



REBA NEWS

A newsletter from the Real Estate and Business Agents Supervisory Board

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www.reba.wa.gov.au

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PAY YOUR CERTIFICATES BY BPAY

As of 1 February 2008, Real Estate Agents and Real Estate Sales Representatives can pay certificate renewal applications or holding fees using BPAY.

The BPAY payment facility is being added as a payment option to couple a more efficient payment service with a more convenient and secure way for agents and sales representatives to pay for certificate renewal applications.

BPAY allows applicants to make the renewal or holding fee payment prior to sending in the application form, using phone or internet banking. The current renewal fee payment options - cheque, money order, direct payment at the DOCEP cashiers desk or the provision of credit card details on the renewal application form - will still be available.

Agents and representatives should be aware that payments using BPAY

may take up to 48 hours to reach REBA. Accordingly, those renewal applicants, who have less than this amount of time before the certificate or holding status expires, should use one of the alternative payment options.

For further details regarding the introduction of the BPAY payment facility or any other licensing queries please contact the licensing advice line on 08 9282 0839 or, for regional callers, 1300 30 40 54.

ENSURE COMPLIANCE WITH THE DO NOT CALL REGISTER

The *Do Not Call Register Act 2006* ("DNCR Act") came into effect on 31 May 2007. From this date it became illegal for a person to make any unsolicited telemarketing call or cause a telemarketing call to be made to any telephone number listed on the Do Not Call Register.

As part of their marketing activities, agents may use phone number lists to 'cold call' for potential business. In order to comply with the DNCR Act, agents should submit their calling lists to be checked to identify what numbers they can or cannot call. This is to ensure that agents do not call numbers listed on the Do Not Call Register.

A 'washing' service has been established so people can check, or wash their calling lists against the numbers listed on the Do Not Call Register. Unsolicited telemarketing calls must not be made to any number on the register. Fees apply to this service.

Real estate agents should be aware that the person who submitted a calling list for washing can only rely on the washed list they receive for a maximum of 30 days. The 30 day rule provides a safeguard in the event that a caller calls a number added to the list in the 30 days since a list was last washed. Agents should ensure

they wash any calling lists they use within the 30 days prior to making a call to any number on such lists.

It is important to note that the 30 day rule only applies to the person who submitted the calling list for washing. Agents need to wash their own calling lists as they cannot rely on lists that they believe have been checked by a third party provider.

An agent making telemarketing calls to numbers obtained by business contact through the agency (for example, an open house) must ensure it is clear they have obtained express consent in writing for telemarketing calls to be made to that number for a specified time period. Agents must make it clear to the person providing consent that they are consenting to telemarketing calls.

Real estate agents are advised to ensure they comply with the DNCR Act or they are likely to face penalties. The Australian Communications and Media Authority can enforce penalties such as formal warnings, infringement notices, injunctions and court proceedings to parties found to have breached the Act.

To find out further information about the Do Not Call Register and how to submit calling lists for washing, visit www.donotcall.gov.au > Industry website or call 1300 792 958.

RESOLVING DISPUTES THROUGH CONCILIATION

From time to time agencies may occasionally receive a telephone call from a REBA Conciliation Officer. For those not familiar with the process, the Board refers complaints for conciliation if it is felt that the matters in contention can be resolved by a process of negotiation. The Conciliation Officer will usually only discuss such matters with the person in *bona fide* control.

These types of disputes often emerge if a breakdown in communication occurs between parties. Although varied in nature the most common types of complaints received relate to property management issues, usually between property owners and agencies. Unfortunately, with complaints of any kind come the associated emotions and accusations, which is why communication often breaks down to begin with. But

with a neutral, third-party approach, a REBA Conciliation Officer is able to discuss matters with both parties in an effort to find a consensus resolution.

