



Information for complainants

Real estate and business broking industries

This fact sheet contains information you should know when making a complaint about the conduct of a real estate agent or their sales representatives (including property managers).

The Real Estate and Business Agents Supervisory Board (the Board) treats all complaints seriously, so please take the time to read this information. Before making a complaint to the Board we recommend contacting the agent to find out whether your complaint can be resolved through them directly.

About us

The Board is the independent statutory authority responsible for regulating the activities of licensed real estate and business agents and registered sales representatives in Western Australia. The Board is established under the *Real Estate and Business Agents Act 1978* (the Act).

The Registrar and inspectors of the Board have powers of investigation and inquiry which they may exercise for the purpose of determining whether an agent or sales representative is complying with the requirements of the Act, the Code of Conduct for Agents and Sales Representatives (the Code of Conduct) and any conditions of their licence or certificate of registration.

The powers of investigation may also be used to determine whether there is any other cause which makes an agent unfit to hold a licence, or a sales representative unfit to hold a certificate of registration. Finally, the Act provides for the Registrar and inspectors to

conduct investigations into people who hold themselves out to be agents or sales representatives, or conduct real estate transactions without being properly licensed or registered.

Your complaint

The usual way in which matters are brought to the attention of the Board is by a complaint. The Act does not specify who may complain about the conduct of an agent or sales representative. Complaints may be received from consumers, another agent or sales representative, auditors, or from anyone else.

If you are dissatisfied with the standard of conduct of an agent or sales representative you should:

- Refer to the Board's website www.reba.wa.gov.au for information regarding your rights and the functions of the Board.
- Discuss your concern with the agent or sales representative (or the agent in charge of the representative) to whom your complaint relates. This may give them the opportunity to rectify the problem.
- If you remain dissatisfied, contact the Board through the Real Estate and Settlement Advice Line on 1300 30 40 64 to discuss the matter, or email: contactus@reba.wa.gov.au.

- If, after discussing the matter, you wish to lodge a formal complaint with the Board you can:
 - complete and lodge an online complaint form on the Board's website, www.reba.wa.gov.au;
 - complete a complaint form (available for download from the Board's website or by contacting the Advice Line above) and submit it to the Board by post or in person; or
 - write to the Registrar detailing the complaint and attach all relevant contracts, correspondence, and any other documents that will assist in the assessment of your complaint.

You will receive acknowledgement of your complaint by mail, and an officer will contact you.

All written complaints relating to the conduct of an agent or sales representative are referred to the Registrar, including those complaints addressed to Consumer Protection which come under the jurisdiction of the Act.

Upon receipt of the complaint, the Registrar will assess any potential breach of the Act or Code of Conduct or any other misconduct by an agent or sales representative.

During this initial review the Registrar may also determine whether the complaint should be:

- evaluated for investigation;
- conciliated;
- dealt with as a fidelity account claim; or
- referred to another disciplinary body if it does not fall within the jurisdiction of the Act.

An inspector will conduct a preliminary assessment of complaints to be evaluated for a potential investigation. During this assessment, the inspector may write to the agent or sales representative outlining the nature of the complaint and request a response. A copy of the letter may also be sent to the person in *bona fide* control of the agency concerned. The inspector may also telephone the agent or sales representative to discuss the complaint and may ask to see relevant documents.

During the preliminary assessment of a complaint, the inspector may not compel a person to provide information and documents. Information and evidence obtained during this process may be used later if the matter proceeds to an inquiry.

The Registrar may issue a direction for a formal investigation to proceed if the preliminary assessment identifies sufficient cause for concern.

Formal investigation process

Where the Registrar directs a formal investigation into a complaint, an inspector will seek further information from the agent, sales representative or others concerned. For the purposes of carrying out such an investigation or inquiry, the Registrar or inspector may require a person to:

- give information;
- answer a question put to them; and
- produce any document relating to the investigation or inquiry.

The inspector may interview and take statements from the person who made the complaint and anyone else who may be able to give relevant information. The inspector may require questions to be answered under oath or affirmation.

Inspectors are under statutory obligations to maintain the confidentiality of information obtained in the course of their duties. Inspectors are also aware of their responsibilities when handling personal information and the need for it to be stored securely.

Outcome of the investigation

At the conclusion of an investigation the Registrar may take one or more of a range of actions. The Registrar will notify all parties in writing of the outcome.

Where the investigation does not identify sufficient evidence of a breach of the Act or Code of Conduct, the Registrar will take no further action.

Even where an investigation reveals evidence of non-compliance with the Act or Code of Conduct this may not always result in disciplinary proceedings before the State Administrative Tribunal (SAT) or the Magistrates Court. Depending on the circumstances, the Registrar may decide to close the file within Board policy.

Where there is sufficient evidence of a breach, the Registrar may recommend that the Board bring the matter before the SAT alleging that there is proper cause for disciplinary action against the agent or sales representative. The SAT will consider a range of factors

such as the nature of the conduct, prior history of compliance with the Act, and the strength of the evidence available.

The Board may also refer certain alleged breaches of the Act for prosecution in the Magistrates Court.

Evidence of any criminal conduct is usually referred to the police by the Board.

Conciliation process

The Registrar may also refer a matter for conciliation where the breach identified is of a suitable, minor nature and both parties are willing to participate. The Board will not offer conciliation if the issues raised involve allegations of dishonesty on the part of the agent or sales representative, significant financial loss to the complainant or a serious breach of the Act or Code of Conduct.

Conciliation is a free, voluntary service where a Board conciliator mediates proceedings between the parties, helps in the conduct of negotiations for financial compensation, and if possible, assists the parties to reach an agreement. The conciliation process is particularly beneficial when communication barriers exist between the parties.

Fidelity Guarantee Account

In some circumstances, the Fidelity Guarantee Account administered by the Board can reimburse consumers when an agent, or one of the agent's employees, commits a criminal or fraudulent act which results in a loss to the consumer. Information on the Fidelity Guarantee Account is available on our website, www.reba.wa.gov.au.

What we cannot do

The Board cannot directly compel an agent or sales representative to pay damages or compensation to you. If the actions of an agent or sales representative have cost you money and you wish to obtain damages or compensation, and if the Board's conciliation process has failed to resolve the problem, you will need to seek legal advice and consider taking action through the courts. Alternatively, you may be able to reach an out-of-court agreement with the agency.

The Board cannot offer legal advice.

This fact sheet contains general information that was current at the time of publication. If you have specific inquiries about matters relating to your situation then you are strongly urged to seek independent professional advice. The producers of this publication expressly disclaim any liability arising out of a reader's reliance on this publication.

This publication was produced by the Real Estate and Business Agents Supervisory Board.

National Relay Service: 13 36 77
Quality of service feedback line: 1800 30 40 59

This publication is available in other formats on request to assist people with special needs.