Must have earned at least \$57,948 (evidenced by PAYG summary or similar) for the 12 month period immediately prior to entering into an agreement for commission only.

There have been a number of changes to minimum employment conditions for commission only employees. To be eligible for commission only employment employees:

- need to be a Real Estate Employee Level 2 or above
- need to have worked in property sales or commercial, industrial or retail leasing as a Real Estate Employee Level 2 or as a licensed real estate agent for at least 12 consecutive months over the previous 3 years
- who are engaged on this basis after 2 April 2018, need to meet the new minimum income threshold amount rules.
- who are already engaged on this basis before 2 April 2018, can continue their commission only arrangement as long as their arrangement is reviewed each year and meets the new minimum income threshold amount rules.

The award changes also introduce a new minimum commission only rate of 31.5% of an employer's gross commission. This replaces the previous rate of 35% of an employer's net commission.

Commission only arrangements need to be reviewed every 12 months and need to meet the new minimum income threshold amount rules. In particular, employees engaged on a commission only basis:

- before 2 April 2018 – need to have their arrangement reviewed by 2 April 2019
- on or after 2 April 2018 – need to have their arrangement reviewed no later than 12 months after the arrangement started.

Arrangements that don't meet the minimum income threshold amount rules have no legal effect and can't be enforced. If an arrangement fails this review, the 3 year qualifying period used to assess an employee's eligibility for a new commission only arrangement starts no earlier than the date their previous arrangement ended.

### **New minimum income threshold amount rules**

The award now states that employees engaged on a commission only basis must, in any single 12 month period over the past 3 years, have been paid an annual amount (including commission or bonus payments) that is at least equal to:

- the minimum annual rate for their classification under the award
- an extra 25%.

This amount doesn't include superannuation payments.

Note: The income threshold will not need to have been achieved if the employee has operated their own real estate business within the last five years. For an existing salesperson transferring to commission only, any debit from a previous debit/credit structure IS NOT carried forward.

## **Anti-Discrimination Act, 1991**

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The objectives of the Anti-Discrimination Act 1991 are to encourage the identification and elimination of discrimination, sexual harassment and victimisation and their causes, and to promote and facilitate the progressive realisation of equality.

To do this the Commission will provide a timely and effective dispute resolution service and has been given tools to encourage and facilitate best practice and compliance.

It is still against the law under the Anti-Discrimination Act 1991 to discriminate against a person on the personal characteristics listed in the Anti-Discrimination Act 1991. It is also against the law to sexually harass someone or to victimise them for speaking up about their rights, making a complaint, helping someone else make a complaint or refusing to do something that would be contrary to the Anti-Discrimination Act 1991.

A licensee must ensure that an employee is given equal opportunity to achieve in the workplace. An employee cannot be denied access to work opportunities because of their age, gender, marital status, physical impairment, race, parental status or religious beliefs. Nor must an employee be sexually harassed or discriminated against for any reason whatsoever.

Matters of particular relevance in an agency are:



- Remuneration
- Terms
- Employment and recruitment advertising practices
- Promotion and advancement
- Professional and personal development opportunities.

## Review to ensure Queenslanders protected against discrimination

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Published Tuesday, 04 May, 2021 at 03:15 PM <https://statements.qld.gov.au/statements/92010>

### Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

The Honourable Shannon Fentiman

Anti-discrimination laws will undergo review to ensure they better protect Queenslanders from discrimination, promote equality and meet international best practice.

Attorney-General and Minister for Justice Shannon Fentiman has formally requested the Queensland Human Rights Commission to undertake a review of the *Anti-Discrimination Act 1991*, announcing the Terms of Reference today.

“Making sure our laws protect and promote equality for our diverse communities is a key priority for the Palaszczuk government,” Minister Fentiman said.

“I’ve written to Human Rights Commissioner Scott McDougall asking the Commission to review the Anti-Discrimination Act to consider whether any reforms are needed to update the laws to best protect and promote equality, non-discrimination and the realisation of human rights.

“It will consider how we can make the process easier for victims of discrimination to make and defend complaints as well options for ways to better use dispute resolution to address systemic discriminations as well as discrimination complaints that raise public interest issues.”

In undertaking its review, the independent Commission will take into account Australian and international best practices in the area and the compatibility of the Act with Queensland’s Human Rights Act, which commenced in full on 1 January 2020.

The Attorney said the Commission will consider the protected attributes under the legislation, including whether the current definitions best promote the rights to equality and nondiscrimination and whether additional attributes should be introduced.

“The review will also consider the ongoing efforts of the Palaszczuk Government to implement recommendations from the Australian Human Rights

Commission’s *Respect@Work: Sexual Harassment National Inquiry Report*,” she said.

“I have asked the Commission to provide options for legally requiring all employers to take positive measures to eliminate sex discrimination, sexual harassment and victimisation as far as possible in their organisations.”

Minister Fentiman said the Commission would receive \$150,000 to assist it in undertaking the review and would provide its report by 30 June 2022.

“This year marks 30 years since State Parliament passed the Anti-Discrimination Act to ensure Queenslanders had adequate protection from discrimination by building on the existing Commonwealth legislation,” Minister Fentiman said.

“Introducing the Act to Parliament on 26 November 1991, the then Attorney-General Dean Wells MP said its principal objective was to promote equality of opportunity for everyone by protecting them from unfair discrimination, sexual harassment and other objectionable conduct.

“The anniversary provides a timely opportunity to conduct this holistic review of our antidiscrimination laws to ensure they continue to provide those protections in a contemporary setting.”

Mr McDougall welcomed the opportunity to review the state’s anti-discrimination legislation.

“A lot can change in 30 years, and the Queensland of today is not the Queensland of 1991,” he said.

“The Anti-Discrimination Act has made a big difference to a lot of people, but this is a wonderful opportunity to make sure that it is up to dealing with the challenges of modern Queensland, that it reflects community expectation, and that it helps us build a safe and inclusive community for everyone.”

## Work Health and Safety Act, 2011

## Safety Is Everyone's Business

### Meaning of workers

Because so much work is now done in businesses by people who are not direct employees, WHS defines worker very broadly to include employees; contractors; sub-contractors; employees of contractors or sub-contractors; outworkers; employees of labour hire companies; and volunteers.

WH&S management is the responsibility of everyone, not just the Licensee. Everyone has a duty of care unto themselves and others around them. If you know of, or see an impending risk or danger you must do everything in your power to prevent it from eventuating by ensuring a safe workplace and co-ordinate risk management systems in the property industry:

- Establishing and maintaining WHS framework
- Establishing and maintaining participative arrangements
- Establishing procedures for identifying hazards and assessing controlling risks •  
Reviewing system effectiveness

Businesses should make sure their workers understand the nature of these duties and should not tolerate material breaches of them without taking the matter up with the worker in an appropriate way consistent with workplace relations laws. They are an important part of the behaviour that makes workplaces safe.

## Common Risks Within Real Estate Agencies

According to a 2016 State-wide review by the OFT, the following table details the key risks that arise in the property services industry.

Key risks in the property services sector as detailed in the PSA Act; the Residential Tenancies Act; the Fair Trading Act and the Australian Consumer Law
General conduct of licensees and registered persons
Agency agreements
Residential property and rural land sales
Auctions
Trust accounts and records
Fair Trading and Australian Consumer Law requirements
Residential tenancy law

Strata Schemes Management Act
Conveyancing Act

Policies and procedures should be in place to control the risks involved with such things as:

<p><b><u>Appraisals:</u></b> Not completing a preliminary inspection report;</p>	<p><b><u>Contracts:</u></b> Not completing agency agreements correctly; Not verifying ownership of the property;</p>
<p>Offering under or over estimate of selling price; False and misleading representations; False and misleading advertising.</p>	<p>Not explaining the agency agreement; Not completing a residential tenancy agreement correctly; Not completing a condition report.</p>
<p><b><u>Documentation:</u></b> Not lodging bonds within the prescribed time; Not giving a copy of the agreement to the principal within 48hrs; Not keeping up to date records of repairs and maintenance; Not keeping repairs and maintenance up to date; Not giving a copy of an updated agency guide to the vendor; Not keeping up to date records of offers; Additional conditions which conflict with the Act.</p>	<p><b><u>Administrative:</u></b> Incorrect details (i.e. wrong phone number for potential client); Advertising text that doesn't correspond to the property; Double booking appointment times; Failure to get to the Post Office, Bank, etc in time.</p>
<p><b><u>Management:</u></b> Not explaining rights and responsibilities to the principal; Not explaining rights and responsibilities to the tenant; Not giving tenant a full set of keys per tenant; Tenant selection not verified; Discrimination; Privacy; Arrears of rent; Lack of systems; Infrequent reconciliation of trust account; Failure to account for trust monies when requested Over-estimated appraisals.</p>	<p><b><u>Risk Management:</u></b> This is a major concern for agencies. Let's look at the 4 main categories: <b>Physical</b> This may be an injury to staff or clients. <b>Financial</b> Could involve fraudulent activity in the trust account; Breaches resulting in penalties. <b>Legal</b> Lack of knowledge within the industry; Abiding by legislation. <b>Ethical</b> Involving actual or potential harm to the reputation of the agency or client.</p>

## Disclosure of Benefits in Agency Agreement Secret Commissions

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The National Competition Policy review of the 1941 Act identified a problem with real estate agents receiving a financial advantage which exceeded the agent's fee entitlement. There were benefits from a third party received in connection with the provisions of agency services without the principal's knowledge and agreement. Concerns were expressed in relation to the taking of secret commissions including rebates on costs paid to newspapers and others by agents commissioning large volumes of advertising and commissions paid by tradespeople for maintenance contracts. Consumers were often unaware that rebates or commissions such as these were given to the agent and were charged the full costs of these services.

Accordingly, Section 145 of the Act requires licensees to disclose in the agency agreement the source and estimated amount of all rebates, discounts or commissions they received. These usually involve costs associated with advertising and maintenance. If agents want to retain entitlement to these benefits they must obtain the agreement of their clients.

The need for this provision is recognised by consumers and industry. In Fair Trading's online survey 28% of property owners strongly agreed and 30% agreed with the statement that the requirements for agents to disclose any rebates, discounts and commissions in the agreement made them confident about hiring them. When asked whether the disclosure requirements in agency agreements contributed to consumer confidence, 76% of licensees and certificate holders agreed that it did so. However, according to property owners responding to the survey, only 70% of agents disclosed these rebates, discounts or commissions.

A secret commission is also potentially misleading and deceptive conduct under Section 52 of the Trade Practices Act. Breach of this provision will expose the agent (and potentially the payer of the commission) to an action for damages by an aggrieved party (such as the principal) or the ACCC itself.

The following case studies are for example only, Whilst they have occurred in other states – the penalties and laws are similar to that of Queensland.

### **AGENT DISQUALIFIED FOR 5 YEARS**

A St Albans real estate representative has been banned from the industry for five years, after a Victorian Civil and Administrative Tribunal hearing found he had colluded with a buyer and accepted a secret commission.

The hearing before VCAT deputy president Sandra Davis yesterday was told that Ngoc Phuc Nguyen, also known as Michael Nguyen, 47, from Clarke Avenue, St Albans, entered into an agreement with Stelios Doxas when buying 67 Walmer Avenue, St Albans.

Mr Nguyen, who worked for Westgate Real Estate, told Mr Doxas the vendor wanted \$130,000 for the property and Mr Doxas offered \$128,000.

The offer was never communicated to the vendors, John and Vera Sachon, and Mr Nguyen told Mr Doxas he could get the property cheaper, expecting payments of \$500, for every \$1,000 reduction in the sale price.

Mr Nguyen told the owners the best offer he had received was \$127,000 and the property was sold to Mr Doxas on June 1, 2001, for this price.

## Predictions, Recommendations & Investment Advice

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The Trade Practices Act prohibits representations being made about any future event without reasonable grounds. You should therefore be careful when predicting trends in property values or development prospects. **Helpful Tip: Watch the movie 'The Big Short'.**

Past experience of a particular market can quite reasonably be used to predict its future performance. Such experience could be especially relevant in markets characterised by cyclical patterns. On the other hand, some markets are so volatile that not even experts can make predictions with any confidence. If your clients require an estimate, you should at least make them aware of the unpredictability of the market and warn them to keep it in mind when evaluating your market forecast.

**The Act places the onus on you.** Unless a business can produce evidence to the contrary, the Act deems it not to have had reasonable grounds for making a prediction.

**Breaches:** There is a public register of all license and certificate holders and the register will include information about any disciplinary action taken against the holder. Members of the public are entitled to inspect any entry in the register.

**Key risks:** If an agent creates an impression that unverified information is authentic or creates an impression of certainty when there is significant doubt, they expose themselves

to the risk of litigation. Clients will often ask for recommendations and advice. Whilst we do want to help them, we must be careful that the recommendations and advice that we provide will be honest, accurate and not misleading.

### **Essential Areas for Problems:**

- Investment or financial advice should be of a general nature
- Market appraisals – we are NOT valuers
- Condition of the property – we are NOT pest or building inspectors
- Financial records – we are NOT accountants
- Legal action – we are NOT solicitors. Refer clients to professionals in these fields

## **Specialist Work**

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**IMPORTANT:** Always suggest to your client that they will need to seek professional advice on questions outside the general comments parameter.

Even where a statutory disclosure obligation exists under the Code, buyers should, as much as possible, seek to independently verify information presented to them in order to reduce the risk of making a purchase decision based on false, out of date or incomplete information. Buyers will usually involve professional advisors to assist in the due diligence process – see more on this in the following unit.

These will generally include accountants (to assess financial data and issues), lawyers (to assess legal, contractual and mandatory compliance issues) and specialists relevant to the industry or market sector.

**Recommendation to Seek Specialist Advice:** It is important to employ ethical, competent, and independent professionals to investigate, and verify the property. These investigations could include professional services such as:

**Valuer:** Most properties need to be valued for the lending institution on behalf of the purchaser. There is a fee payable which the purchaser covers, regardless of whether they proceed with the purchase. The Valuer will usually require to sight a copy of the front page of the contract. From this they verify title details, such as Lot and DP. Most agents will cultivate a happy relationship with their local valuers for the free-flow of information back and forward.

**Mortgage broker:** The 'agent' between the purchaser and the banks. Often paid their commission from the finance provider or in line with new legislation, paid by the purchasers.

**Pest inspector:** Following successful negotiation the purchaser, or their legal adviser, will arrange for a pest inspection to be carried out. Termites are widespread throughout Australia and can do major damage within a very short period of time. Insurance policies do not cover termite damage, so if they are there vendors can be hit with a most unexpected problem. Termites are attracted to wet timbers so if there is a leaking shower the probability of termites is high.

**Building inspector:** Usually as per pest inspection. Some companies offer the dual service for a lower fee. If the property is less than 7 years old the balance of Builders Warranty passes to the new owners – the warranty is attached to the property, not the person. If the inspections reveal major faults or repairs required sometimes there is room for re-negotiation rather than lose the current buyer. Contracts are not re-done, rather the legal representatives will arrange for a special condition to be inserted which changes the price.

**Quantifier:** Usually only carried out on brand new properties or those sold off the plan. The quantifier's task is to estimate the cost of fixtures and fittings such as toilets, vanities, taps, blinds, stoves, etc. This information is then passed to the Accountant for depreciation purposes or the developer for budgeting of the venture.

**Insurance Assessor:** A property may come onto the market due to damage, usually either by fire or flood. The assessor will make the decision as to the extent of the damage and whether or not the property is habitable.

## What Is Communication?

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The dictionary defines communication as:

1. the act of transmitting
2. a giving or exchanging of information, signals, or messages as by talk, gestures, or writing
3. the information, signals, or message
4. close, sympathetic relationship
5. a means of communicating; specifically a system for sending and receiving messages, as by telephone, telegraph, radio, etc.
6. a system of routes for moving troops and material
7. a passage or way for getting from one place to another
8. the art of expressing ideas, especially in speech and writing



9. the science of transmitting information, especially in symbols

### **Communication is a message being sent and received correctly**

**Non-Verbal Communication:** Non-verbal communication involves exchanging information or transmitting data without the use of words. There are many examples of nonverbal communication everywhere in the world.

Likewise, body language and facial expressions are also examples of non-verbal communication. Over the years, numerous research studies have been done to suggest that babies respond to smiling faces the world over, and that when a person sees someone else smile, he may become a bit happier as well.

Thus, while understanding non-verbal communication may require some knowledge of the cultural and social meanings behind the symbols and signs used, some types of non-verbal communication are instinctual and no teaching is necessary – think of the universal sign for STOP!

**Verbal Communication:** The system of verbal communication has become quite complex, with many countries having their own languages and each language having millions of words.

Unlike non-verbal communication, in order for verbal communication to be meaningful, there must generally be a readily accepted understanding of the meaning of sounds. In other words, sounds and words alone aren't sufficient to communicate: the person transmitting the message and the person receiving the message generally must have a cultural background or shared knowledge that allows them to understand what those sounds have come to mean.

## **Policy as to How an Enquiry is Handled**

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Due to the large number of clients communicating with agencies each day, whether it is by phone, fax, email, personally, etc. there should be procedures in place to ensure that business is effectively controlled and conducted ethically. The agency will have a policy as to how an enquiry is received, recorded and responded to. This will ensure ALL staff follows the correct protocol when communicating with clients.

- How quickly does the message have to be communicated to the client? Do you need immediate feedback from the client: questions, comments, instructions?
- What records are required of this communication with a client?
- Is confidentiality a factor?
- How formal should the communication be? i.e. tone used, printed, handwritten, spoken?
- How much does this form of communicating cost?
- How much time does this form of communicating take to prepare?

## Networking

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Networking doesn't have the sole purpose of getting you business, it's also about helping out the other party. Once you help someone else they tend to want to return the favour and help you! This is termed a reciprocal relationship.

Here are some handy questions to ask at the networking sessions:

- What is it you do / sell / produce?
- What's the biggest benefit of dealing with you?
- What is it you love about your business?
- What sort of challenges are you facing today?

Asking about them establishes the connection then you need to work to keep the connection going.