Conciliation Officers do not force either party to the negotiating table, nor do they insist that either party accept their recommended solutions. The Board's role in conciliation is simply to assist the parties to resolve a dispute by working towards an agreement. When the parties involved do not agree to conciliate a dispute, the option for all concerned is to seek independent legal advice to see what rights or remedies may be available. The Registrar will then consider the original complaint to determine its further direction. However if it is determined that further investigation is warranted, any information or documentation

obtained through the conciliation process cannot be used.

The success rate of conciliation is high, with many disputes successfully resolved. If you do receive a call and wish to take part in the conciliation process, remember that you can communicate in whichever way suits you best. The conciliation process can take place by telephone, here at REBA, in your office (distance of travel permitting) or by mail, fax or e-mail. The choice will always remain yours.

Importantly, in the conciliation process, absolute confidentiality is assured for all parties involved. This applies to written documentation received, including emails, and with matters discussed over the telephone or in person.

CPD IN 2008 – BEAT THE END OF YEAR RUSH AND BOOK IN NOW

Are you a licensed real estate and business broking agent, hold a current triennial certificate but haven't booked in for CPD yet? Then organise your CPD program for the year now and beat the end of year rush.

CPD training has now been outsourced to external providers. Agents must attend a half day seminar encompassing the mandatory topics this year to gain three CPD points and then complete a further seven points of elective CPD activities.

The training providers listed below were approved by the Board to deliver the mandatory subjects to an allocated number of students and should be contacted to book your place:

West Coast Property Training 08 9300 0000
info@westcoastpropertytraining.com
www.westcoastpropertytraining.com

Kaplan Education 1300 662 203
mail@kaplan.edu.au www.kaplan.edu.au

Central TAFE 1300 300 822
For metropolitan and country areas
(Kalgoorlie, Geraldton, Port Hedland, Broome, Karratha, Northam, Bunbury, Busselton and Margaret River)
www.central.wa.edu.au

Great Southern TAFE 1800 675 781
For courses in Albany:
info@gstafe.wa.edu.au
www.gstafe.wa.edu.au

Remember to retain your certificate of attendance in a safe place as evidence of your participation in the CPD program as you will need to include it with your next application for renewal.

CPD for sales representatives will start in 2009, however they are still able attend training sessions if they choose.

Statutory Declarations – use the right form and get the right person to sign it!

The Board reminds agents that when completing statutory declarations they must adhere to the amendments made to the *Oaths, Affidavits and Statutory Declarations Act 2005* (“the Act”). The Act came into operation on 1 January 2006 and amended:

- the form to be used for a statutory declaration; and
- who may be an authorised witness of a statutory declaration.

The role of the commissioner for declarations (also known as a ‘cd’) no longer exists under the Act. Agents must refer to the list of authorised witnesses included in this article or the more detailed list on the REBA website for persons who are able to sign and witness statutory declarations.

Go to: www.reba.wa.gov.au > For Agents > Industry Publications

This legislation has expanded the previous list of persons who were authorised to witness to more than 40 occupational groups. These include:

- Academics - University faculties
- Architects
- Australian Consular Officers
- Australian Diplomatic Officers
- Auditors and liquidators
- Bank Managers
- Chartered Secretaries
- Chemists
- Chartered Accountant and Certified Practising Accountant
- Chiropractor
- Defence Force Officer
- Dentist
- Doctors
- Electorate Officers (State)
- Engineers
- Industrial organisation secretaries
- Insurance brokers
- Justice of the Peace
- Lawyers
- Local government CEO’s and Deputy Chiefs
- Local government councillors
- Loss adjusters
- Marriage celebrants
- Members of Parliament
- Minister of Religion
- Nurses
- Optometrists
- Patent Attorney
- Physiotherapists
- Podiatrists
- Police officer
- Post Office Managers
- Psychologist
- Public notary
- Public Servants (Commonwealth)
- Public Servants (State)
- Real Estate Agents
- Settlement agents
- Surveyor
- Teachers
- Veterinary surgeons

When witnessing the signing of a statutory declaration the authorised witness must:

- **Ensure that the document is prepared and signed correctly.**
The declaration must be in the approved format, fully completed and signed. Any alteration, such as an insertion or erasure, must be initialled.
- **Take an oral declaration.**
The authorised witness must ask the person to declare orally that he or she is the person who made the declaration, that the contents of the declaration are true and that the signature is his or hers.
- **Witness the statutory declaration.**
After the person has given the oral declaration, the authorised witness must sign the declaration, sign or initial any alteration that has been made and clearly write their name and qualification as a witness.

