GOVERNMENT OF WESTERN AUSTRALIA

real estate news

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A newsletter from the
Consumer Protection Division of the Department of Commerce

A Welcome from the Commissioner

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With the transfer of responsibility for the regulation of several industry Boards to Consumer Protection now behind us, I thought it would be a good opportunity for me to thank those who assisted during both the transitional period and importantly the Boards themselves that oversaw the real estate and settlement industries in Western Australia. It's also a good opportunity for me to discuss a number of the positive changes that are occurring now and are set to occur into the future.

Firstly, I would like to express my gratitude toward the former Boards and their staff, for the outstanding work they did in regulating the industries over the years, and in assisting during the transitional period. They have left very big shoes to fill, but I feel with their help in the transition, the planning that we have undertaken, and the staff we are very privileged to have, we will be able to maintain the standards of performance that they have upheld for so long.

Bringing together the regulation of a number of industries under the Consumer Protection umbrella results in a more streamlined operating structure with a single regulator across a number of property-related occupational areas and better integration with generalist laws such as the *Australian Consumer Law* and *Residential Tenancies Act 1987*. The changes will also position the local property industry for the proposed national harmonisation of licensing under the National Occupational Licensing System, which was set to commence on 1 July 2012 for the real estate industry, but has since been delayed. For further information on National Occupational Licensing please see the relevant article later on in this publication.

The Department is very aware of the high quality of service that the Boards provided to the industry and is committed to ensuring that this high standard is maintained. Core programs initiated by the Boards, such as the Compulsory Professional Development Programs and Proactive Compliance Programs will continue as part of this commitment.

I would like to remind the industry of the continued need to comply with the requirements of the *Real Estate and Business Agents Act 1978* and the Code of Conduct for Agents and Sales Representatives. Consumer Protection will continue to investigate matters to ensure compliance with the legislation. In addition, industry participants are reminded of the need to comply with the requirements of the Australian Consumer Law (ACL).

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A Welcome from the Commissioner (continued from page 1)

More details on the ACL are provided elsewhere in this publication.

A newly formed Interim Property Industry Advisory Committee (IPIAC) consisting of eight industry members has been established in order to represent the views of the real estate, settlement and land valuer industries in Western Australia. The interim committee will become the Property Industry Advisory Committee (PIAC) after it has received parliamentary approval, which is expected in November 2011. The committee will advise the Minister and myself in regards to many significant current and future undertakings including industry regulation, training and education.

Industry will continue to be kept informed through the continuation of quarterly newsletters, e-Bulletins and educational publications that will now be produced by the Consumer Protection Division of the Department of Commerce.

While we have tried to keep disruption minimal, we acknowledge that minor changes have been required and as such I'd like to thank you, the industry, for your patience and understanding during this transitional period. I truly believe that these changes will be for the betterment of the industry and the public of Western Australia, and I am enthusiastic about what lies ahead.

Finally, I wish to thank both REIWA and AICWA and in particular Alan Bourke, Anne Arnold, Ciaran Westland and Graham Glasson for their assistance in responding to the most recent property fraud in WA. The professionalism and responsiveness of both industries to develop a comprehensive response to this unfortunate incident has had an unexpected benefit in cementing positive relations at the time of transition.

Regards

Anne Driscoll
Commissioner for Consumer Protection

New licensing fees

As at 1 July 2011 fees related to new licence and registration applications and triennial certificate renewals were increased slightly to keep pace with the annual increase in the CPI.

These changes are in line with regular annual increases to the fees and are not related in any way to the abolition of the Board. The new licensing fees are outlined below:

Licensed Agents

Real Estate And Business Agents Licence – Individual	
Type of fee	**Cost**
Grant of Licence/triennial certificate fee	$688
Advertising fee	$65.50
Contribution to the Fidelity Guarantee Account	$150
Total fee	**$903.50**

Real Estate And Business Agents Licence – Firm/Partnership or Body Corporate	
Type of fee	**Cost**
Grant of Licence/triennial certificate fee	$900
Advertising fee	$65.50
Contribution to the Fidelity Guarantee Account	$150
Total fee	**$1,115.50**

Mutual recognition licence	
Type of fee	**Cost**
Grant of Licence/triennial certificate fee	$688
Contribution to the Fidelity Guarantee Account	$150
Total fee	**$838**

Triennial Certificate Renewal – Individual, Firm/Partnership or Body Corporate	
Type of fee	**Cost**
Renewal	$442
Renewal of holding status	$208
Type of fee	**Cost**
Holding fee	$208

Sales representatives

Type of fee	Cost
Certificate of Registration as a real estate sales representative/business sales representative	$177
Contribution to the Fidelity Guarantee Account	$45
Total fee	**$222**

Mutual recognition licence	
Type of fee	**Cost**
Registration	$177
Contribution to the Fidelity Guarantee Account	$45
Total fee	**$222**

Renewal fee	
Type of fee	**Cost**
Renewal of Certificate of Registration	$145
Late lodgement fee (if applicable)	$36.25

Property Industry Advisory Committee

As part of its reforms to the administration of licensing in the real estate and settlement industries, the Government decided to establish a statutory Property Industry Advisory Committee (PIAC).