## First Impressions

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Clients will judge your agency based on first impressions, therefore, the initial contact whether it be by phone, social media, email, unannounced, at an open house or personal contact, will have an immediate effect on your reputation and the agency's credibility. Recent studies show that a customer takes only 3 seconds to form their "first impression" of you.

These 3 seconds are broken down to:

1. 54% - based on how you look
2. 39% - based on the tone of your voice

3. 7% - what you are actually saying

## Greeting Clients Face To Face

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There are 3 main factors contributing to the effective greeting of clients face to face:

1. **Your appearance and mannerism**
2. **Skills, attitude and knowledge**
3. **Environment** – feeling comfortable or threatened

Appearances are a non-verbal signal of communication, remember, not one word has been spoken but your dress sense, mannerism, accessories, i.e. diary, grooming, vehicle, etc. are powerful tools of influence on first impressions. Whether fair or not, you will be judged on your ability to service your clients by their first impressions.

## Building A Client For Life

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What, or who, is a “client for life”. Think about your Doctor, your Dentist, your Solicitor... you need to be your Agent to your clients. To be such you must first work hard at establishing all of the elements shown prior to this topic.

- Establish a rapport and therefore, relationship with the client
- You need to be honest, trustworthy and diligent
- Develop people skills including reading body language
- Practice and identify different forms and techniques of listening and questioning

You must also be conversant with your local “people of influence” – these are the people that include you in the information sent and received, such as conveyancers, solicitors, registered valuers, mortgage brokers, etc.

When you have these principles in place you will be in a position to be the Agent that people rely on.

## Client Interaction Skills

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- Identify the issues or client's needs
- Clarify the issues/needs
- Create a comfortable environment
- Use appropriate language
- Use active listening techniques
- Explore and discuss options
- Check the viability of a possible solution
- Record the agreed outcome
- Decide on follow up action and explain this to your client

It is important to allow the client sufficient time to reflect on the information given and received. Some people are comfortable making snap decisions whilst other personalities take time to be sure.

Give consumers time to read and understand the terms of the agreement, seek independent advice and consider whether the services and fees are appropriate. By allowing this time your client will be able to proceed with 100% trust, conviction and confidence. After all, most authorities have a cooling-off period so you want to be sure you actually have the business when they sign.

## Establish Rapport With Clients

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How do we become good communicators? We listen to what has been said, using reflective listening skills to ensure that the message is translated from one person to another in entirety and its correct context. In real estate we establish a rapport with clients **through our ability to connect with them and relate to them on the same wavelength.**

To be successful in the property industry you will need to make the client feel comfortable and assured that there is honesty, integrity and total transparency with communication in your agency.

A client is the person, team or other business that uses the services of an agency. Both internal and external clients should be treated equally. We must show an interest in their needs, preferences and requirements with respect and quality service.

## Communication Barriers

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- Rank, status and power – i.e.. feeling intimidated by a ‘stronger party’
- Filtering or gate keeping – not telling all the information ● Breakdowns in understanding, especially language differences ● Denial barriers – i.e.. it won’t happen to me!
- Anger and / or confusion
- Verbal communication, including swearing
- Volume, pitch & rate at which we speak

## Major Types of Listening Skills

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As a real estate agent, you will need to perfect these two types of listening skills:

### **LISTENING FOR INFORMATION**

### **LISTENING FOR EMOTION & ATTITUDE**

In other words, you need to be able to listen for INFORMATION and listen for how the client FEELS. You need to be able to listen for the client’s attitude and emotion. We may need to commence building a long-term relationship if the potential vendor / purchaser is not yet ready to buy OR they may be a red-hot prospect. We need to listen for their emotion and attitude.

Listening for information:

- How many bedrooms ● House/unit/strata/etc.
- Buy or rent
- Selling price
- Buying price

Listening for emotion or attitude:

- I want my property sold within a month
- I need a progress report
- Can we increase the exposure of the advertising
- Will I be able to ask for a delayed settlement

A clear set of guidelines should be included in your questioning and listening techniques to establish the wants and needs of your clients. Once you have gathered this information, it is always a good idea to clarify what information has been given. Loss of time and money are the result of poor listening skills and the ability to identify your clients' needs. Always check for accuracy and keep checking your understanding. Watch and observe your clients' reactions, interpreting these non-verbal clues is part of your total ability to listen well. Needs and wants can be adaptable to many properties, so by listening each time you speak to them, you will create new opportunities for both yourself and your client.

## Listening Skills Checklist

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- Maintain appropriate eye contact with the speaker
- Position your body towards the speaker
- Show interest in the speaker by leaning slightly forward
- Use relaxed gestures to encourage ease with the speaker
- Do not interrupt or talk over the speaker
- Show you are attentive and listening (hmm; I see; alright)
- Resist distraction
- Allow the speaker to talk at their own pace
- Encourage the speaker to talk
- Appear relaxed and receptive
- Paraphrase what you understand the speaker is mainly saying
- Ask questions to clarify your understanding
- Listen for the meaning behind the words
- Listen for what is not said
- Do not pass judgment on appearance, accent, etc.
- Do not pass judgment on what is being said until all the information is assessed and analysed
- Ask questions and note the facts
- Decide what to do and take action
- Explain what you are doing and why
- Make a record of the conversation/ complaint and pass it on to those responsible and follow up to ensure the matter was rectified or appropriate.

## Importance Of A Diary System

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Apart from being an excellent time management tool, your diary (either the written form or software) can be used as evidence in a court of law, it has been known for commission to be awarded because of diary evidence. There are many different systems available but even if you don't have ready access to the office software, make sure you have a system which is readily available for your personal use.

### **THE SHORTEST PENCIL IS MORE RELIABLE THAN THE LONGEST MEMORY**

- Things to include in a diary:
- things carried over from the day before – unfinished work
- appointments, deadlines, meetings
- things to do the next day
- conversations of importance – feedback and offers
- disputes, complaints, arguments and accidents – ideal for WH&S issues

## Empathy

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This is 'walking in another man's shoes'. Sensitivity is what is most needed when dealing with clients, their feelings and their needs. Real estate is a volatile industry where emotions run high.

You will be dealing with people that are in positions you may never find yourself. However, commonly:

- Offers being submitted are too low
- Not enough interest being shown in the property
- Not enough communication being conveyed to the vendor/landlord
- No feedback
- Relationship / communication breakdown

# Types Of Questioning

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## Open questioning:

Get the information flowing and cannot be answered “yes” or “no”. Open questions are useful when you first meet or make contact with a potential client.

What....How....When....Where....Why....?

- What is the reason you are considering selling your house?
- When are you likely to consider placing your house on the market?
- Where are you planning to move to when you have sold your house?
- Why are you thinking of moving?

## Closed questioning:

Closed questions focus the discussion with the client on a particular aspect or issue. Closed questioning can only be answered with “yes” or “no”

- Is it convenient to call and see you at 2pm tomorrow?
- Do you need more time to consider our services?
- Would you like me to appraise your property?
- Would 3 bedrooms and a study be considered rather than a 4 bed?

## Hypothetical questions:

Hypothetical questions allow you to explore ideas and options with the client, i.e. what if? why not?

- What if we discuss other ways of marketing the property • Why not talk the offer over with your partner

When presenting yourself at a listing presentation, it is important to provide all relevant information so the client can make an informed decision. The Agency Guide we must provide to the vendor will assist them further with their understanding.



## Clarifying Client Needs

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In order to be able to clarify clients' needs in real estate you will need to:

- Be conversant and knowledgeable about properties, values and areas
- Understand your vendor's motivation for selling, or landlords need to rent
- Understand your buyer's motivation for buying, or tenants need to rent
- Be capable of presenting a range of services to these clients.

## Communicating Needs of Clients

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Ask lots of questions, show that you are interested in their needs.

- If you sold this house, what plans do you have and where are you thinking of going?
- Why are you thinking of selling your managed property?
- Why would you be selling such a beautiful house?

**Body language:** Every day we subconsciously use body language (non-verbal communication) to assist in communicating, hence it provides the other party with useful clues to what we are really saying.

- Facial expressions: raising eyebrows, smiling and nodding
- Eye contact: focus, looking away or rolling your eyes is a sign of disrespect
- Posture: facing the speaker, leaning slightly towards them
- Gestures: hand movements, shrugging and pointing
- Proximity: shows respect to the clients' space, too close can appear threatening.

### **Questions for understanding motivations:**

- What do you need in a property?
- What price range are you looking to buy in?
- How soon do you need to move?
- What lifestyle are you seeking?

**Listen carefully:**

- Treat the client with good manners and respect
- Be thoughtful and courteous at all times
- Show the client that you are interested in their needs and desires
- Make them feel comfortable with you
- Explain your strategies for meeting your clients' needs and the reasons for those ●  
Keep clarifying their expectations for a timely and successful conclusion.

Most complaints are able to be dealt with immediately as a result of the matter being drawn to your attention. Think about the person who says nothing, but is not happy with the way you handled the sale of their property. These people do not voice their complaint to you or your agency, but tell many friends and family about their experience.

It's not always what is said but the many messages that can be conveyed. Positive, responsive skills are to be implemented as a result of these messages or the opportunity will be wasted. Your communication skills are needed in an attempt to diffuse the situation by listening, using empathy, let them have their say.

**Remember, a promise broken is worse than a promise never being made.**

## What Do All Customers Want When They Complain?

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- Respect
- Immediate action ● To be listened to

Date	Name	Contact #	Issue	Responsible	Action	Response
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1/8	Ki m	041239	Door	Joe	Spoke	3/8/2
/	J	824	left	Mgr.	to	0
2	o	9	unl		sa	2
0	n		ock		le	0
2	e		ed		s	
0	s				st	
					af	
					f	

The complaint register should then be a part of every sales, property management and office meeting.

The best way to minimise client frustration is to

- keep calm
- show control and confidence without overpowering them as this will exacerbate the situation,
- explain how you can assist them with the situation, but do not promise what you cannot deliver,
- be honest in your dealings.

**Try to remember the four F's when it comes to complaint handling – FINE / FEEL / FELT / FOUND.**

**“That’s fine Ms Tenant, I understand and I can appreciate how you feel. Others have probably felt the same way and what we’ve found is....”**

Welcome the complaint and see it as an opportunity for improvement. No one complains without a reason. It may be a problem that needs to be resolved or it may be simply a misunderstanding. Whatever the reason, it needs to be resolved. Categorise the complaint as one of these 3:

- Factual statement
- Misunderstanding
- Unreasonable demands

Once you are aware of the category the complaint falls into, you can plan strategies to deal with it effectively.

**Factual Statement:** Something has gone wrong and needs to be identified.

- Acknowledge the problem and apologise if you, or the agency, are at fault
- Acknowledge their feelings
- Agree on a course of action
- Thank them for bringing it to your attention and reassure them you have understood

**Misunderstanding:** Rectify the misunderstanding so that it is clear and precise to the client.

- Again, acknowledge the problem and their feelings
- Offer advice/explanation
- End on a friendly note

**Unreasonable Demands:** An unreasonable demand could be your clients' expectation of additional services. He feels you have let him down and wants the whole world to know. He just loves a stage show, so the more people he can show his performance to, the better his performance. He wants to see you jumping through hoops.

- Don't take it personally
- Don't build barriers
- Give respect
- Don't argue or raise your voice
- Attempt to calm the client down by acknowledging feelings, suggesting a solution, confirming your understanding, giving positive responses.

If they are at the front counter, or within ear shot of other customers, it would be best to move them to a quiet area

## Foreign Investment in Real Estate

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[www.firb.gov.au](http://www.firb.gov.au)

Excerpt from Sydney Morning Herald, May 2016 by Kirsty Needham

The government will collect the first comprehensive data about the real level of foreign ownership of NSW houses and apartments, and whether restrictions on foreigners buying established dwellings are being complied with.

Buyers and sellers of real estate will have to prove their residency and citizenship status to the NSW government before a sale is completed, under rules targeting foreign buyers that were introduced in July 2016.

**A land tax certificate showing whether any money is owed must be supplied to a home buyer by a vendor before settlement. The vendor must disclose their residency status and nationality when applying for the certificate. Foreign buyers must provide citizenship and visa details, as well as Foreign Investment Review Board clearance, through the stamp duty process.**

## What Is Material Fact?

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Why the suit of armour? This Act is designed to protect the public but it also protects the real estate agent! Legislative provisions relating to misrepresentation by concealment are based on false and misleading representations involving “a material fact”.

**IMPORTANT: A material fact is a fact that would be important to a reasonable person in deciding whether or not to proceed with a particular transaction.**

### **Some things that fall under material facts are:**

- Known pest infestation or building faults (usually from a previous inspection report) ●  
Flood affectation
- Fire zone – is the land classified as ‘bush fire prone land’?
- Illegal activity
- Death – in all forms (i.e. accidental; natural causes; self-inflicted; violent death)
- Asbestos – in all forms (e.g. friable / non friable – see more in the booklet)

The Material Facts Guidelines for Victoria can be found [here](#).

### **How did this legislation come about?**

Sef Gonzales was convicted and sentenced in the Supreme Court of New South Wales to life imprisonment for the 2001 murder of his father Teddy Gonzales, 46, mother Mary Loiva

Josephine, 43, and sister Clodine, 18. At the time he carried out the crime Sef was 20 years old. The events which occurred at 6 Collins Street, Ryde and the subsequent 2004 \$800,000 sale of the home to a Buddhist family, by L J Hooker North Ryde, brought about a number of changes to the legislation.

Following the horrific 2009 murders within the Lin family home at 55a Boundary Road, North Epping, the property was advertised for auction 'Under instructions from the Public Trustee and Guardian' and subsequently sold for approximately 35% below normal value. With similar properties selling for \$950,000 the property eventually sold for just above land value at \$766,000 in March 2012. The principal, Mike Ward from North Nor'West Property, handled the matter himself and ensured all interested parties were well informed of the property's history. The death certificates for Mr & Mrs Lin were even attached to the contract.

The Administrative Decisions Tribunal Appeal Panel pointed out the role of agents, as professionals in the real estate market, having market knowledge to assess whether particular aspects of a property are going to have an effect on its market value, and therefore whether it is 'material' to the market.

**Accordingly, the Tribunal further ruled that indications which would be relevant to determining whether something is a material fact could include:**

- the agent's treatment of the fact
- whether the fact is able to be independently ascertained
- whether the fact is likely to impact on price ● the reaction of other purchasers to the fact
- whether the fact results in the property being in a rare or unusual category or position.

Purchasers still need to take reasonable steps to inform themselves about a property. However, as the Tribunal appeals decision points out, 'requiring a purchaser to raise all relevant issues in order to have them answered would be to subvert the intention of the section.' The emphasis of section 52, as highlighted in the same Administrative Decisions Tribunal appeal decision, is on the agent informing the purchaser 'of matters which could not be revealed through undertaking usual enquiries.'

Enquiries may include a physical inspection by a professional building and/or pest inspector, asbestos assessor, and / or searches conducted by the purchaser's solicitor or conveyancer.

Some 'material facts' about a property which may not be readily apparent could include:

- if an agent had shown a property in the past that had water damage at the time, even if it was not there later, the agent should disclose it to other potential buyers;
- problems that have arisen due to a previous pest report or building report;
- whether a property is Roads and Maritime Authority affected;
- whether the property has a current DA approval – this might be a positive selling point for some;
- aspects of the recent history of use or activity in a dwelling;
- crown land affecting vehicular access to a property;
- aspects of the neighbourhood surrounding the property which may not be immediately apparent upon inspection;
- potential psychological stigma attached to a property which is likely to be shared by a significant proportion of the population. For example, property which has been the scene of a serious crime during the recent occupation. While such circumstances may not represent a physical barrier to the use of the property, they may significantly affect the extent to which occupants would be comfortable using the property.

**A rule of thumb is to stop and consider...**

**Would someone hesitate in proceeding with this transaction?**

Properties that have been used as drug laboratories are required to be cleaned and decontaminated by experts in the removal of hazardous chemicals, to the satisfaction of the Environmental Health Officer of the relevant local council.

The Queensland Government is currently in the process of reviewing the laws around material facts and what should be disclosed and how when selling property in Queensland. The full report on existing laws and recommendations can [be viewed here](#) for your own reading/information.

#### Methamphetamine (ice) Contamination:

The per capital use of methamphetamine, popularly known as ice, in the last five years in Australia has tripled. This is increasingly leading to poisoning in properties, especially investment properties. Bryan Goodall, National Sales Manager for Octief – decontamination specialist - mentions the case of one property in Victoria costing \$400,000 to be cleaned

after contamination and that each year in NSW, six to ten homes are knocked down because they are so contaminated that they're not economically worth cleaning.

When people cook or even smoke ice some of the chemicals seep into the walls, floor coverings, carpets and furniture. It can be a clandestine lab where the drug is manufactured, sometimes there is an acrid smell during the manufacture of ice but there may not be. In a house that's been smoked in, there may be no signs - no staining or smells. Experts say it can be impossible to tell that dangerous residues linger in the property and it is not until the next round of tenants move in and become sick, they are removed from the environment when hospitalised, that the problem becomes investigated and the cause is found – ice contamination.

It is the responsibility of the property manager to keep the landlord apprised of unlawful activities occurring in the properties they are managing, and only to let habitable properties. Testing can be carried out on a property to assess the levels of illicit chemicals.

Methamphetamine Baseline Screening is a test available in metropolitan areas for a cost of \$550. It indicates if ice has been cooked or smoked on the premises. Local councils are developing their own protocols about how contaminated properties are to be cleaned and standards that properties must meet before they can be relet. Check with your local council.

<http://realestatetalk.com.au/a-warning-about-sprukers-buyers-beware-ice-properties-cookiecutter-renos/>

In terms of a property which is to be put on the market, attention should be given to material facts which relate to the period during which the seller was the owner. Agents must conduct a physical inspection of the premises which are to be marketed for sale and obtain all relevant information necessary to complete the sales inspection report, as required by clauses 1 and 2 of the Rules of Conduct set out in Schedule 2 of the Property and Stock Agents Regulation 2014.