For more information on the witnessing of statutory declarations visit the Department of the Attorney General: www.justice.wa.gov.au > Justices of the Peace > Witnessing Documents

The statutory declaration form (below) must comply with the content and format specified in the Act.

OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

STATUTORY DECLARATION

I,.....
.....
(name, address and occupation of person making declaration)

sincerely declare as follows:

.....
.....
.....
.....
(insert content of the statutory declaration; use numbered paragraphs if content is long)

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005

at
(place)

.....
(date)

in the presence of -

.....
(Signature of authorised witness)

.....
(Name of authorised witness and qualification as such a witness)



by.....
(Signature of person making the declaration)

Sales Instruction Sheets

REBA is seeking feedback from real estate agents and sales representatives about sales instructions sheets their office currently uses.

Proactive Compliance officers often receive complaints from settlement agents regarding inadequate or inaccurate instructions they receive from real estate personnel on their sales instruction sheets. It is important that these instructions are accurate as the information is used on the land transfer document and to complete the settlement process.

In order to explore the issue further, REBA would like to hear from agents and sales representatives. If you have had any feedback from settlement agents regarding your

agency's sales instruction sheets or have a format that works well for your agency we would like to hear from you. This information may be used to plan a possible future workshop where industry members and Proactive Compliance could discuss and design a master or template sales instruction sheet.

Send comments, feedback and examples to proactiveseminars@docep.wa.gov.au or telephone the Proactive Team on 08 9282 0593.

REBA NEWS DELIVERED STRAIGHT TO YOUR INBOX

The REBA News delivered straight to your inbox - a convenient way for you to receive the latest information about issues in the Real Estate Industry in Western Australia.

Electronic communications are rapidly being taken on by business organisations as essential communication tools. The Board is keen to use these technologies fully and is considering replacing the current print newsletter with an electronic bulletin or “e-bulletin”. This development reflects the Board’s desire to reduce paper consumption for environmental reasons, as well as being a more effective and contemporary way to communicate with its members.

REBA news items would be regularly delivered to your

inbox with the subject line heading *REBA e-bulletin*. Your privacy will be protected as other recipients on the distribution list will not be able to view or use your email address. To be satisfied that crucial information, such as changes to regulations or legislation, is received by agents and sales representatives the Board will continue to correspond by letter through Australia Post. Call 08 9282 0839 or email rele@docep.wa.gov.au to update your postal address.

REBA has received positive feedback from members supporting the initiative and wanting to subscribe to the e-bulletin distribution list. If you would like to comment on this initiative or subscribe complete the feedback form below or email contactus@reba.wa.gov.au.

Benefits of receiving e-bulletins include:

- * One or two articles at a time will be sent to your inbox, a quick way to keep up-to-date with industry issues in your busy schedule.
- * Hyperlinks within the articles will direct you to related information on the REBA website or on the web.

- * An easy contact facility via email links will be provided so you can update address details, book CPD seminars and give feedback to the Board.
- * Past articles will be archived on the REBA website for future reference.
- * You can forward relevant articles to colleagues.

FEEDBACK FORM

Do you support replacing the current print REBA newsletter with an e-bulletin?