Agents should discuss with sellers any market sensitive matters that are likely to be the subject of statements or representations by the agent in the course of marketing the property. During this process, it is important for the agent to gather information on aspects of the property which are sensitive to the market which will assist him/her in accurately and honestly representing the property.

Having gathered the relevant information necessary to market and promote a property, the agent must then ensure that this information is disclosed by the vendors and then provided to potential purchasers.



### **Gangland killing:**

A Sydney house where a notorious gangland figure was brutally murdered in 2016 was up for sale for \$1.1million. The listing for 51 Sturt Avenue, Georges Hall was described by the agent as 'Large wide driveway and bonus rear lane access, making a great family home or even better investment'. However, the ad fails to mention the wide driveway is where 29 year old Hamad Assaad was gunned down by two men in front of his family on October 25 2016. 'It doesn't make it an easy sale', said George Bakhos from Ray White Bankstown. Source: The Daily Telegraph, 2 July 2017

### **At what point should a material fact be disclosed?**

Agents need to use their judgment in assessing individual circumstances as to when to discuss material facts. Timing may depend on the nature of the material fact. Facts of a nonsensitive nature such as the area of the land on which the property stand, would be provided as part of the standard marketing campaign. Disclosure of more sensitive information may be more appropriately revealed when there are indications that a person is seriously considering purchasing the property.

### **Difference between personal information and material facts:**

When marketing or managing a property transaction it is important to remember that there is a difference between personal information and material facts. Material facts relate to the property, personal information relates to the individual parties involved in a property transaction. As an example, an agent may inform a potential buyer that a serious crime had taken place at a property during the current ownership. The agent provides this information because s/he judged the crime to be a material fact. If the agent then goes on to discuss the parties involved in the crime, s/he is providing personal information.

### **Concealment and Silence:**

Misrepresentation can be about what is NOT said as well as what is said. There is no standalone duty of disclosure, but silence can be misleading in certain contexts, and this should be avoided. There is a need to consider the background of other facts against which

the silence occurs. Agents need to consider whether silence in that context can lead reasonable people to believe that a particular state of affairs exists where it does not.

**IMPORTANT: Remaining silent or only telling half the story where there is a reasonable expectation of disclosure means you are breaking the law**

Licenses and certificate holders must be open and honest with clients and customers. If information is known to the agent they must not conceal or suppress information about a property if there is a reasonable expectation that the information will be of concern to a buyer or tenant and is not readily apparent. Also, where information provided in an original statement subsequently changes and that change renders the original statement incorrect, the change must be conveyed to the relevant parties.

If a potential buyer asks a question about a property and the agent knows the answer, there is a responsibility to answer the question frankly and fully. If the agent does not know the answer s/he should undertake to obtain the information from the vendor or refer the person back to his or her conveyancer or relevant expert, depending on the nature of the query.

What happened to the LJ Hooker agents? Mr. Peter Hinton (licensee) and his daughter Ereca Hinton were each fined and issued disciplinary orders for 'failing to act honestly, fairly and professionally'. Their fines were \$5,500 and \$2,200 respectively. Their company also received a fine of \$13,200. They also lost a subsequent appeal.

## Work Place Productivity and Health

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Search 'Good Environmental Choice Australia' website for sustainable and certified products.

<https://www.ipaustralia.gov.au/tools-resources/certification-rules/1763523-0>

Fostering a positive workplace environment makes good business sense. After all, our values, attitudes and behaviours can strongly influence business outcomes. As we increasingly understand the positive impact of eliminating toxins from the workplace environment, we will benefit from less absenteeism and employee turnover, better safety practices and improved staff wellbeing.

## **Indoor Air Quality**

We tend to think of air pollution as something outside such as smog, ozone or haze hanging in the air but the air inside our homes, offices and other buildings can be polluted. The CSIRO estimates that the cost of poor indoor air quality in Australia may be as high as \$12 billion per year. Recent comparative risk studies performed by the US Science Advisory Board have consistently ranked indoor air pollution among the top five environmental risks to public health.

Our 'built environment' is currently the world's single largest contributor to greenhouse gas emissions, consumes around a third of our water and generates 40% of our waste.

## **Sick Building Syndrome**

SBS describes an excess of chronic symptoms and persistent illness in office workers when fumes are inhaled from a range of products such as paints, photocopiers, carpets, office furnishings, glues, toxins, chemicals and plastics. Known as 'volatile organic compounds' (VOC), these fumes are emitted as gases from certain solids or liquids and are a major pollutant for indoor environments.

## **Breathe Easy**

Automatic aerosol 'air fresheners' are commonly used in bathrooms within commercial offices and public buildings that are often small, enclosed spaces without windows or ventilation. It is preposterous to imagine that a chemically scented fragrance and/or aerosol propelled by butane, propane or other toxins can create an outdoor environment of fresh air, yet we still tend to associate a lemon or pine scent with the thoughts of clean or fresh.

Other initiatives that can be easily incorporated into daily work practices are things such as:

- Sensor lighting for when no-one is using the room / area
- Recycling printer toners and paper
- Energy efficient LED light bulbs
- Using tea towels and hand towels in the kitchen rather than paper or disposables.

## **TENANT DATABASES**

## **THE RESIDENTIAL TENANCIES AND ROOMING ACCOMODATION ACT – RESIDENTIAL TENANCY DATABASES – SECTION 458**

Real Estate Agencies have a duty of care to their landlords to check the credibility of tenancy applications and that includes checking to see if the applicant is listed on a data base.

Section 458 – Residential Tenancy Databases, of the Residential Tenancies and rooming accommodation Act 2008 is the legislation which governs the use of databases or blacklists within Queensland.

Changes to legislation regarding the use of tenancy databases are being introduced across Australia to ensure that they are not mis-used by landlords and agents. While the legislation recognises the right of landlords to take steps in protecting their property, being listed on a tenancy database can have serious consequences for the person listed.

A tenant can only be listed in a tenancy database if:

- causing serious damage to a rental property
- endangering the safety of neighbours, the rental provider, real estate agent or any person working for them
- not paying rent
- not complying with a QCAT order
- using a rental property for illegal purposes
- sub-letting a rental property without the permission of the rental provider or real estate agent
- breaking terms of the rental agreement.

**Before a listing can be made, the tenant must be given at least 14 day’s notice to review the information and be able to object to the proposed listing. If a prospective tenant is found on a database by an agent, the agent must inform the tenant in writing within seven days of the database being accessed.**

Outdated listings or listings older than three years must be removed from a database.

The legislation has been introduced to regulate the use of tenant databases to ensure that listed tenants:

- **Have access to their personal information**
- **Can amend incorrect information**

- **Their objections are listed**
- **Listings are deleted within the specified time frames.**

**Tenant's information service:**

There is no breach of privacy by supplying the applicant with a copy of their listing in fact it saves them time and money making that 'difficult conversation' a little easier.

## **MISREPRESENTATION GUIDELINES – CONSUMER LAW**

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The key principles of Australian Consumer Law are to protect consumer rights when buying goods and engaging services. There are several rights of the consumer:

- The right to safety
- The right to be informed
- The right to choose
- The right to be heard
- The right to redress
- The right to satisfaction of basic needs
- The right to consumer education
- The right to a healthy environment

The Misrepresentation guidelines will help agents and certificate holders better understand their legal obligations around misrepresenting properties for sale. The guidelines are not exhaustive nor intended to constitute legal advice. They are provided to clarify the types of statements or actions which could be interpreted as a misrepresentation or concealment of material facts, and to outline some circumstances.

### **THE LAW**

The legislation discussed in these guidelines contains provisions relating to misleading, false, deceptive, or unconscionable conduct in relation to the property services industry.

**Each individual also has a responsibility under the Real Estate Code in regard to skill, professionalism, duty of care, etc. to make themselves aware of any changes that directly affect their work so you must stay up to date with legislation, regulations and amendments.**

**Section 18** of the Australian Consumer Law deals with the issue of misleading or deceptive conduct and **Section 30** of the Australian Consumer Law deals with false or misleading representations about the sale of land. The Property Occupation Act 2014 covers misrepresentation by a licensee or registered person.

### **Publications:**

Agents should ensure that all information in a publication is accurate and does not create a false impression. To clarify the issue of publishing misleading and deceptive material for those working in the property services industry, guidelines to assist agents when publishing photographic advertisements have been developed.

### **Predictions:**

Section 30 of the Australian Consumer Law provides that when a person makes a representation about any future matter without having reasonable grounds to do so, the representation shall be taken to be misleading. In a property services context, predictions about trends in property values or potential returns on development / investments which are untrue or cannot be substantiated constitute misleading conduct.

### **Selling Price, Price Range and Method of Sale:**

It is an offence for an agent or agent's employee to make a false representation to a seller or prospective seller of residential property as to the agent's or employee's true estimate of a property's selling price. The same requirements apply to advice about method of sale – relevant factors such as the current state of the property market and demand for the type of property to be marketed will need to be researched and discussed openly with the seller / potential seller.

# PROOF OF IDENTITY CHECKLIST FOR VENDORS (OR APPOINTED REPRESENTATIVE)

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## **Fraud Prevention:**

In Queensland it is the responsibility of the Agents to sight and record identity documents upon signing the Agency Agreement and preparing the contract of sale.

A real estate agent is prohibited from offering residential property for sale unless all required documents are available for inspection, at the real estate agent's registered office, by a prospective purchaser or agent for a prospective purchaser at all times, at which an offer to purchase the property may be made.

The Act also prescribes the situations when an agent is considered to offer residential property for sale and sets out the required documents which must be available. These documents include a copy of the proposed contract for the sale of the property and the supporting documents required.

The licensee in charge should have adequate written guidelines in place to ensure that all employees follow proper procedures and are aware of their responsibilities under the Act. However, each individual also has a responsibility under the Act in regard to skill, professionalism, duty of care, etc. to make themselves aware of any changes that directly affect their work.

In their procedures and in performing their duties an agent should conduct an identification check

to show that the client has satisfactorily proven that they own the property or legally represent the true owner.

Identification can be proven with a Driver's License or other form of photo ID, Medicare card or bank issued card and a choice of Council rates or water rates no less than 12 months old. If the property is subject to strata or community levies the vendors could provide a notice. In addition, if the vendor holds property that is subject to land tax they could also present that document.

## **Certificate of Title:**

This document is issued by the Lands Titles Office and will be attached to the eventual Contract for Sale. Best practice is to match it against the Vendor ID Checklist to ensure all parties are included.

**DOCUMENTS SHOULD BE RETAINED FOR 3 YEARS IN THE SALES FILE FOR INSPECTION IF REQUIRED.**

Agents should use the following guidelines when selling a property to confirm the identity of vendors (or appointed representative) in order to prevent real estate fraud. When selling a property, confirm that dealings are with the true owner(s) of the property [i.e. the registered proprietors or their properly appointed representative].

While the Property Occupations Regulations requires that the agency agreement must contain a statement to the effect that the principal warrants that they have authority to enter into the agreement, this may not be sufficient to protect an agent and they should ensure that this authority is verified in some manner before acting for the principal.

In some cases, the person with the legal right to sell the property may not be the registered owner. These would include but would not be limited to:

- the holder of a Power of Attorney or Enduring Power of Attorney;
- an executor,
- a mortgagee in possession,
- or a person with an appropriate Court order.

In these cases, the original or a copy that has been certified as a true copy of the document conferring the power of sale should be sighted and where possible confirmed with the current registered owner, or their legal representative, that the person is authorised to act on their behalf.

Confirm the identity of the owner or the person or persons with the legal right to sell the property via an identification check.

When confirming the identity of the owner, the agent or conveyancer should:

- Check that the name on the agency agreement is the same as that on the property certificate if the owner is selling the property themselves.
- Conduct the check face to face and sight original documents to verify identity.



- Verify the vendor's identity from an original primary photographic identification document and an original or certified copy of a secondary non-photographic identification document.
- Verify the legal ownership of the property from an original or certified copy of a primary property ownership document such as a property certificate, current rate notice or other document conferring the power of sale.

In verifying the information from the relevant documents, the agent should be reasonably satisfied that:

- The documents are legible and do not appear to have been altered in any way;
- There is no apparent discrepancy between the information collected from the agent and the information contained in the documents (other than a discrepancy that can be reasonably explained and supported, such as a change of name or the owner of the property has recently been married);
- In the case of a primary photographic identification document—that the photograph contained in the document is a true likeness of the owner of the property.
- Proof of identification or legal ownership of property documents referred to in these guidelines should not include documents that have expired (other than in the case of an Australian passport that has been expired for less than 2 years).
- If the person or persons are not directly available, the original documents should be sighted and verified as a true copy of the original by a suitable independent witness.

### **You have suspicions**

Agents who suspect real estate fraud should:

- Contact the Queensland Police Force or OFT ● Not act further on the sale of the property.

Principals should have documented processes and procedures to ensure that the process of identifying principals is properly documented and that all employees are aware of, and use these processes and procedures.

Agents should retain copies of all documents obtained in the process of verifying identities and in verifying the authority of a person to act in the sale of the property and retain them in the appropriate sales file for later inspection if required.

## SALES AUTHORITIES

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A written sales authority must be prepared for all services to be performed by an agent for a client (principal), unless the services relate only to livestock. It is important to ensure the authority is prepared, signed and served correctly or you may lose your entitlement to be paid commission and recoup expenses. Agents are not entitled to commission or expenses for services for a client unless:

- a written sales authority has been entered into for the services
- the sales authority was signed by the licensee and the client
- the sales authority contains the terms required by the regulations and
- within 48 hours after the client signs the sales authority, a copy of the agreement signed by the licensee is served on the client (in limited circumstances, a court or tribunal can wholly or partly award commission to the agent if the signed copy of the agreement was not correctly served (see Part IV).

If the sales authority relates to residential property or rural land, it must contain a statement identifying the source and estimated amount of all rebates, discounts and commissions that the licensee will or may receive in respect of the expenses payable by the client under the agreement. An agent is not entitled to any expenses from the client if these disclosures are not made.

In Queensland, vendors and agents sign an exclusive, general or auction sales authority. A general sales authority allows you to sign up to more than one agent and only pay commission to the agent that sells the property.

Checklist: An sales authority must:

- be in writing
- contain terms required by the regulations
- be signed by agent and client

- be a fully signed copy and be served on the client within 48 hours of the client having signed it
- disclose all rebates, discounts and commissions which will or may be received by the agent in relation to expenses payable by the client under the agreement (relating to residential property or rural land)

Prescribed clauses in the agency agreement as described below must be acknowledged:

**1. Identification of property** The agreement must specify the address of the property to which the agreement applies or contains a description of the property sufficient to clearly identify it.

**2. Names of parties to agreement** The agreement must specify the names of each of the parties to the agreement, including the licensee.

**3. Information identifying the parties** The agreement must specify the principal's address, the licensee's license number and any business name under which the licensee conducts business.

**4. Principal's authority to enter into agreement** The sales authority must contain a statement to the effect that the principal warrants that the principal has authority to enter into the agreement.

**5. Authorisation for licensee to act on behalf of principal** The sales authority must include a term containing particulars of the extent of the licensee's authority to act as agent on behalf of the principal in providing services under the agreement.

**6. Period of duration of the agreement** The sales authority must contain a term indicating the period for which the agreement remains in force or indicating that the agreement remains in force until terminated.

**7. Termination of the agreement** If the sales authority provides for its termination by a party to the agreement, the agreement must indicate how and when it can be terminated.

**8. Reimbursement of licensee** If the licensee is to be entitled to any sum or reimbursement for expenses or charges incurred by the licensee in connection with services provided under the agency agreement, the agreement must include a term that:

- a) states that the licensee is so entitled
- b) describes those services

- c) specifies the amount that the licensee is so entitled to and when it is payable
- d) states that those services and amounts cannot be varied except with the agreement in writing of the principal.

**9. Remuneration**      The sales authority must include a term specifying:

- a) the circumstances in which the licensee is entitled to remuneration (by way of commission or otherwise) for services performed under the agreement, and
- b) the amount of the remuneration or the way in which it is to be calculated and when the remuneration is payable.

If the agreement provides for the payment of commission calculated as a percentage of the sale price, the term must also specify the amount of remuneration to which the licensee will be entitled calculated on the basis of a specified estimated sale price for the property.

**10. Exclusive agency and sole agency agreements**      If the agency agreement is an exclusive agency agreement the agreement must include the following statement:

**IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sell the property or introduce a buyer who later buys the property.**

An agency agreement is an exclusive agency agreement if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent is the effective cause of the happening of the event, and whether or not the client is the effective cause of the happening of the event.

An agent should always check that the vendor is not already under an exclusive agreement as they may be in a position of having to pay two commissions.

If the agency agreement is a sole agency agreement the agreement must include the following:

**IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the property or introduces a buyer who later buys the property.**

An agency agreement is a sole agency agreement if the agreement provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the

effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.

A statement required to be included in an agency agreement by this clause must be included in the agreement immediately following the term about remuneration and must be no less prominent than that term.

**11. Warning about other agency agreements** The agency agreement must include the following:

**WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay two commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement)**

A statement that this clause requires the agency agreement to include must be included in the agreement immediately following the term about remuneration or immediately following the statement about exclusive and sole agency and must be no less prominent than that term or statement.

**12. Fixed term agency agreements** If the agreement is for a fixed term that exceeds 90 days, the agreement must include a term that entitles the principal to terminate the agreement (without penalty) by giving 30 days notice in writing to the agent at any time after the end of the first 90 days of the term.

This clause does not apply to an agreement for the sale of residential property where the contract for sale provides for the construction by the seller of a dwelling on the land (i.e.. 'off the plan' sales).

**13. Price at which property is to be offered** If the agreement provides for the property to be offered for sale by private treaty, the agreement must specify the price at which the property is to be offered.

**14. Cooling-off period** The agency agreement must include the following:

**IMPORTANT: COOLING-OFF PERIOD: You (the principal) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it up until 5pm on the next business day or Saturday.**

A statement that this clause requires an agency agreement to include must be included in close proximity to the place where the principal signs the agreement and must be no less prominent than any other term of the agreement.

**15. A sales inspection report to form part of the agreement** The agreement must include a copy of the sales inspection report prepared by the agent and given to the principal, as required by the rules of conduct for real estate agents.

**16. Disclosure of rebates, discounts or commissions** The agreement must include provision for the licensee to identify the source and amount or estimated amount of all rebates, discounts or commissions the licensee will or may receive in respect of expenses payable by the client for the services to be provided by the agent, i.e. free advertising as a result of previous outlays, insurance or mortgage commission.

## Sale Contracts

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Residential property cannot be advertised for sale until a Contract of Sale has been prepared. The contract must contain a copy of the title documents, drainage diagram and the Planning Certificate issued by the local council.

If the property for sale has a swimming pool or spa pool, one of the following must also be attached to the contract:

- a copy of a valid certificate of compliance or;
- relevant occupation certificate and evidence that the pool has been registered or;
- a valid certificate of non-compliance.

This requirement does not apply to a lot in strata or community schemes that have more than two lots, or for any off-the-plan contract. If you fail to attach one of these documents to the sales contract, the purchaser may be entitled to rescind the sale contract within 14 days of exchange, unless settlement has already occurred.

Go to the local council website to check if the property with a swimming/spa pool has a current certificate of compliance.

Property exclusions and a statement of the buyer's rights under the cooling-off period must be included.

The draft contract must be available for inspection at the agent's office. Generally, all agents who offer a property for sale must have the proposed contract for the sale. However, where

a conjunction agreement exists, it is only necessary for the listing agent to hold the sales contract, provided conjunction agents have access to the contract as necessary.

### **Exchange of Contracts**

The contract exchange is a critical point in the sale process:

- the buyer or seller is not legally bound until signed copies of the contract are exchanged
- buyers of residential property usually have a cooling-off period of five working days following the exchange of contracts during which they can withdraw from the sale
- if the agent arranges exchange of contracts, the agent must give copies of the signed contract to each party or their solicitor or conveyancer within 2 business days
- the cooling-off period can be waived, reduced or extended by negotiation
- there is no cooling-off period for sellers; once contracts have been exchanged, sellers are generally bound to complete the agreement
- there is no cooling-off period when purchasing at auction or on property larger than 5 acres.

More on this will be covered in the listing and sales units.

## **Legislation, Regulations & Codes of Conduct**

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There are many tiers to legislation and how Acts work. These tiers are referred to as 'hierarchy'.

### **Legislation (Acts):**

These are the Acts, either Commonwealth or State/Territory that sets out the regulations of how a real estate agent must act. Consider it the top of the pyramid.

First and foremost we have the Property Occupations Act 2014 (State Level). Then there is the Trade Practices Act 1974 (Commonwealth Level), followed by other no less important Acts such as Privacy Act 1988 (Commonwealth); Residential Tenancies and Rooming Accommodation Act 2008 (State) and the Anti-Discrimination Act 1991 (State).

### Regulations:

These are regularly updated whenever the Act changes – this is the process of how we make the Act work. The second level being Regulations, such as OFT. This second tier monitors and sets out such things as the issuance and checking of real estate licenses / certificates.

### **Policy & Procedures Manual:**

This is the “how to” of every day working life of your agency. It should instruct and inform all staff in all areas, from how to answer the telephone through to front desk security through to trust account procedures and personal safety issues. It must be a ‘living document’ and updated constantly to properly work.

### Legislation and regulation may include:

Relevant federal, and state or territory legislation and local government regulations relating to:

- Anti-discrimination
- Equal employment opportunity
- Consumer protection
- Fair trading & trade practices
- Employment & industrial relations
- Environmental & zoning laws affecting access security, property use, energy efficiency
- Financial services
- Leases
- Work Health & Safety
- Privacy
- Property sales
- Property management



### Property Occupations Act 2014:

Addresses such things as:

- Advertisements and representations
- Unjust conduct
- Requirements for agency agreements
- Cooling off periods
- Contracts
- Auctions and bidding
- Trust accounts
- Record keeping and auditing ● Management and receivership ● Offences against the Act.

The “Do Not Call Act” is an example of a recent Act but we should remember that legislation is amended and agents are required to keep up to date with these amendments, e.g. PSAA Amendment Act 2006 updated the laws on Auctions, such as registering to bid and vendor bidding.

### Components of statute law may include:

- Principal legislation, such as Acts (e.g. Property & Stock Agents Act, 2019)
- Subordinate legislation, such as: (e.g. Do Not Call register; Discrimination Act; Privacy Act)
- Approvals; determinations; mandatory and non-mandatory administrative guidelines; orders and regulations

### Inter-relationship of legislation:

Generally speaking Act A (and its subsidiary legislation) will stand alone and not have an effect on other legislation. If Act A has any effect on other legislation(s) it will be usually stated in it or the other legislation. Such as, The Do Not Call register / legislation is not confined to the Property, Stock Agents Act but is included under a number of other principal legislations. Agents are not solely the ones that must abide by the Do Not Call conditions.

### Relevant records may relate to:

- Agency administration

- Property management
- Property sales

### Structure of legislation

- long title – e.g. The Estate Agents Act, 1980
- short title – e.g. EAA or the Act
- commencement
- application
- contents
- definitions
- headings
- parts
- divisions and subdivisions
- clauses and subclauses
- schedules and appendices

## Monitoring & Communicating Changes

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**Amendments happen usually, after a great deal of discussion with agents, their industry representatives and associated bodies** (e.g. Tenant's Union). Often these changes are a result of consumer complaints and minor adjustments can go undetected.

Rules and techniques for interpreting real estate legislation and regulations may include:

Aids to the interpretation of legislation, including:

- **External:** interpretations of legislation, Acts, Hansard/parliamentary papers, legal dictionaries
- **Judicial:** interpretations – precedent
- **Internal:** objectives, legislation to be accessed as a whole, definitions and interpretation sections in legislation, headings, margin notes and punctuation.

Processes may include:

- Government agency approval
- Governor approval

- Minister approval
- Parliament

Industry codes of conduct may relate to:

- Ethical behaviour
- General business operations
- Property sales
- Property management

### Language conventions:

Language is used to express and connect ideas so as to enable us to interact in the world and foster social interaction, create and maintain relationships, develop and project a personal identity, express opinions and engage in the views of others. Language conventions are basically different ways the writer uses and manipulates language to encourage the audience to view something in a certain way.

Choices in language features and text structures together define a type of text and shape its meaning. These choices vary according to the purpose of a text, its subject matter, audience and mode or media of production. Understanding language conventions enables the user to describe how language works, to make meaning as they speak and listen, to read and to be able to use language to make meaning as they write.

Understanding how language features vary according to purpose allows us to critically analyse texts in order to appreciate, interpret and create well-constructed texts. In this way fewer misinterpretations should occur when the meaning is singular and clear.

Once we are conscious of how different linguistic structures are formed, we are in a better position to be able to manipulate these structures to create clear, well-structured, unambiguous sentences. Consequently, in our reading, we are better able to perceive meaningful chunks of language rather than to read each word as a separate unit.

## Legal Processes

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### Implication of changes to real estate agencies:

The financial impact to the agency could be enormous if it contravenes core regulations which may have changed. For example, if an agency continued to receipt “reservation fee” instead of a holding deposit the tenant would have the right for a full refund. Likewise, say an invoice for the water usage didn’t go out in time (good practice would have the agency receiving these invoices direct but that’s not always the case). A year’s worth of invoices cannot be passed on to the tenant. The relationship with your landlord is at risk.

**Not only could the agency be open to financial risk, it may also be penalised by CAV should it be in breach. Just like theft of trust money, the damage to the agency’s reputation is often hard to gauge.**

Source documents for legal framework, principles and process may include:

- Amendment Acts – from OFT
- Amendment Regulations – from OFT
- Consolidated or re-printed Acts – from OFT

Appropriate people:

Different sections of the Acts and Regulations relate to different sections of an agency. What may vary in regards to administration may not have any effect on a sales person. Likewise, the recent amendments to the Tenancy Act may not affect your Trust Accountant at all. However, we need to recognise that there are various sections, and various people, within the agency. Such as:

- Agency principals
- Authorised representatives
- Book-keepers, accountants & auditors
- Licensed real estate agents
- Certificate holder real estate agents
- Property Managers & staff
- Sales Managers & staff
- Office Managers

**A policy needs to be in place so that the relevant people are informed of any amendments and recent rulings that may affect their day to day work. An internal office memo (intranet) is a great way.** It could be set out like the template below:

<u>Residential Tenancies Act 1997 – Amendment</u>	Property Management
<b>Responsibility for battery replacement in smoke alarms</b>	(PM & PO Initial Below)
<u>Superseded Action:</u> Tenant to be responsible for change of battery during tenancy.	JKS SLO 23 / 03 / 2020
<u>New Action:</u> Landlord now responsible for all aspects of the smoke detectors.	JKS SLO 23 / 03 / 2020
<u>Responsibility:</u> Property Manager and Property Officer	

Techniques for tracking amendments may include:

**OFT provides links to all relevant legislation.** Australian consumer protection and trade practices laws and guidelines such as Trade Practices Act 1974; Anti-Discrimination Act 1991 and Privacy Act 1988. Make it part of your weekly agenda to check the OFT site for any updates.

- Government and industry newsletters
- Information sessions / seminars
- Use of margin notes
- Tables of amendments

Strategies for identifying amendments to legislation:

Given the penalties involved, an agency needs to have strategies in place to identify amendments. Rather than needing to trawl through the entire Act an agency can register through the OFT for notification of amendments, usually received via email alerts.

Person responsible for communicating changes:

As difficult as this may sound, even in a small office, you need to have one person allocated to check for any changes. A larger rent roll would probably have more staff checking precedents from the QCAT on a frequent basis, if so then that person would be familiar with the log-in processes. However, when all is said and done, the principal is still the one that maintains responsibility for the agency and its compliance to the legislation. Licensee must ensure employees comply with the Act and regulations, therefore, it would either be the principal / licensee-in-charge or someone they nominate for the role who would also be responsible to report back to them.

The licensee in charge is responsible in ensuring the agency has a policy and procedure in place to ensure they are following guidelines, procedures and legislation. An agent is placed in a position of trust, confidence and responsibility. Any unethical practices in dealing with clients will constitute a breach of the Regulations and could result in disciplinary action being taken against the agent.

They can register for update email alerts from associated bodies such as updates and seminars hosted by the Real Estate Employer's Federation (REEF). Other legislation they must be aware of is the annual review of the Real Estate Award and the Clerical Award.

**The licensee in charge can delegate this task, possibly to a compliance officer in larger agencies but, as stated above, they are still responsible. These should be minuted and included in sales meetings, property management meetings and general office meetings.**

Common misinterpretation problems are:

- Ambiguous words;
- Broad phrases, especially when it comes to market appraisals;
- Need for words to be implied;
- Printing and drafting errors;
- Unforeseen developments, such as changes in technology or practice.

Any discrepancy between an employee's actions and applying legislative requirements, such as a breach of The Privacy Act, must be immediately corrected and the necessary adjustment to the policy and procedure manual adapted and circulated. Again, the above template is invaluable for showing the process that was used to record it and the method used to then correct the discrepancy.

An example of this correction could be to have all employees receive and reply to an interoffice memo that all sensitive documents that are no longer required are shredded, such as unsuccessful applications for a tenancy.

The “how-to” and the “where” of maintaining records:

Again, address how you would do this in the policy & procedures manual so all staff is aware. Best Practice offices would have an acknowledgement notice which is signed off by the relevant staff to say they have been informed. Many businesses have their own “Update Notice” which is passed to all relevant staff for signature. It also goes on to say all previous documentation that is now superseded is to be destroyed. Maintain these records in a safe place for any future reference.

## Express Permission

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### **EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS**

It means “the express mention of one thing is the exclusion of another”. This Latin expression is normally employed by courts to guide them in the course of interpreting laws, wills, contracts and other legal documents in order to ensure that something not intended by a document is not read into it. For agents it usually concerns permission to send notices, etc. to an email address.

For example, your clients or customers may have multiple email addresses between them but they can give permission for one specific address to receive notices from the agency – this is then to the exclusion of all other addresses. It is deemed that all parties would receive the information when sent to this email.

A notice served to an address other than the expressed one can be deemed invalid, especially if it’s a termination notice to the tenant.

## Environmental Protection Act, 1994 (EP Act)

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According to <https://environment.des.qld.gov.au/management/policy-regulation>

“The [Environmental Protection Act 1994](#) (EP Act) is a key element of Queensland’s environmental legal system. Its objective is to protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains ecological processes (ecologically sustainable development).

The EP Act and its subordinate legislation provides a range of tools to ensure this objective is met. These tools range from providing for a licensing system for environmentally relevant activities (ERAs) (called an environmental authority) through to response tools such as environmental protection orders.

Under the EP Act, environmental protection policies are developed to cover specific aspects of the environment. There are approved policies for the air environment, acoustic environment, and for water and wetland biodiversity.”

The following legislation supports the EP Act:

- [Environmental Protection Regulation 2019](#)
- [Environmental Protection \(Air\) Policy 2019](#)
- [Environmental Protection \(Noise\) Policy 2019](#)
- [Environmental Protection \(Water and Wetland Biodiversity\) Policy 2019](#)

## Misleading or Deceptive Conduct

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**Whether your conduct is misleading or deceptive depends on its likely effect on the type of person with whom you are dealing.**

The following principles relevant to whether a representation is false, misleading or deceptive, or likely to mislead or deceive have been summarised from the Court’s reasons (at [54]-[58]):

1. In determining whether a statement is false or misleading, it is necessary to consider the context within which the statement was made;
2. Whether or not conduct is misleading or deceptive is a question to be determined objectively and upon the basis of the impugned conduct being viewed as a whole and in its full context;



3. A representation will be false, misleading or deceptive or likely to mislead or deceive if it has a tendency to lead into error, or if it induces or is capable of inducing error;
4. Whether a representation is false, misleading or deceptive or likely to mislead or deceive is 'quintessentially' a question of fact, which should not be complicated or over-intellectualised;
5. The question is whether a not insignificant number of reasonable persons within the class have been misled or deceived or are likely to be misled or deceived by the conduct, whether in fact or by inference;
6. The question of what is the natural and ordinary meaning conveyed by a publication or conduct is to be ascertained by the Court applying an objective test of what ordinary or reasonable readers or consumers in the class would have understood as the meaning;
7. It follows that where the alleged contravention of s 52 of the TPA involves the making of a representation to the public or a class of the public, it is necessary for the Court to consider what ordinary persons in the class to which the representation is made would understand by the representation, and whether a not insignificant number of such persons would have that understanding.

In respect of how the law treats representations in advertising, the Court held that:

Where representations are directed to members of the public at large, the representations must be judged by their effect on "ordinary" or "reasonable" members of the class;

The ordinary or reasonable person likely to be affected by advertising directed to the public at large or sections of the public may be intelligent or not, may be well educated or not, will not likely undertake "an intellectualised process of analysis ... and will be likely affected by an intuitive sense of attraction rather than by any process of analytical or logical choice".

## Due Diligence

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Due diligence is no more complicated than looking at the facts of a deal from all angles to make sure they stack up. In short, due diligence assesses the risks and opportunities of a proposed transaction, be it buying a business or entering some other arrangement.

Even where a statutory disclosure obligation exists under the Code, buyers should - as much as possible - seek to independently verify information presented to them in order to reduce the risk of making a purchase decision based on false, out of date or incomplete information.

Buyers will usually involve professional advisors to assist in the due diligence process.

These will generally include accountants (to assess financial data and issues), lawyers (to assess legal, contractual and mandatory compliance issues) and specialists relevant to the industry or market sector in which the business operates.

## Electronic Signatures

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### **Electronic Transactions Act, 1999 – Section 10:**

- (1) If, under a law of the Commonwealth, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if:
- a) in all cases--a method is used to identify the person and to indicate the person's intention in respect of the information communicated; and
  - b) in all cases--the method used was either:
    - i. as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
    - ii. proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and
  - c) if the signature is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the method used as mentioned in paragraph (a) be in accordance with particular information technology requirements--the entity's requirement has been met; and
  - d) if the signature is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity--the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in par (a). Certain other laws not affected
- (2) This section does not affect the operation of any other law of the Commonwealth that makes provision for or in relation to requiring:
- a) an electronic communication to contain an electronic signature (however described);  
or

- b) an electronic communication to contain a unique identification in an electronic form;  
or
  - c) a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator's intention in respect of the information communicated.
- (3) The reference in subsection (1) to a law that requires a signature includes a reference to a law that provides consequences for the absence of a signature.

## Marketing – The ‘What’ and ‘Why’

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### **Definition:**

Marketing is the activity, set of institutions and processes for creating, communicating delivering and exchanging offerings that have value for clients, customers, partners and society at large.

### **Purpose:**

The reason why something is marketed or created or why something exists.

### **Build Brand Awareness:**

Source: IMPACT website, author John Bonini

In order to effectively market your product or service, you first must know who you are as a company and also who your ideal consumers will be. Your brand acts as the foundation that your entire company will be built around. If you don't have a clear, definitive idea of who your company is, then how can you expect your consumers to understand?

In today's digital and internet age, your company's brand will be shaped by the content you and your employees feature on the web as well as the interaction between your company and your clients or prospects.

To successfully create, or even re-create a strong, successful brand that reaches your target audience, you need to define the following:

- Who are we as a company?
- What keywords do people search to find our products/service?
- Who are our buyer personas?
- What makes us different?
- How do we convey our expertise through content and graphics?
- What value are we providing?
- What makes customers buy from us? What makes them return?

Once you've clearly established a foundation as a brand, you can more effectively begin executing a marketing campaign and work to raise brand awareness. In doing so, you've ensured that the attention your brand receives is qualified and directly in line with your target audience.

Given the dramatic consumer shift in the past decade, the most effective way of raising brand awareness now consists of creating optimized content in the form of blogs, ebooks, and press releases, to fully immersing your company in the world of social media and engaging with your followers and other relevant prospects.