1	2	3	4	5
Strongly support	Support	Neutral	Do not support	Strongly against

Comment

Send feedback to:

Mail: Locked Bag 14, Cloisters Square, WA 6850 Fax: 08 9282 0869

REAL ESTATE AGENT AND PERSON IN *BONA FIDE* CONTROL FINED FOR BREACH OF THE REBA ACT AND CODE OF CONDUCT

Recent disciplinary proceedings against a real estate agency and its current person in *bona fide* control were settled at mediation with orders being made against them by the *State Administrative Tribunal* (“SAT”).

The proceedings determined that on two occasions the real estate agency:

- received \$435.60 and \$462.00 in respect of its services in its capacity as an agent where it did not have a valid appointment to act in that capacity, contrary to section 60(1) of the *Real Estate and Business Agents Act 1978* (the “Act”);
- advertised that real estate was for sale or lease or erected or displayed a notice of sale or leasing without written authority, contrary to article 4(3) of the *Code of Conduct for Agents and Sales Representatives* (the “Code”); and
- demanded for service amounts which were greater than the amounts agreed in writing with the principal, contrary to article 14(b) of the Code.

In addition, on three occasions the real estate agency:

- did not promptly supply to the principal all relevant information and material which the principal may reasonably require in order to be satisfied as to the amount of the sign board expense and that the sign board expense was properly incurred by the agent, contrary to article 15(1) of the Code; and
- sought reimbursement in respect of a sign board where the principal had not agreed in writing to pay the expense, contrary to article 15(2) of the Code.

Also, the person in *bona fide* control of the agency, in allowing the above conduct by the agent, failed to properly supervise the agency and take reasonable steps to ensure that sales representatives and other employees of the agency complied with the provisions of the Act and the Code.

The SAT ordered that:

- the real estate agency pay a fine of \$2500 and costs of \$1000, and reimburse its clients \$435.60 and \$462.00; and

- the person in *bona fide* control pay a fine of \$500 and costs of \$500.

The agency and the person in *bona fide* control stated that a review of the procedures of the agency had been undertaken resulting in improved such procedures which complied with the Act and the Code.

The Board reminds all agents and sale representatives of their responsibilities and duties under the Act as they relate to advertising property for lease or sale, and the Code which imposes further responsibilities and duties on them.

In summary, all agents and sales representative are reminded that:

- (1) any marketing costs reimbursements must be actual expenditure and costs incurred;
- (2) prior to the recovery of expenditure agents must comply with article 15(1) of the Code; and
- (3) informed consent of the principal is required for the recovery of in-house production of marketing brochures.

DECLARATION OF NO RECEIPT OF TRUST FUNDS FORM

Every individual, partnership or body corporate that conducts business as a real estate agent during the whole or part of a year must submit a trust account audit report by 31 March. The Board reminds triennial certificate holders that audit requirements still apply to them even if they have not traded during the year and have no accounts to audit.

If a licensed agent has not received or held money in the course of business for or on behalf of any person, they **must** lodge a ‘Declaration of no receipt of trust funds form’ by 31 March. The trust account audit period is from 1 January to 31 December in any given year.

This is a statutory requirement under section 86 of the

Real Estate and Business Agents Act 1978 (the “Act”). Section 86 of the Act states:

An agent who holds a current triennial certificate but who, in the course of his business, has in any year neither received nor held any money for or on behalf of any other person shall be deemed to have complied with this Part if within the period of 3 months after the end of that year he makes a statutory declaration to that effect and delivers it to the Board.

The receipt of a late declaration submitted after 31 March may result in the agent being brought before the State Administrative Tribunal on the recommendation of the Board for an inquiry. If you have any queries please contact the Board’s Trust and Fidelity section on 08 9282 0786.

This newsletter contains general information that was current at the time of publication. If you have specific enquiries arising from any material in this publication, you should write to the Registrar of the Real Estate and Business Agents Supervisory Board, or seek independent professional advice. The producers of this publication expressly disclaim any liability arising out of a reader’s reliance on information in this publication. This publication was issued by the Real Estate and Business Agents Supervisory Board.



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