Ranking high in search engines and maintaining a strong social media presence are the two most important aspects of raising brand awareness.

### **Engage with Target Audience:**

Networking in the 21st century has moved from simply having the ability to connect with friends and family, to now being able to stay informed and connected with brands through news feeds and alerts.

The fact that your consumers and target audience have the ability to connect and engage in conversations with you (or your competitors), makes it critically important that you're tapping into this incredibly potent resource.

Some of the more effective ways of staying engage with your target audience include:

- Participating (and engaging) in all of the social media networks
- Monitoring and responding to all comment on your blog
- Comment on other top industry blogs to build relationships and stay visible
- Retweet content from some of your more influential followers

By staying engage with your target audience, you effectively humanize your brand and also set yourself up as an ideal person to buy from or do business with.

### **Drive Traffic, Leads and Sales:**

All business owners and marketers share one common thread; to generate customers and make money.

And now, with over 75% of all Internet users conducting product research online, "getting found" has required a shift from the physical advertising to more web based marketing.

The foundation for lead generation in the digital age is quality marketing content delivered on a consistent basis. This means blogging, ebooks, whitepapers, webinars, case studies, and visual content like infographics have become the new standard for generating enough traffic to your website in order to get the number of leads your business needs.

The main purpose of this content is to get found in the search engines by prospects who are searching for relevant terms. By conducting a thorough keyword analysis of all of your content and services pages, you'll be in a much better position to get found by the prospects who have already taken an interest and need you most.

However, the goal shouldn't be just to generate traffic to your website. There are tons of websites out there just like yours, what are you providing that's different and offers your visitors a unique experience? Free offers in the form of e-books and webinars are most effective, as it provides an opportunity to generate leads and also push leads further down the sales funnel by introducing them to related or more advanced content.

The focus should always be to inform and help your prospects.

### **Prove Industry Expertise:**

Everything you do throughout your entire marketing campaign should aim to achieve this.

Your content, blog articles, offers, client communications, and social media engagement should all focus on setting yourself and your company aside as industry thought leaders, because when it comes time to open the wallet, people want to do business with them.

Once again, content reigns supreme here, as blogging as well as social media engagement are two of the most effective ways of conveying your expertise, and as a result, sets you apart from the competition.

### **The Relationship Between Communication and Marketing:**

'The marketing function is the component of business that is directly involved with communicating with customers. Communicating with suppliers, investors, government representatives and employees is handled at different levels of an organization, but all communication to customers is controlled by the marketing department in some way. Because of this, the relationship between marketing and communication is inseparable.'

Wrote David Ingram for the website 'bizfluent'.

He goes on to write,

### **Direct Communication**

'Salespeople, advertisements and public relations messages are often communicated directly to customers and others in the marketplace in a clear, straightforward manner. An example of direct communication in marketing would be an advertisement that announces a new sales promotion, or a sales pitch made inside a retail store. Direct marketing communication puts information in consumers' hands, and puts the ball in their court to make a decision.'

### **Subliminal Communication**

'Not all communication is direct, nor is communication always verbal or written. Marketing involves a good amount of consumer and marketplace psychology, and savvy marketers have learned to communicate information in subliminal, unnoticeable ways in addition to direct communication. The visual and audio stimuli in advertisements can communicate promises of pleasure, prestige, or the fulfillment of needs, regardless of what the speech and text in the advertisement say. Images, colors, celebrities, voice tones and a wide range of factors can communicate information clearly, even if it is unspoken.'

### **Customer Relationship Management:**

Marketing communications is a form of marketing developed from direct response marketing. Relationship marketing relies on the communication and acquisition of consumer requirements solely from existing customers.

Think about those text messages or email you receive from businesses you deal with such as clothing and sports stores letting you know exclusive member deals on offer. Most of us have a flybuys card or coffee loyalty card in our wallet or apps on our phone.

### **Marketing Channel Relationships:**

This is linking producers to buyers, affects advertising and promotion and influences pricing. Consider it a direct route to the market.

### **Engaging with the Community:**

Wikipedia describes this role as ‘a dynamic relational process that facilitates communication, interaction, involvement and exchange between an organisation and a community for a range of social and organisational outcomes’.

**As a concept, the above is designed to achieve or elicit an outcome at individual, organisation or social level.**

Community engagement therefore offers and expects an ethical, reflexive, and socially responsive approach to community-organisational relationships with engagement practices that aim to both understand and be responsive to community needs, views, and expectations.

### **Instagram for Small Business:** (Reproduced from the SME Business Magazine)

Instagram is all about generating emotions through short, sharp messages and great photos. Instagram boasts over 500 million active monthly users, who generate over 40 billion photos and 95 million videos per day. If you want to make a lasting impression on the world’s leading image-sharing platform, ensure your profile is optimized and your brand is represented at its best for maximum reach, engagement and growth. Here are three bio basics that you need to know.

### **Descriptions**

From reading this bio, the user should know immediately what kind of business you are. Your bio shouldn’t just say what you do – to really make use of the platform, turn it into a call to action! Include relevant emojis, hashtags, your website URL or even an email address. Chances are lots of businesses are doing the same thing as you. How do you stand out from the competition? Your location, character, values and ways of working can all come into play here. Being an SME can be your unique selling point. Be proud of it. There are consumers who love to support independent businesses over huge corporations and see where their

money is going. Many customers also like getting personalized responses to their queries and knowing a real person is reading their correspondence.

### **Contact**

You often hear about big companies like Facebook being a nightmare to get hold of. As an SME (small to medium sized enterprise), make it clear you are happy to hear from customers by including a contact email in your Instagram bio.

### **Links**

Different companies experiment with different links in their bios at different times, but keep it simple. Generally, links should direct the visitor to your homepage, but this may change this depending on the promotions you are running. You may want to include a campaign code, so you can track visitors to your site and find out more about them. Tools like Linktree give you one bio link for multiple locations. This could be a useful and time-saving if you have more than one page you need to link to from Instagram.

## **Principles Underpinning Effective Marketing Materials**

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### **Success rates:**

Efficient real estate agencies know their success rates and where deficiencies lie. For example, every letting person should know their 'appraise to list' ratio and their 'list to lease ratio'. Really successful agencies dissect this further to how much the office outlays on properties against how much an agent has covered by their landlord / vendor.

### **Where did all the money go?**

Drill down from that to where is the money spent and how effective is the outlay. Again, this needs to be verified by other sources and data. Ask the question to every potential tenant / buyer that phones in or inspects the property – “how did you know about this property?”

If we don't ask then agents will continue to spend money where it doesn't provide sufficient return.



### How long does it take?

You need to analyse the time that the average property takes to lease and therefore, extrapolate costs for future listings.

That is say, if the average property takes 3 weeks to lease with marketing costs at:

Photo signboard	\$ 400.00
Local paper 3 x editions @ \$300 each	\$ 900.00
Website entry	\$1000.00 (EACH !!!)
Average cost of advertising per property	\$2300.00 (MORE FOR MULTIPLE WEBSITES)

And that doesn't include your time and vehicle costs to attend each inspection or Open House.

## Striving For Total Professionalism

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Qualities and traits of a customer service professional include, but are not limited to:

- They set goals daily and have a longer term objective
- They manage their time well
- They are strongly motivated and performance oriented
- They control the things they can control
- They ask questions and listen to the answers
- They solve problems or find someone else who can
- Are naturally sincere, honest and friendly
- They present the facts so people understand them
- They are confident in themselves
- They display energy and enthusiasm
- They can handle failure

## Six Building Blocks For Excellent Customer Service

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- An organisational commitment to excellence
- Make the customer feel comfortable
- Focus on customer needs, wants and preferences
- Have fun – if you don't enjoy what you do, do something else
- Be respectful with the clients
- Be attuned to your personal customer service

## MAKE SURE CLIENTS COME FIRST

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Where would we be without them?

Clients will judge your agency based on first impressions, therefore, the initial contact whether it be by phone, fax, email, unannounced, at an open house or personal contact, will have an immediate effect on your reputation and the agency's credibility.

Recent studies show that a customer takes only 3 seconds to form their "first impression" of you. These 3 seconds are broken down to: **54% - based on how you look**

**39% - based on the tone of your voice**

**7% - what you are actually saying**

- New clients will form their first impression by how they are greeted
- Clients need to be treated with respect and care
- Staff should be sensitive of cultural backgrounds, age of the client and any physical impairment that may hinder the building of this client/agency relationship

The real estate profession is about building long term relationships. If your client tells everyone that they only deal with you and that you are their real estate agent, then you have received the ultimate accolade which ensures business longevity.

Remember, a happy client will refer you to their closest friends and family, where as an unhappy client will talk about you to everyone who will listen!

# Client Personal Profile

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Why is it important to build a client personal profile?

Everyone wants to feel as if they are treated as an individual – not just a number. By creating a personal profile of your client this is how they will feel. It might be as simple as referring to them by their Christian name, remembering their partner's name or the name of the family dog who wants to lick you every time you go into the rear garden. Be aware of different religious holidays and their significance so that you don't offend someone by offering to show a property on a significant day.

What information do you need?

Everything that would be of service to the business and to service your client's needs.

- Names and contact details
- What do they need from the office, i.e.. House purchase; office rental
- More detailed requirements, i.e.. Number of bedrooms
- Is there a time constraint
- What other factors are involved in making a decision

Get it right

Initially, get all the information in writing and make sure the spelling is correct. It's no good writing family friendly emails to your clients if you can't get the spelling of their name right.

Keep it current

Next, keep it up to date. If Fido passes to the pet cemetery, don't keep asking where he is.

Tailor made

A few pertinent questions at the beginning should get you off to a great start. Ensure you have an office template so these questions flow smoothly. For example, "How many bedrooms do you need?"; "Which schools do the children attend?"; "Is there an alternative contact number?"

Cultural differences are recognised and accommodated:

Be aware of the various differences when dealing with clients from different cultural backgrounds as well as handicaps and disabilities. This could be as minor as not contacting

them on certain days or as major as attempting to sell a home at No. 13 with the black door, on the low side of a cul-de-sac to another client. The Anti-Discrimination Act does not look kindly on cultural discrimination.

## Implement & Maintain Client Care

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### Why is it important to consistently implement and maintain client care?

There is enormous cost and time involved in setting up a database but it will all be worthless if you are relying on old information.

### Follow through on instructions & feedback

If the client asks you to cease sending the monthly newsletter, make sure you follow through. The database is somewhere to build your business from, a source of income growth. Allowing it to be a source of frustration to your client will have the exact opposite effect you are seeking.

Set aside time in your diary to ensure these tasks have been completed.

## Your Personal Profile

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### Why is it important to build your own personal profile within the agency?

Likewise, you will expend a great deal of time, effort and expense on promoting yourself within the agency – regardless of what role you play. It could be as subliminal as talking real estate at the local football match or school gate. The public need to know that you exist and that they know enough about you to want to deal with you.

### Credibility

The general public will make judgements, or more so perceptions, on what they hear from various sources – including Current Affair programs and newspapers. It's important to build and maintain a reputation for being honest and reliable. This will aid in having the clients

seek you out. It doesn't guarantee you the business but it gets your foot in the door – literally!

### Shout it from the rooftops

Sometimes it's more professional to let someone else do the talking for you. Quote personal comments and recommendations from happy clients on your profile page, after all, it's someone else saying it and possibly in the same shoes as your next potential client.

### Set aside time in your diary

Yes, you need to do this for your profile too. Make it part of your system that you review your own profile at least every 3 months. Add in any awards or nominations you have received in that time. What was your best sale/transaction? Update client comments.

## The Nine C's Of Professionalism & Management

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- **COMPETENCE**
  - know your client
  - know your product
  - keep up to date
  - be reliable
  - give excellent service
  
- **CONFIDENCE**
  - self esteem
  - be sure of yourself
  - help clients achieve their goals
  
- **CONCERN**
  - show individual understanding
  - possess empathy

- consideration
- respect
- listening skills

- **COMMUNICATION SKILLS**

- gain rapport quickly and efficiently
- ask questions to determine needs
- turn words into pictures
- have highly perceptive listening skills
- get to the point quickly and assess relevant information

- **COURTESY & CARING**

- be polite
- be friendly
- be honest
- show respect

- **COMPETITIVE**

- follow up
- have a “killer instinct”
- compete with quality and service, not just price
- have knowledge of your competitors movements
- offer best value

- **CREATIVE**

- seek other opportunities
- seek other leads
- suggest alternatives
- offer new ideas

- **CREDIBLE**

- remain honest

- keep promises – remember, "a promise broken is worse than a promise never made"
- be a proud representative

## Principles of Quality Assurance & Client Services

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The A B C's of building a good, solid business.

Quality Assurance is a system that seeks to continuously improve every product and service offered in business. It focuses on listening to what the client wants and using feedback to refine the service offered to the client.

If the business doesn't receive complaints, it doesn't necessarily mean the clients are satisfied. Quality Assurance encourages us to survey our clients regularly to discover if they are satisfied with what we offer. This relies on dealing with negative feedback in order to improve our service. This feedback lets us improve the job we do and use the information to refine our processes and meet client needs.

By listening to our clients we have the opportunity to improve to process that might have created the problem, because unless the process is right, the problem will occur again. By then following up the feedback, we keep in touch with our clients and this generates better business.

Maintaining a good relationship with your clients involves work. You need to have a number of things in your toolbox that:

- Provide value for money
- Provide knowledgeable, convenient and efficient service
- Provide a consistent and reliable service with appropriate follow up
- Use time effectively and efficiently
- Provide an office environment which is welcoming and functional ● Make clients feel valued

## Distribute Surveys and Questionnaires

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Surveys can be distributed to employees as well as to clients. Surveys to clients can be distributed after the client has received the service he contracted you for, during the process, or even at the beginning with regards his expectations of the service being offered.

Get the client's feedback on the quality of that service. Analysing the data is one of the most important parts of the process – why ask the question if you don't intend heeding the answer!

- Have clear objectives as to what you are gathering data about – is it about your service? location? availability?
- Did we meet their expectations, wants and needs?
- The survey should not take more than a few minutes to complete.
- Common survey mistakes
- Creating questions that are too long, they run the risk of becoming confusing
- Creating leading questions
- Using technical jargon the client may not be familiar with
- Not being consistent with the timing and approach
- Forgetting to 'test' the survey first with a select group
- Not having a clear objective for the information that is harnessed.

## Agency / Client Relationship & Management Check List

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Many businesses offer a service beyond their clients' expectations but never really fulfil their obligations. Communication and negotiation skills are the most practiced tools in the real estate industry, yet we barely rate them as such.

Some people are natural communicators and negotiators, however, everyone needs to practice their skills to maintain a high level of professionalism when using them. Failure to be effective negotiators or communicators can result in breaches due to aggressive behaviour to obtain a result or offering a property for a much higher market price just to secure the listing – this is referred to as 'buying the listing'.

Relationship Management Check List:

- Ensures client loyalty strategies support repeat business



- Structures services to emphasise client satisfaction and to maintain the agency's reputation for service
- Ensures client service strategies are able to be integrated into individual and team delivery of agency services
- Ensures performance indicators enable policy review and activity adjustment to occur
- Provides timely, relevant and up to date information to clients – e.g. changes to legislation
- Provides information on client needs in a manner that improves client relations and the quality of services
- Maintains client service records that provide an accurate and objective record of communication with clients and other service providers
- Handles complaints in a manner that improves the agency's reputation for quality service and integrity
- Ensures client satisfaction surveyed at regular intervals is able to be used to modify or adjust client contact and agency marketing activities
- Ensures client feedback on quality of services is able to be used to improve performance in client contact areas
- Ensures reviewed and updated information on agency services reflects current client expectations and improves the agency's image
- Ensures opportunities arising from information provided by clients are able to be used to update the agency marketing strategy.

DATE	ACTIVITY	RESULT	REVIEW
01/01/19	Sent monthly newsletter	Nil	01/02/19
02/01/19	Replied to email enquiry on new listing	Inspection booked	03/01/19

## Marketing of You & the Agency

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Under the corporate umbrella, your principal will spend money to promote the agency as a whole – to 'get the phone ringing' – but why will the potential client request you???

### **Methods of Communicating / Modes of Marketing:**

- Signage (one-off cost; 24 hours x 7 days a week 'silent salesperson')
- Paper (some people still prefer to see / find a property in printed format but can be costly)
- Electronic (expensive but information is updated immediately; ample room for description)
- Customer based – referrals (the most cost effective form of business)
- Events / experiences (can be expensive but also memorable)
- Direct marketing (gets right to the people that may be interested in the property)
- Sales promotions (often targeted at a broad market and doesn't really pinpoint any particular property)
- Public relations (again, doesn't pinpoint but strengthens the community perception)
- Personal selling (adds a more intimate level to the contact, provides a 'face')
- Expo displays – such as shopping centre 'pop up' stands, community events (again, a broad market and can be a hit or miss)
- Sponsorships (long term financial commitment but also helps the community and shows support)

We will often start with letting our '**sphere of influence**' know that we are now in real estate. Then there are the networking opportunities such as Chambers of Commerce, SWNG, etc.

Marketing is not just the printed word it could be in the form of:

- Information seminars – especially on investment
- Word of mouth referrals
- Sponsorships – there are opportunities everywhere and at every \$ value
- Charitable events/causes such as 'The Biggest Morning Tea'
- Wearing a corporate uniform, badge, etc
- Car signage – relatively cost effective as it's a once-off outlay if well done and visually prominent
- Agency marketing material – magnets, calendars, pens, etc
- For Sale / Lease signs or billboards with your photograph
- Social media – facebook, linkedIn twitter, snap chat, the list grows almost daily ●  
Often restricted for the larger networks and franchises due to cost there is also:
- Television, radio and cinema advertising.

To build trust within your relationship to your clients your personal marketing strategy will outline your:

- Personal qualities
- Compliance with ethical and conduct standards
- Knowledge of property sales and / or property management environment
- Customer relations and performance

**Remember, first impressions count so always make sure you present yourself in the best way possible.**

### **Example of an agent's personal profile on the 'Meet Our Team' web page**

Mary provides exceptional service and goes above and beyond the call of duty to ensure maximum results. She understands her client's expectations and strives to instil peace of mind by providing the best real estate experience possible. Gaining her real estate licence in 2000 Mary has participated in hundreds of real estate transactions, or as she likes to call them 'experiences'.

She has lived in the local area for over 20 years giving her intimate knowledge of the region. Her enthusiasm for the area and the people living here is contagious. Having previously served on the local Chamber of Commerce committee as well as being the owner and manager of a café in the heart of town Mary is well known to many.

Mary prides herself on her honesty and integrity. She has a commitment to excellence in everything she does. You won't be disappointed when buying or selling with Mary.

## **Exercising Discretion and Confidentiality**

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Discretion is very important in the relationship with your client. You should never reveal confidential information about a client, colleague or your organisation. Similarly, information you have been given by the client should be used only for its particular purpose.

Always obtain the vendor's permission to disclose why they are selling – it could be a positive thing such as a lifestyle change 'but we loved living here'. An ideal answer to 'Why are they selling' is 'The property is now surplus to their needs'.

Ensure that your office follows the rules of the Privacy Act, including secure storage of your data.

## Maintaining A Working Relationship With Clients

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### Key points

- Receive information from clients and provide information to clients
- Solicit feedback
- Evaluate your service
- Clients feel valued
- Incorporate clients' ideas on quality service into your interactions with clients
- Follow through
- Identify and solve clients' problems

**Always be alert to ways of renewing contact with the client.**

## Target Market Analysis

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Identifying your target market is the first step to a successful marketing campaign.

A target market analysis is a study you do of your potential customers. Knowing how to do a market analysis will enable you to figure out exactly who you will market and sell to. When you conduct your target market analysis, focus on the five W – who; what; when; where; why – of your potential customers who are most likely to buy your product.

A target market analysis is a systematic and comprehensive assessment that allows you to identify important characteristics of your target market and group them into categories based on those characteristics.

Segmenting the market in this way not only identifies the customers who are most likely to buy your product, it also identifies the best way to reach them. This knowledge lets an organization focus their resources where they're mostly likely to get the largest return on their investment.

Website article by George Boykin, US:

'A target market analysis is a study you do of your potential customers. Knowing how to do a market analysis will enable you to figure out exactly who you will market and sell to. When you conduct your target market analysis, focus on the five W's and H of your potential customers.'

### **Target Marketing – a three-step process**

The first step is to describe and profile distinct customer groups -- market segments -- that may respond to different product or service offerings or to a unique communication message and media mix.

The second step is to select one or more of these market segments for targeting.

Finally, you want to develop positioning strategies that communicate unique product or service benefits, which are relevant to those individual target audiences.

Steps two and three in the process clearly pivot on accurate descriptions of your target market segments. This requires a thorough analysis of the two principal target market components: demographic and psychographic segmentation.

### **Demographic Analysis**

The demographic of your target market describes its characteristics by observable and quantifiable factors that might include age, gender, geographical location, marital status, educational attainment, occupation status, household income, race and religion. Huge demographic databases allow marketers to target market segments down to the neighbourhood block. For instance, geographic data combined with other demographic data is a reliable predictor of who lives where by demographic characteristics.

This is useful for real estate development, locating new retail outlets, matching retail inventories to neighbourhood preferences and location-based digital advertising.

Locationbased advertising delivers ad messages to smartphones according to user location.

Imagine walking into your local shopping centre and receiving a text on the specials available from the stores you like to shop in. That technology is already in use and returning great dividends to the users.

## Feedback To Landlord / Vendor

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After the initial advertising period often things seem to die down. Potential tenant / buyers that have not been able to find their property will pounce on a new listing. This can give landlord / vendors a false sense of the market and a deflated feeling when things go quiet. You may need to review the current marketing plan, together with your landlord / vendor, and in line with any budget restrictions.

### **Perception of levels of interest and worth of current marketing strategies:**

“Perception” is the key word here. Some landlord / vendors perceive multiple inspections are needed to show they have interest in their home, whereas, depending on many variables (ie location, size, price) there may be only a limited number of potential tenant / buyers in the market place at any given time. For example, a 1 bedroom unit will not have as many inspections or applicants as a 3 bedroom home.

### **Budget:**

Not all advertising costs hundreds of dollars. By past analysis of marketing an agent will know the most cost effective expenditure in their area. If demand is strong for a particular street or estate it may be only a generic office signboard is needed.

Although the landlord’s / vendor’s budget (and the agency’s) plays a big factor in marketing we also have to consider landlord / vendor motivation. If you have a very motivated landlord / vendor then they are likely to accept a realistic price from a realistically suitable applicant. This means the property will not be on the market for as long, or longer, than average. Don’t forget to get the feedback from your landlord / vendor too. They may realise themselves that there is insufficient advertising money being spent.

## Review the Marketing Plan

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Let's look at how quickly the marketing dollar can so quickly add up:

<b>Campaign Items</b>	<b>Description</b>	<b>Price</b>
<b>INTERNET</b>	Internet & Technology Package: Premier Property: realestate.com.au – 42 Days Premier Property: domain.com.au – 42 Days	\$2000
<b>SIGNBOARDS</b>	Solar Illuminated Signboard (8ft x 4ft)	\$595
	Solar Illuminated Signboard (5ft x 2.5ft)	\$450
	Non Illuminated Signboard (8ft x 4ft)	\$400
	Non Illuminated Signboard (5ft x 2.5ft)	\$200
<b>PHOTOGRAPHY</b>	Professional Package: 8 Stills	\$360
	Professional Package: 4 Stills	\$260
	Dusk / Night Still Photography: 2 Stills	\$175
	Aerial Drone Photography: 5 Stills	\$495
<b>VIDEO</b>	Video Property: Agent dialogue (60-90 Second Video)	\$495
	Video Property: Nil audio	\$300
<b>BROCHURES</b>	Just Listed (Double Sided-Floorplan) Quantity 3000	\$415
(Just Listed Cards)	Just Listed (Double Sided-Floorplan) Quantity 1000	\$250
<b>AUCTION</b>	Auctioneer	\$1000
<b>PRINT MEDIA</b>	Macarthur Chronicle/Advertiser – Full Page	\$545
	Camden-Narellan Advertiser – Full Page	\$545
<b>ADMINISTRATION</b>	Campaign Administration Fee	\$195

To support the agent's request for vendor / landlord contribution you will require verifiable evidence such as website printouts, data base entries, open house registers, etc to back up your summary to date as well as any future allocation of advertising – both placement and cost.

We are fortunate that most websites provide the number of “hits” a property receives however, there is still some ambiguity with these as we don't usually spend the dollars required for software that differentiates individual IP addresses – in other words, multiple looks by one party as against multiple single hits by many parties.

Office procedures should include making note against each property of walk in enquiries or phone enquiries. This information, together with multiple enquiries but few inspections also contributes to qualitative and quantitative data to the landlord / vendor.

Feedback from inspections is also vital, not the least because these comments are from potential tenant / buyers, not the agent. Positive feedback points (e.g. “we loved the gardens”) could be used to modify the text to highlight the landscaping.

Instead of committing (often the agency's) money to panic advertising as the property remains vacant or unsold, we need to genuinely sit down with the landlord / vendors and show what has been happening and where they are now best to head. Keeping the lines of communication flowing via feedback is essential throughout the listing period.

**Possible changes in marketing activities and plan:**

- Expanding / reducing printed media depending on budget restrictions
- Increasing exposure on websites
- Adding a virtual tour
- Holding Open House or altering the current dates / times

**If the property proves difficult to move, strategies could include:**

- Revising advertising budget
- Modifying advertising copy and promotional materials
- Other specialists, such as a professional photographer or house “dresser” might be brought in at this stage to refresh the look
- Minor cosmetic work might also be undertaken to provide better presentation to potential tenant / buyers.



## Key Principles

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- Be positive, always try to be enthusiastic about what you are doing and who you are dealing with
- Try to show, by your actions and the tone of your voice, that you genuinely enjoy dealing with clients
- Remember that clients are the lifeblood of your business. They are important and deserve to be treated as important people
- Be flexible and creative when dealing with difficult problems
- Try to make the client's suggestions part of your organisation's policy and procedures
- Respond to criticism, see it as a chance to grow and improve
- Constantly evaluate the level of your client services
- Understand the services your real estate agency or organisation can provide

Work with clients, get their co-operation, build trust and confidence from the start. The relationship between an agent and vendor/landlord begins from the moment a listing or management is formalised. Don't let the relationship deteriorate after all the hard work has been done.

Ensure all instructions are backed up by letter of confirmation, so both parties know exactly what has to be done and what is expected of each party.

Avoid any conflict or misunderstanding by communication breakdown. Keep times and appointments diarised with important notes for discussion or perhaps a reminder to take something with you, as promised.

## Address, Record And Resolve Issues

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There will inevitably be times when things go wrong – advertising deadlines are not met; photographs and videos don't provide the quality expected; clients can be terribly offended by negative feedback.

When issues arise the agency must have procedures in place to deal with it, this is not just Best Practice but in many circumstances it is required under legislation.

Here are some examples and suggestions, though not an exhausted list of problems:

PERSONAL PRACTICE	CLIENT EXPECTATIONS
EG. Conflict of interest	I would ensure that all parties were clear of the association and the necessary wording / forms have been completed for transparency. This would be in writing on the required Form 49 under Section 55 creating a transparent transaction.
Follow principal's reasonable instructions	As an agent we have knowledge of the legislation. If a client instructs the agent to falsely advertise the property, or to withhold information such as material fact, the agent must record the request in their file but also, must deny the instruction. They cannot plead 'the vendor / landlord told me to do it'.
Act in good faith	Disclosure of any conflict of interest when selling property to a close associate, as in Conflict of Interest above.
Act in the principal's best interests but remember to be fair to the purchaser	Complete the Disclosure of Material Facts with vendor or landlord so we have all the information required to provide to a tenant or purchaser. Resolution may be by mediation of VCAT if can't be resolved within the agency.
Make a full disclosure of any personal interest in a business relationship	Not accept any secret commissions or referrals without disclosure. These may be a referral fee received by landlord insurers which is common but still needs to be written into the Management Agency Agreement.
Exercise a duty of skill, care and due diligence in any dealings on behalf of a principal	Any problems must be recorded in the Complaints Register and may need resolution by a third party.

Maintain the principal's confidentiality	Not disclose to the purchaser if the vendor is under financial or personal pressure to sell their property. There is a difference between Material Fact and personal circumstances. An agent must be 'fair to the purchaser but have the best interests of the vendor in mind'.
Care for the principal's property as though it was your own	We must ensure that the property is kept safe by only allowing potential tenants or buyers through the property after we have exercised 'due diligence' in identifying who these people are and writing their details on our Open House register or database.  Under legislation this includes their money, see below.
Faithfully account for all monies held on behalf of a principal.	We must ensure that all transactions are in writing and accounted for, including advertising contributions.

## Waiting Times

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- Unoccupied time feels longer than occupied time – think how quickly a busy day goes by
- Anxiety makes waits seem longer – think dentist waiting room
- Uncertain waits are longer than known, finite waits ● Unexplained waits are longer than explained waits ● Unfair waits are longer than equitable waits – people served in front of you, out of turn
- The more valuable the service, the longer the client will wait ● Solo waits feel longer than group waits.

# Deceptive and Misleading Conduct

## Bait Advertising

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Extract from Fair Trading's website:

### **The Law:**

**Section 18 of the Australian Consumer Law** prohibits a person, in trade or commerce, from engaging in misleading or deceptive conduct. In addition, section 30 of the Australian Consumer Law applies the general rules about misleading conduct to the specific conditions concerning interests in land, including the sale or grant, or the possible grant of an interest in land, the promotion by any means of the sale or grant of an interest in land.

Section 30 provides that a person, in trade or commerce, must not make a false or misleading representation about:

- the nature of the interest in the land
- the price payable for the land
- the location of the land
- the characteristics of the land
- the use to which the land is capable of being put or may lawfully be put, or ● the existence or availability of facilities associated with the land.

**Penalties apply for breaches of Section 30 of the Australian Consumer Law.**

**The maximum penalty in the case of a person is \$220,000 and for a company is \$1.1 million.**

### **False, Misleading or Deceptive Statements:**

A statement is taken to be false or misleading if it has a reasonable tendency to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement indicates that the state of affairs does exist.

Misleading or deceptive conduct is a concept that has been broadly interpreted judicially. Conduct is misleading or deceptive if it is likely to lead a reasonable or ordinary member of the class of persons to whom it is directed into error. Misleading conduct can include acts of silence or omission. This is often referred to as 'bait' advertising, hooking the consumer in for a product that no longer exists, if it ever was. Wording such as 'units starting from \$...' but that priced unit is no longer available. Advertising must change to reflect what can actually be purchased.

Conduct can be misleading even if the agent does not actually make any representations. It is not relevant whether the agent actually intended to mislead anyone to establish liability. What is relevant is the overall impression created by the conduct and its actual or likely effect on reasonable or ordinary members of the target audience (e.g. prospective buyers or tenants).

Any type of conduct related to the photographic advertising of real estate that could give a consumer the wrong impression may potentially breach the Property Agent and Motor Dealers Act 2000 and the Fair Trading Act 1989.

Agents must ensure that any claims made about any property or land characteristics in any photographic representations and advertising are accurate and could not give prospective buyers the wrong impression. Statements made in conjunction with photographs of the views and facilities available in a local area must not be false or misleading.

Examples of undesirable photographic property advertisements in newspapers, real estate publications and on the internet can include:

- a photograph of a water view or scenery, placed next to a photograph of a house, makes it difficult to ascertain whether the water view or scenery can be seen from the house or whether the photograph is a 'location shot'
- a photograph of a beach scene with the wording 'minutes to this!' typed above the photograph does not give a clear indication of the distance from the property to the beach shown in the photograph
- a photograph of a park and beach with the wording 'opposite home' where, in fact, this view cannot be seen from the property
- a photograph of a house placed next to a photograph of a beach with the wording 'stroll to beach' printed underneath the photograph does not give a clear indication of the distance from the property to the beach
- a photograph of a beach with the wording '90 seconds walk to water's edge, not actual view' printed at the bottom of the photograph needs more clarification

- a photograph on the internet of a beach with the wording '100 meters from beach' printed at the bottom of the photograph needs more clarification.

The photographs and wordings in the above examples are likely to mislead, give the wrong representation or be unclear to any person relying on the photographs to give them an image of the property being offered for sale.

Photographs of properties which have been touched up to hide undesirable characteristics or enhance other features could mislead consumers. Accordingly, agents must ensure that photographs are not used in a manner that may lead to implied representations that are false or involve misleading or deceptive conduct.

Real estate agents must not:

- modify or allow to be modified photographs of properties so that the images no longer truthfully and fairly represent that property
- change the appearance of a property by digitally removing or adding features, but adjusting the lighting slightly to compensate for poor lighting on an overcast day may be acceptable
- zoom in on a photograph of a view which can be seen from the property to make that view appear closer.

The modifications to photographs described in the above examples are likely to be misleading or deceptive.

### **The Use of Labelling to Clarify Meaning:**

Accurate labelling of photographs used in property advertisements could eliminate any doubt in a consumer's mind about what they actually see in a photograph.

Some examples of acceptable practices in photographic advertisements are:

- a photograph of a water view which has been taken on the property being offered for sale does not require any labelling
- a photograph of a water view which has not been taken on the property being offered for sale, but is within the immediate area, should have printed on the photograph 'location shot'

- a photograph of a parkland or bushland which has been taken on the property being offered for sale does not require any labelling
- a photograph of a parkland or bushland view which has not been taken on the property being offered for sale, but is within the immediate area, should have printed on the photograph 'location shot'.

Note: The term 'location shot' should only refer to photographs of facilities and services within the immediate surrounding area of the property being offered for sale, such as, a park, playground, beach, shopping village, café scene or other facility. Generally, the scene in the photograph labelled as a 'location shot' cannot be seen from the property being offered for sale, and was not taken on the property itself. Therefore, the most accurate description to print on the photograph would be 'location shot'.

It is suggested that any photographs taken on the property itself to be used in real estate advertising do not require labelling. Accordingly, only photographs not taken on the property itself, but within the immediate surrounding area, will require the labelling 'location shot'.

Photographs of the property (exterior and interior photographs) that is being offered for sale which are for illustration purposes must not be misleading. The touching up of photographs would be considered misleading.

Further, the Australian Competition and Consumer Commission's guideline 'Fair and Square - A Guide to the Trade Practices Act for the Real Estate Industry' advises that vague statements about the location of land are likely to be misleading under the Trade Practices Act 1974. Only factual information about the location of land or property should be used.

The following examples show what wording would also be acceptable to use in the description of a property to supplement the photograph/s:

- '2 km to beach' is preferable to 'close to beach', and
- 'Village shops 3 km' is preferable to 'within walking distance of shops'.

All efforts should be made by agents and their employees to provide an accurate picture or impression in the consumer's mind of the features of the property being offered for sale.

Agents cannot avoid liability simply by claiming that the buyer or consumer should have made reasonable enquiries and checked the information provided. Agents are responsible for their words and actions in their dealings with their clients.

## Trust Accounts – Relevant Regulations And Legislation

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Trust Accounts come under the umbrella of the Property Occupation Act and Regulations with regard to:

- Claiming commission, fees and expenses
- Advertising reimbursement
- Administration fees

## Definitions under the Act

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**Account** (a) a trust account in a licensee's name with a financial institution;  
(b) an account in a licensee's name or in which a licensee has an interest;  
(c) another account of which trust money is deposited.

**Associate** in relation to a licensee is:

- a partner of the licensee;
- an employee or agent;
- a corporation or member of a corporation, partnership, syndicate or joint venture;
- a person who bears a prescribed relationship to the licensee, e.g. spouse
- a person declared by the regulations to be an associate.

**Disbursement** payment of funds (a debit) either by way of manual (cheque or at bank) or

electronic means.



Expenses	remuneration payable to the manager; expenses incurred in the course of management; legal proceedings involved in the management; reimbursement of the manager or receiver under the Act.	costs of any
Failure to account	a failure by the licensee to pay or deliver money or other valuable property that has been received by or entrusted to the licensee in the course of carrying on the business;	
Financial institution Holder	includes an approved deposit-taking institution. of an account means the licensee or other person authorised to operate on the account.	
Money	includes an instrument for the payment of money in any case where the instrument may be paid into a bank or other authorised deposit-taking institution.	
Money received for and on behalf of any person	includes money held for or on behalf of any person, whether originally received for or on the person's behalf or not.	
Licensee	includes a former licensee and the personal representative of a deceased licensee.	
Order on the Agent	a notification from the solicitors/conveyancers to the agent, once a matter has completed. The order contains different information and instructions from each side.  Purchasers: the purchaser's solicitor confirms settlement has taken place.  Vendors: the vendor's solicitor usually instructs HOW the money is to be distributed.	
Receiver	appointed by the Supreme Court under this Act.	
Trust money	means money received for or on behalf of any person by a licensee (whether or not the money is deposited in a trust account required to be kept by a licensee), e.g. rent, bonds, holding deposits, sales deposits, vendor advertising contributions which are then to be disbursed to another party, such as a landlord or vendor.	

Claim Fund                    the Claim Fund for the property, motor, auction and debt collector industries was established and maintained under this Act, which supports consumers who have experienced financial loss as a result of agent misconduct.

## What Is Trust Money?

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Trust money is money that is paid to a property agent for matters relating to the purchase or rental of a property. Trust money is NOT the agents money. It is to be held in a specific 'trust account' until it is required to be reimbursed to the correct/matching person.

Examples of money to be deposited in the trust account includes:

- the payment of rent including rent for a holiday let apartment
- a deposit on a property for sale
- debt repayments collected on behalf of a client
- an amount received with a written direction for its use, such as money paid by a client for the marketing, maintenance or repair of a property .

Examples of trust account receipts to be issued could be:

### From tenants

- Holding deposit
- Rent
- Outgoings (such as water usage)
- Contribution towards damage caused by tenants (such as electrical repairs by faulty appliances)
- Bonds allocated back to the agency for repairs, arrears of rent.

### From vendors

- Advertising contributions
- Auctioneer fees
- From purchasers
- Initial 0.25% deposit

- Balance of deposit

Examples of trust account payments could be:

#### For landlords

- Strata levies
- Utilities – council rates & water rates
- Insurance premiums
- Fees for tribunal applications or sheriff's costs
- Tradespeople
- End of month payment of rents to landlords.

Trust funds are to ensure the funds are held securely exclusively for that person and is to be paid to the person or disbursed as the person directs, and until so paid or disbursed is to be paid into and retained in a trust account at an authorised deposit-taking institution (by the way, not all credit unions are authorised to hold trust accounts).

## What Are General Funds?

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These are funds that the agency has earned which are not required to go through the trust account first.

Examples of general funds received could be:

#### From vendors

- Advertising contributions which are reimbursing for advertising already paid by the agency
- Settlement commission, although this is most often drawn from the trust funds held under the sale with the balance payable to the vendors.

Note, pre-drawing of the sales commission is illegal – these funds are not normally released until after the sale is finalized and requires 'Orders on the Agent' to do so.

Examples of general funds paid out could be:

- Rent on the agency premises
- Wages, super, taxation for the employees

- Franchise fees, business registrations, insurances

Trust money not available to pay licensee’s debts:

Tempting as it may be to some licensee’s, especially in difficult economic climates, the trust money IS NOT available for payment of debts of the licensees. Nor can it be “taken” by third parties in restitution (eg Courts, fines, etc).

## Who Can Do What?

### WHO ‘PUSHES THE BUTTON’ TO RELEASE FUNDS?

TRUST ACCOUNT ACTIVITY	RECEPTION	PROPERTY OFFICER	PROPERTY MANAGER	LICENSEE IN CHARGE
Download the daily bank statement	!	!	!	!
Receipt rents and other incoming (e.g. water)	!	!	!	!
Bank reconciliations	!	!	!	!
Process bonds (lodge, claim, release)		!	!	!
Raise disbursements (e.g. water usage)		!	!	!
Process EOM landlord statement run			!	!
Release disbursements				!
Release landlord funds				!

## Who ‘Pushes the Button’ To Release Funds?

### **Who 'pushes the button' to release funds?**

Only the licensee-in-charge or the principal should have the access code to process debits on the trust account. If for any reason they are unavailable, they can designate to another person who must hold an Agents license.

They cannot, in law, pass their responsibilities over to another unless they are unable to do the task, e.g. sick leave, then another trusted person may be given access to a temporary code, preferably with a maximum amount level.

**IMPORTANT: IT IS ASSUMED THAT EVERY WRITTEN RECORD AT THE REGISTERED OFFICE OF THE LICENSEE IS MADE BY OR WITH THE AUTHORITY OF THE LICENSEE.**

**IMPORTANT: THE LICENSEE-IN-CHARGE OF AN AGENCY MUST ADEQUATELY SUPERVISE THEIR STAFF AND IS RESPONSIBLE FOR THEIR CONDUCT AT ALL TIMES.**

The licensee-in-charge should have management and control mechanisms in place to ensure agents comply with the requirement of the Act.

This should include regular spot-checks of balancing the days rent receipts and disbursements (i.e. cash book) against either the bank deposit book or the cash in drawer

- Signing off on a daily trial balance
- Ensuring the bank statement has been correctly receipted
- A minimum of monthly signing off on the trial balance
- Far more effective would be a daily checklist attached to the bank sheet.

#### Licensed real estate agent or certificate holder:

To carry out many, if not most, of the roles of dealing with trust accounts the person doing so MUST hold either a license or certificate of registration. The receipting of trust money should only be done by a licensed agent or certificate holder. The processing of bonds, both lodgement and disbursement, is the same but only the Licensee-in-Charge should regularly send money from the trust account.

The Claim Fund is not liable to reimburse a complainant unless the person that was negligent or fraudulent held one of these. They are not necessarily seen to have all the

knowledge that a licensed or certificate holder has. That doesn't mean that they won't be penalised under the Crimes Act.

#### Office manager:

In smaller offices this is usually encompassed within another employee's role. Again, the Principal cannot pass their responsibility on to this person however, the term "manager" means that they are seen to know what transpires within the agency.

#### Regulatory authorities:

The Director-General may at times authorise people to act on their behalf. This could be, for example, for the periodic inspection of the trust account. An officer of the Police Force, with good reason, is also able to inspect the records and many franchises require this in their franchise agreements.

## Audit And Accounting Requirements

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All licensees who held or received trust money during the audit year must have their trust accounts audited by 'authorised and certified auditors' within four months after the annual expiration date. Audit periods are as follows:

- For the first audit period, the trust account audit will cover the first 8 months from when the license was issued, The period expires on the last day of the eight month from license issue date.
- Following audit periods are 12 months long and audit reports must be completed, signed and submitted to the OFT within four months of the end of the audit period.

These audits are lodged online with OFT at either [www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading) or via email at [Financial.OFT@justice.qld.gov.au](mailto:Financial.OFT@justice.qld.gov.au) and filtered for any discrepancies or problems that may already exist or minor breaches which could escalate in the future.

Licensees who did not hold or receive trust money during the audit year will be required to note whether or not they did so when they next re-apply for their licence.

Real estate trust accounts are audited to make sure that money such as sales deposits, rent and security deposits are being managed correctly. In addition, it would be best practice for the trust accounts to be regularly internally audited (e.g. bank reconciliation done daily and checked by the licensee) to ensure all monies are fully accounted for. The licensee-in-charge risks heavy penalty for negligence and lack of supervision should a theft occur.

Licensees are required to hold a copy of their trust account audit report at their registered place of business, for at least 7 years, and make it available to OFT inspectors if required. Licensees who did not hold or receive trust money during the audit year will be required to note they did not when they next re-apply for their licence.

At each time of license renewal the licensee-in-charge must advise if trust funds were held under their name, or their company name, in the previous 12 months.

Also, the licensee must employ an independent, registered auditor to audit their books each year and to lodge the audit with Office of Fair Trading.

An approved auditor is a practising public accountant who is a member of at least one of these professional bodies:

- CPA Australia
- the Institute of Public Accountants
- the Institute of Chartered Accountants in Australia.

An approved auditor cannot:

- be an estate agent or the employee of an estate agent
- be a partner of the estate agent whose trust accounts are being audited
- have been, in the last two years, an employee or partner of the estate agent whose trust accounts are being audited
- be a member, director, employee or officer of an estate agency corporation ● keep, control or have custody of estate agent trust accounts.

**According to the *Agents Financial Administration Act 2014* the following penalties can apply to Auditors for breach of the auditing requirements:**

- **Fined up to 200 penalty units**
- **One year's imprisonment**
- **Being reported to ASIC**

- **Being reported to their professional accounting body**

**There could also be discipline under the Crimes Act.**

## **Franchise Requirements and Consumer Affairs Penalties**

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The number 1 rule of all franchises and networks is that 'you won't bring the name of the brand into disrepute in the eyes of the public.'

Any discrepancy in the books can bring tremendous harm to the agency's reputation. Gossip spreads. Often franchises will dictate that the annual audit is also to be supplied to them as part of your agreement. This helps to maintain the prestige amongst the brand and therefore, the 'value' of the franchise.

In addition of course are the OFT penalties.

## **The Claims Fund**

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Ever wondered what funds the Government coffers? It's not just the lotto players, it's also Agent's trust accounts.

At the end of each month all banking institutions that hold trust funds calculate interest on the daily balances of ALL MONEY held during the month. They then apply those balances the prescribed percentage (as per RBA rates) and before the 7th business day of the following month pay the amount of that interest to the Director-General for crediting to the Statutory Interest Account.

Imagine that just one medium sized agency holds 6 x 10% sales deposits plus rent at the end of the month of, say, \$120,000 the combined balance could be around \$460,000 by end of month. The amount is calculated at a daily rate but given that sales deposits are generally held for at least 5 weeks it's reasonable to assume that the opening balance for the month could be \$100,000's. Multiply that by the percentage, say 5% and you have \$1,000's per annum from each and every agent in the state held in trust by the government.



## Trust Account Deficiencies – Case Stories

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These Case stories are for reference and information only, they are based in other states – However similar laws and penalties apply in Queensland.

The then NSW Fair Trading Commissioner, Rob Stowe, says the regulator is now seeking jail terms in addition to suspending licenses to send a clear message to the industry that trust account fraud won't be tolerated.

**In 2016 claims under the Compensation Fund had trebled to \$2,333,961 however, theft from trust accounts was more than \$5 million in 2015 and in 2019 an individual theft of \$3.65 MILLION by a principal has been found when the agency declared bankruptcy.**

It's difficult to judge the full extent of the damage to reputation of the real estate profession when theft occurs, however each event tarnishes the industry as a whole and builds distrust when dealing with agents in general. Although the consumer will eventually retrieve their funds through either the agency principal or the Statutory Interest Account (aka Compensation Fund) it is a lengthy process where they must prove their loss / damages.

"I really do think it's sending a bit of a shock wave through the industry, and we've actually had people contacting us to verify that people have been given custodial sentences. That's encouraging that people are sitting up and taking notice and looking over their shoulder."

"Either they're having difficulties with parts of their business and they think they can take money from the trust account to help balance the books, always intending to pay it back. Unfortunately in many instances it just doesn't happen. In other instances that money's being used to handle an addiction or to pay gambling debts."

### **Campbelltown agent convicted:**

A former Greater Western Sydney real estate agent who used client funds held in trust for a property she sold has received a suspended gaol term, Fair Trading Commissioner Rose Webb said on 13 March 2018. Vanessa Lea McGrath, 43, the former registered proprietor and licensee of McGrath Commercial Industrial Real Estate, was convicted in the Campbelltown Local Court for fraudulently converting \$9,136 from a trust account for personal use. McGrath was sentenced to seven months imprisonment, suspended, provided she adheres to a good behaviour bond for the same period. Ms Webb said McGrath

misappropriated trust funds, taking commissions before she was entitled to them and using the money for her own use.

“Immediately after a \$19,000 deposit was banked, McGrath debited \$9,136 from the account, noting in a handwritten ledger for the business it was a ‘commission’,” Ms Webb said. “Under the law real estate agents are required to hold money in trust for the vendors until settlement of the property.”

NSW Fair Trading administers and enforces the Property and Stock Agents Act, which amongst other matters regulates the handling, management and retention of trust money. “These laws are designed to ensure real estate agents act in a responsible and honest manner,” Ms Webb said. McGrath has the right to lodge an appeal.

NB – there is no connection between Vanessa Lea McGrath and McGrath Limited.

### **Agent uses deposits to pay off personal debts**

A former Strathfield real estate agent who fraudulently used more than \$380,000 of clients’ money held in trust has been sentenced to a 20-month Intensive Correction Order. Minister for Innovation and Better Regulation Matt Kean said 31-year-old Min Paul Pak was also ordered to pay more than \$87,000 to the NSW Property Services Compensation Fund.

“This was a breach of trust from someone who was meant to be helping people through the biggest transaction of their life,” Mr. Kean said. “Let it be a reminder: This government won’t put up with people who want to rip off consumers or small business. You will pay the price.” Mr. Kean said the former director of Haus Real Estate Pty Ltd was convicted in the Parramatta Local Court for misappropriating trust funds three times.

“On one occasion, after he helped in the sale of a house for more than \$1 million, Pak authorised the transfer of withdrawals totaling more than \$111,000 from a trust account to external accounts,” Mr. Kean said. “Those withdrawals had no connection to the sale of the house and Pak had no authorisation to disburse the funds.

“Selling property is extremely stressful and owners don’t need the added burden of worrying that something dubious may happen to their money.” Pak has been disqualified from being involved in the direction, management or conduct of a real estate agency for 10 years.

The Property and Stock Agents Act requires agents to hold money in a trust account for the vendors until settlement of the property. Agents found to be using trust money for their

personal use or the use of another person can be prosecuted and face penalties of up to 10 years imprisonment, even if the money is returned in full.

Source: Office of Fair Trading email release 12 September 2018

### **Steals from Second Employer Whilst Waiting Court Hearing for the First:**

Former property manager, Mark Kolodynski has been sentenced to 18-months in gaol with a 12-month non-parole period for stealing more than \$370,000 from real estate trust accounts.

Mr. Kolodynski, of Panania, pleaded guilty in Parramatta Court to taking the funds during his employment as a strata manager and rental property manager.

Minister for Innovation and Better Regulation, Matt Kean, said this is a timely warning to anyone thinking about stealing other people's hard-earned money. "If you choose to do the wrong thing, Fair Trading will come after you, and you will be prosecuted to the full extent of the law," Mr. Kean said. "This result reflects the hard work of Fair Trading's investigators who will continue to pursue dodgy operators to protect the community."

Fair Trading's investigation uncovered Mr. Kolodynski's systematic and unlawful conversion of trust money for his personal use. He withdrew tenant's bonds without their knowledge, paying them directly into his personal bank account. The investigators were alerted by the Bond Board.

According to information produced in court, Mr. Kolodynski used false descriptions relating to fictitious expenses to cover his illegal activity. Mr. Kolodynski's bank statements showed regular payments to an account at a well-known betting agency.

He was convicted of taking \$129,457.48 from Peeco Pty Ltd, trading as Harcourts Northern Beaches & Northern Strata, and \$243,965.30 from Bevans Wollongong.

Both companies have since reimbursed the corporations' trust accounts at their own expense, to repay the money taken by Mr. Kolodynski. At the time of the hearing, Mr. Kolodynski's real estate certificate had expired. In addition to the prosecution, NSW Fair Trading disqualified him from holding any real estate credentials for 10 years.

Source: OFT newsletter 5 May 2017

### **Crooked Commissions in Trust Account Fraud**

A real estate agent and company director who created fictitious real estate listings to obtain early commissions and defrauded his company's trust account of \$808,173.69 had pled guilty to 12 charges in Parramatta Local Court.

The charges included a number of Crimes Act offences including fraud and making and using false documents as well as offences under the Property and Stock Agents Act for fraudulently converting money. A number of other charges were admitted and taken into consideration for sentencing. Shaun Andrew Crockford, from Claremont Meadows, was sentenced to two years' imprisonment to be served by way of an Intensive Corrections Order, 30 March 2016 and concluding 29 March 2018.

Fair Trading Commissioner Rod Stowe said Mr. Crockford, of Quakers Hill Property Management Pty Ltd, trading as Wiseberry Kellyville, created false contracts for sale of land signed by fictitious vendors and purchasers, false bank account statements, false sales ledgers and false stamped bank deposit slips.

"He was robbing Peter to pay Paul to keep his cash flow going," he said.

"He fabricated 71 sales contracts for the purposes of drawing commissions from debtor factoring agencies, he provided fabricated records to the agency's auditors over a number of years and created several fake owner statements issued to landlords detailing remittances that were never paid.

"Mr. Crockford also fabricated a sales inspection report, exclusive agency agreement and sales contract document using the name of a former client and used an old contract reference number on the sales document. Furthermore, as a result of the defalcation of the trust fund, there was insufficient money to cover genuine purchasers' sale deposits to account to genuine vendors on five real estate sales transactions in 2015."

Properties were 'created' in suburbs including Kellyville, Rouse Hill, Cherrybrook, Beaumont Hills, Schofields and Castle Hill. NSW Fair Trading appointed managers over Quakers Hill Property Management Pty Ltd on 9 January 2015.

On 5 November 2015, NSW Fair Trading cancelled Mr. Crockford's real estate agent's license and disqualified him for 15 years. He is also disqualified from being involved in the direction, management or conduct of the business of a licensee for 15 years.

Source: OFT website 31 March 2016

# Banking Institutions Obligations to Report

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## Monthly balances:

Within 14 days of the end of each month ALL banking institutions holding trust funds must report to the Government relevant details of accounts, including:

- Name and number of the account
- End of month balance for each account – including any nil or overdrawn balances.

## Overdrawn accounts:

**Immediately of becoming aware of an overdrawn trust account, the financial institution must advise the Director-General in writing of:**

- **Name and business address of the licensee**
- **Name and number of the account**
- **Date on which the account became overdrawn**
- **The amount of which the account is overdrawn**

## Dishonoured cheques:

This usually occurs when there are insufficient cleared funds to cover the amount, however, leave some room for explanation until you know for certain.

Within 5 working days of becoming aware of a dishonoured cheque on a trust account, the institution must advise the Director-General in writing of:

- Name and business address of the licensee
- Name and number of the account
- Amount of dishonour
- The date on which the cheque was dishonoured.

# The Transaction Process

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## SOURCE DOCUMENTS:

Below are examples of primary and secondary source documents and registers that you will need to know about, with handling of trust accounts.

Records of Prime Entry may include:

- Cheques / EFTPOS payments
- Receipts

Records of Secondary Entry may include:

- Contractor invoices
- Deposit slip / books / ledgers / journals
- Legal documentation – cooling off notification, early deposit release notification and settlement documentation
- Receipt registers
- Unclaimed moneys register

If the license is held by a corporation, the trust account is to be in the name of the corporation and in any other case is to be the name of the licensee or of the firm of licensees, e.g.

Cottontails Pty Ltd trading as

Bunny & Co Real Estate

Sales Trust Account No. 777-999

Not only these details but also the name of a trust account and the description of the trust account in the books and records of the licensee ON ALL TRANSACTIONS.

**TRANSACTIONS MAY INCLUDE:**

- Electronic, computerised or manual entries or processes
- Property management or property sales

**RECORDS MAY INCLUDE:**

- Account balance statements
- Account sales
- Bank reconciliation statements
- Rental statements
- Rescission statements
- Transfer journal
- Trust cash payments journal
- Trust cash receipts journal
- Trust ledger

### **RECEIPTS:**

All agents who operate a trust account must have:

1. A register of trust receipt forms, containing a record of the receipt number, and
2. All receipts in duplicate and appropriately named, e.g. "office copy"

Each trust account receipt must include:

- a title that says 'Agents Financial Administration Act 2014 – Trust Account Receipt'
- a unique receipt number (with all receipts in consecutive order)
- the name of the trust account holder (principal licensee)
- the agent's licence number
- the date the trust money was received and the date the receipt is completed
- the name of the person completing the receipt form and if the receipt form is from a receipt book, or is a hard copy of a computer entry, the person's signature
- the name of the person for whom the receipt is completed
- the name of, or other means of identifying, the person on whose behalf the trust money is received
- a brief description of the matter for which the trust money is received
- the amount of trust money received, expressed in figures
- how the trust money was received (such as cash, cheque, direct deposit or electronic funds transfer)
- if the trust money received is rent; the address of the rented premises and the day up to which the rent is paid

- if the trust money received is payment from a prospective buyer for an option to purchase a used motor vehicle for sale on consignment, the vehicle's:
  - make ○ body model ○ colour ○ engine number or, if the vehicle is a caravan, the chassis number ○ identification number ○ registration number ○ built date.

**Below is an example of a rent receipt:**

YOUR AGENCY PTY LTD Trading As CITY AND COUNTRY REAL ESTATE ABN 34-091-643-702							
MANAGEMENT TRUST ACCOUNT							
Date	Receipt #	Tenant	Address	From	To	Amount	Credit
01/02/2020	787878	MR PETER SMITH	7 Park St., Park Town	01/02/2020	08/02/2020	\$450	---

**DEPOSITS:**

**You must pay trust money into a trust account before the end of the:**

- first business day after you receive the money

Below is an example of a bank deposit slip:

YOUR AGENCY PTY LTD Trading As CITY AND COUNTRY REAL ESTATE ABN 34-091-643-702			
MANAGEMENT TRUST ACCOUNT			
CASH.....			\$2,000.00
Name of Drawer	BSB	Account	Amount
1. Tom Jones	032-717	12312368	\$ 500.00
2. Elvis Costello	062-516	152659	\$2,000.00
3. John Farnham	032-825	3263263	<u>\$1,000.00</u>
CHEQUES.....			<u>\$3,500.00</u>
TOTAL DEPOSIT.....			\$5,500.00
	Signature	01/02/2020	



Taking money out of the account is called a disbursement and be done only via a cheque or EFT – you cannot draw a cash amount from the trust account.

**DISBURSEMENTS MAY INCLUDE:**

- advertising reimbursements
- commission including letting fees and administration fees
- tribunal appearance fees
- strata levies
- contractor payments

Below is an example of a cheque which is the primary method, along with electronic transfer for disbursing funds from a trust account:

<p>Date 01 / 02 / 2020</p> <p>Payee ABC Plumbing Mitchell 33/57 Jacaranda</p> <p>Amount \$99.70</p> <p>Cheque 0008880</p>	<p>XYZ Real Estate Pty Ltd <b>CHQ NO</b></p> <p><b>0008880</b></p> <p>Management Trust Account</p> <p>ACN 34-091-643-702</p> <p>Payable to: ABC Plumbing 01/02/2020</p> <p>Amount of: Ninety nine dollars and seventy cents only. \$99.70</p> <p><u>L Sullivan</u></p> <p>Westpac 032-717 282427</p>
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**You must keep adequate records of your trust account, and keep these account records for 5 years.**

The records must include:

- a deposit book of trust account deposit forms in duplicate
- a cash book
- a journal of consecutively numbered folios
- a ledger.

You must also keep:

- full and accurate accounts of all money you pay or receive for a transaction

- all books, accounts and records in a way that is easy to audit.

### JOURNALS:

A journal is used to transfer funds internally. For example, if a landlord owns multiple properties but has them on separate ledgers / statements they may allow funds to be transferred from one property to cover costs on a vacant property. The funds can then be 'put back' when the tenant moves in and starts paying rent.

Another example could be drawing funds from the commission or sundries ledger to cover dishonoured bank fees, etc throughout the month.

Below is an example of a journal:

Particulars	From	To	Amount
01/02/20 Cover dishonoured bank fee – 11 Thomas Pl, Down Town	AACOMM	PARKES	\$35.00
02/20 Tenant reimbursed bank fees to agency	PARKES	AACOMM	\$35.00

### LEDGERS:

Remember, there are two sides to a ledger – debit side and credit side. For every entry there is an equal corresponding entry. Think about Einstein's theory: for every action there is an equal and positive reaction.

If the tenant pays \$400 rent then that's a credit into the trust account and to the landlord. However, to the banking institute it's a \$400 debt that they owe back to the account holder. If you pay an insurance premium for your landlord's property then the debit is against the landlord and the credit is to the insurance company (the creditor).

Your question may well be, "if there are two sides to a ledger how will I know which side to post to?"

The rules are:

- An expense / loss place on the debit side (e.g. rates, levies, repairs)
- An asset / acquisition place on the debit side (e.g. purchase of stove)
- Income / gain place on the credit side (e.g. rent, water usage reimbursed)

When dealing with individual landlords, remember any money left in their account at the end of the month is marked as “carried forward” (c/fwd) and marked in the new month as “Brought down” (b/d). The carried forward amounts need to be taken into account when balancing the books for the previous month as they will affect the trial balance.

## Sales Ledger

Below is an example of a ledger:

Jack Butler sold 10 Albert Place, Albert Town for \$800,000 to Sue Smith on 3rd of this month. There was the usual, initial cash deposit of 0.25% on exchange of contracts. Sue has today paid the balance of 10% via bank transfer. This is how the ledger would look:

BUTLER		To	SMITH	Ledger # 1056		
Property: 10 Albert Place, Albert Town						
DAT	DESCRIPTION		MET	AMOU	BALANCE	
E	Receipt #		H	NT		
			O			
			D			
01/1	025% DEPOSIT	101	CAS	\$	\$	
1			H	2,0	2,000	
/				00.	.00	
2				00		
0						
05/1	BALANCE 10% DEPOSIT		TFR	\$78,00	\$80,000.0	
1	107			0.0	0	
/				0		
2						
0						
08/1	JACK BUTLER – S/MENT	FUNDS	EFT	\$64,00	\$16,000.0	
2	332			0.0	0	
/				0		
2						
0						

08/1	BEST AGENT OUT THERE COMM	EFT	\$16,00	NIL
2	333		0.0	
/			0	
2				
0				

You must pay the client first then draw your commission – this applies to rental commission also.

Documents you would regularly review in order to comply with legislative requirements:

- Trial balance sheet
- Sales ledger
- Tenancy ledger
- Bond ledger
- Landlord statement
- Rent and / or sales receipt
- Bank statements

### **RECONCILIATION STATEMENTS:**

Basically, consider this a “run sheet” of the trust account. It’s simply a formula of calculation, i.e. income (receipts) less expenses (disbursements) adjusted for any unpresented (cheques not presented to bank) or outstanding deposits (cash in drawer or daily banking) and taking into consideration any opening balances (sales deposits / landlord funds held from previous month). The end figure should then correspond to the closing amount of the bank account (statement).

Under best practice carrying out a reconciliation on a daily basis reduces the risk of not being able to find when and where it no longer balanced. Checking back through a day or two of transactions is much better than a month’s worth, especially in larger agencies. Also, a final reconciliation statement should be completed immediately prior to commencing the end of month process.

### **Trust account cash book reconciliation**

A trust account cash book reconciliation must be completed within 5 days after the end of the month, the must reconcile the following balances as of the last day of the month:

- the trust account cash book balance with the trust account ledger balances
- the trust account cash book balance with the financial institution's trust account statement balance at the end of the calendar month—ensuring all deposits are finalised and the correct balance is available .

Remember, to bring down the credits from the previous month's ledgers before attempting to do your reconciliation.

### **COMMON ERRORS**

Compensating errors are mistakes that happen which cancel each other out, e.g. Mr Smith's rent of \$400 has been paid to Ms Smith's ledger but the error is only discovered when Ms Smith falls into arrears and complains. The bank has balanced so there hasn't been any knowledge of the error before that.

This would usually be reversed from one ledger to another via a journal entry. Remember to make a notation on the file as to why the money was transferred. We also have 'transposed figures', for example the amount was \$17.98 but it's been processed as \$17.89 and you don't balance. Yes, you have to balance to the exact cent.

Any shortfall from the trust account must be immediately rectified with sufficient notations so that it is clear for the auditor as to 'what went wrong' and how it was fixed. Sometimes it pays to have another set of eyes look over the work. It's just human nature (and the way our brain works) that we can look at the error over and over again and 'not see it'.

## **Electronic Funds Management Including Transfer, Deposit and Verification**

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Discussed elsewhere in this unit (Receipts) are the receipting requirements of direct payments received by your tenants. Tenants should have a code number to quote in the "reference" section of their on-line banking (it's good office procedure to have this on the front page of their tenancy agreement so they have a reference point right from the start).

Cross-reference this to the agency's computer base. It saves the discrepancy of doubling up of the same surnames or street names. It is most frustrating to have money sitting in the trust account which can't be attributed to a tenant, and therefore, not passed on to a landlord or commission received into the agency's account!

Make it a procedure of writing the receipt number beside every direct deposit on the bank statement. This is invaluable down the track if/when you have a tenant disputing their rent receipts.

## Client Confidentiality

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The trust account is soundly rooted in the rules of privacy and confidentiality. This applies to landlords, tenants and the agency itself. Let's look at a few areas that you need to deal with confidentially in regard to accounts:

Landlord – mortgage payments; amount of rent received; who receives the income.

Tenant – arrears of rent or difficulty/arrangements to pay; amount of rent paid; dishonours.

Agency – the amount or rate of commission which may be earned by the agency (the Licensee would not be happy to think their income or rate was discussed with your friend in a competing agency).

## Legislative And Regulatory Requirements

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### Compliance – Technology & It Systems

Due to the multiplicity of real estate computer packages available we will not discuss one brand's merits over the other, however it is fairly safe to assume that all function within the guidelines and regulations as set down by OFT, in so far as what will be allowed and what will not. There is a reason why some transactions require a pass key from your software supplier, for example if you need to cancel a receipt from a previous month's transactions say, for a dishonoured cheque.

Computerised accounting systems

If an agent uses a computerised accounting system (the system) to manage their trust account records, they must ensure it:

- does not allow the deletion of a trust ledger account unless the balance is zero and a record of the account is kept immediately before it is deleted
- records any amendments to a transaction recorded on the system as a separate transaction (i.e., the original transaction and the amendment will both be recorded on the system)
- produces records in chronological order .

The system must also be capable of keeping, in chronological sequence, a record of changes to:

- the name or address of a person for whom trust money is held
- any description of a matter being conducted by the principal agent
- an amount of trust money held for a person by the principal agent
- the financial institution account number of a trust account .

## TRUST ACCOUNTS

If an agent uses the system to keep a trust ledger account or to prepare a trust account cash book reconciliation, they must produce a hard copy of the reconciliation within five business days following the end of the calendar month . This must include the bank balance, cash book and ledger account, including the name and amount of each client ledger . Before deleting any trust ledger account, a hard copy must be made and kept in the agent's records .

When using a computerised accounting system, agents must ensure the:

- computer system has enough backup capability to record the information required to be kept by the Act
- system is backed up at least once a month
- backed up information is not stored at the agent's business address and is protected from anything that could affect the backed up information (such as magnetic interference) .

Computerised accounting systems can make it easier to comply with many of the requirements of the Act and Regulations . Unfortunately, some popular general accounting and spreadsheet software allows deletions or edits to be made in a way

that does not comply with the Act, and care must therefore be taken when choosing and using software to manage trust account records and reporting .

**Whichever system an agent uses, it is their responsibility to ensure the system is kept up-to-date and that all aspects of their record keeping comply with the Act and Regulations.**

**Legislation reference:**

Regulations 3, 4, 26 and 27 of the Agents Financial Administration Regulation 2014

## Client Instructions, Expectations And Needs

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An agent can only follow client instructions, meet their expectations and needs, when they do not contravene the Act and its Regulations.

It's good office policy to get everything in writing, especially these days with the ease of emails via our smart phones and devices. All landlords expect rent to be paid in accordance with the tenancy agreement and often, base their purchase of an investment property on the rent covering a large, if not all, portion of the mortgage payments. Thankfully, with the improvement of the banking system the transferring of money via direct depositing has enabled tenants to pay on-line and agents to disburse funds almost immediately.

It is also more common than not for landlords to request mid-month, or fortnightly payments. A financial report can be requested at any time by a landlord. Whether the agency charges for this service depends on the management authority. The Agent MUST provide this report within 7 days of the request provided it is a current file and within 30 days if it is an archived file.

The end of month landlord statement must state:

- Name of tenant
- Address of property
- Income received during that period
- Dates paid from / to
- Expenses (eg repairs, rates) disbursed during that period
- Commission and administration fees charged



CAMDEN & DISTRICT REAL ESTATE PTY LTD Trading As BEST REAL ESTATE AGENT EVER ACN: 84-071-613-711 MANAGEMENT TRUST ACCOUNT					
MR K J & MRS K A SMITH 2020 PO BOX 117 CAMDEN NSW 2570					Month of: SEPTEMBER
Property: 7 PARK ROW, PARK TOWN Tenant: JANET BROWN					
Rent: \$400 P/WK					\$2,000.00
<b><u>CREDITS</u></b>					0 -
Paid From	Paid To	Weeks	Amount	Credit	
28/08/2020	02/10/2020	5	\$2,000.00	NIL	<u>\$473.00</u>
<b><u>DEBITS</u></b>					<b>\$1527.00</b>
Muddy Boots Plumbing.....\$ 300.00					
Agency commission @ 6% .....\$ 120.00					
Administration and bank fees.....\$ 10.00					
GST.....\$ 43.00					
<b><u>PAID TO</u></b>					
K J & K A SMITH BSB 032-717 ACCOUNT 282427					

## Discrepancies

May include:

- Details of transactions, including insufficient or incorrect data on source documents
- Monetary, including:
- Claiming of entitlements
- Fraud

- Inadvertent bank charges
- Unclaimed moneys

### Fraud:

Unfortunately, it is often where you least expect it and can take many faces. If it occurs and is discovered, the licensee has an obligation to report it immediately – regardless.

### Inadvertent bank charges / errors:

This will always occur at some time. It needs to be immediately reversed into the general account and notations made. Often a dishonoured rent cheque will be the cause, though sometimes the monthly account fees can be processed on the trust in error or even a disbursed amount may have the figures reversed and therefore, overdrawn.

If the cause is a dishonoured cheque you cannot wait for the tenant to reimburse the fee, either do an immediate transfer from the general account or deposit the amount direct to the bank from petty cash. Speed is essential.

## Unclaimed moneys

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If an agency cannot identify the person entitled to the trust money, those funds may be considered unclaimed money under the *Public Trustees Act 1978*,

### **25 Unclaimed moneys fund**

(1)The public trustee must continue to keep the account called the Unclaimed Moneys Fund (the **fund**).

(2)As soon as reasonably practicable after the end of each financial year, the public trustee must pay to the consolidated fund all amounts that, as at the end of the financial year, have been credited to the unclaimed moneys fund for 6 years or more.

(3)The Minister may direct that the whole or part of amounts credited to the fund that have not been paid to the consolidated fund be invested in the following investments—

(a) investments mentioned in [section 21\(6\)\(b\)\(i\)](#);

(b) investments that may be prescribed by regulation.

(4) Interest on the investments must be paid to the consolidated fund.

**Dishonoured cheques / rejected direct debits:**

Of course, in the agency you will need to:

- Contact the tenant immediately to replace the dishonoured cheque amount
- If this can't be done immediately, cancel the receipt and reverse the transaction
- Make a note on the tenant file NOT to accept future cheques ● If needed, contact the landlord and advise them of the situation ● If DD rejected the same procedure applies.
- This will also most likely place your tenant in arrears.

**Disclosure Notice:**

**The material contained within this resource book is written and published as a learning guide to participants and is not intended to be formal advice on the law. You should seek your own independent advice in relation to any issues contained in the subject matter and for any update of the Property Occupations Act and its Regulations.**

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