It is expected that Cabinet will endorse the final membership of this Committee by early November 2011. The role of the Committee will be to provide advice to the Minister for Commerce, the Hon Simon O'Brien MLC, and the Commissioner for Consumer Protection, Anne Driscoll, on the regulation of the land valuation, real estate and settlement industries in Western Australia.

The Committee will also advise on the criteria required to receive grants from the Homebuyers Assistance Account, and any other issues as requested by the Minister or Commissioner.

An Interim Property Industry Advisory Committee has been in place for sometime to provide advice to the Minister and Commissioner. The members of the Interim Property Industry Advisory Committee are Alan Bourke and Anne Arnold from the Real Estate Institute of WA; Graham Glasson and the Chief Executive Officer (currently vacant) from the Australian Institute of Conveyancing WA; Ross Hughes and Gail Walker from Australian Property Institute; Mark Atkinson from the Strata Community Australia (WA) and Radar Luttrell from the Australian Institute of Business Brokers WA.

New contact details, eBulletins, Newsletters

With the transfer of regulatory functions to Consumer Protection, it is a good time to ensure that you have all the correct and current contact details should you need to make any enquiries to the Department.

The telephone numbers have largely remained unchanged. Thus for any specific licensing enquiries please continue to call (08) 9282 0839. For any compliance issues, please call (08) 9282 0874.

Consumer Protection's generic contacts should be used for any other issues. Therefore for general enquires you should telephone 1300 30 40 54 or email consumer@commerce.wa.gov.au.

Although the Boards have been abolished, the means for disseminating information to the real estate and settlement industries has remained the same. The responsibility for the distribution of quarterly newsletters and regular e-Bulletins and updates to the website now falls to the Department's Consumer Protection Division, which will produce the new Real Estate Industry News and Settlement Industry News, in addition to regular e-Bulletins.

If you would like to sign up for the e-Bulletin mailing list, or wish to receive electronic copies of the newsletter in place of a hard copy, please send an email to propertyindustriesnews@commerce.wa.gov.au. Please note that this mailbox is not for email enquiries regarding licensing or compliance matters, as those should now be sent to consumer@commerce.wa.gov.au. The REBA 'Contact Us' Mailbox is currently being phased out and will shortly become inactive.

Residual Current Devices (RCDs) and smoke alarms—a timely safety reminder

According to EnergySafety, 23 of the 29 people who have died in WA as a result of electrocution in the past 17 years may have been saved if Residual Current Devices (RCDs) had been fitted to power and lighting circuits. Additionally, each year in Western Australia, structural fires result in injury and death as well as significant property damage.

New laws were introduced two years ago that require all residential tenancy properties to be fitted with RCDs and smoke alarms. The new laws provided for a transition period to have these devices fitted to the properties.

Residential tenancies

- Since 8 August 2011 it has been a requirement that all residential tenancy properties must be fitted with at least two RCDs.
- Since 1 October 2011 it has been a requirement that all residential tenancy properties must be fitted with mains powered smoke alarms.

Prior to sale

- Since 9 August 2009 it has been a requirement that RCD's must be installed in all residential properties prior to the transfer of ownership of the property.
- Since 1 October 2009 it has been a requirement that mains powered smoke alarms must be fitted in all existing residential buildings prior to sale.

Penalties apply if properties do not comply with the requirements to have the required RCDs and smoke alarms installed. Failure to install RCDs risks exposing the seller or landlord of a property to penalties of up to $15,000 for individuals and $100,000 for a body corporate. Failure to install mains powered smoke alarms risks exposing the seller or landlord to an infringement notice or a fine of up to $5,000.

For rental properties, it is recommended that the tenant be reminded to test RCDs every three months and inform the property manager if the RCD does not operate. All RCDs have a test button that, when pressed, simulates an earth leakage fault and indicates whether or not the RCD is operating correctly. It is also recommended that they be tested at all property inspections. For further information concerning testing visit www.commerce.wa.gov.au/EnergySafety/RCD/Testing.html

It is also recommended that smoke alarms be regularly tested – all smoke alarms have a test button that when pressed indicates whether the alarm is working or not. FESA recommends that the alarms be tested monthly.

These legislative changes were brought about in the interests of improving safety within homes and ultimately saving lives. Compliance with the new requirements should be of paramount concern to all property managers, agents and sales representatives.

Further information on RCDs is available at www.energysafety.wa.gov.au/RCD, while further information on smoke alarms is available on the FESA website www.fesa.wa.gov.au at this address.

Important information about changes to laws about residential tenancy bonds

Two important changes to Western Australian tenancy legislation occurred on 1 June 2011 which affects the amount of bond money landlords can collect from residential property tenants.

These changes are outlined below:

- the maximum pet bond that can be charged to tenants (may include new and current tenants as will be discussed in further detail below) increased from $100 to $260. The increase reflects the current cost of fumigation usually needed to be undertaken after a tenant with a dog or cat has vacated a rental property; and
- the maximum security bond, which is normally set at four weeks rent, can be greater than that calculated amount where the rent charged is more than $1,200 per week. The previous limit of $500 was set in 1989 and the change was deemed necessary to properly reflect today's costs and keep pace with changes in the WA residential property rental market.

The changes in detail:

Tenancy agreements signed after 1 June 2011

The effect of the legislative changes apply as follows:

- where the tenant is permitted to keep a cat or dog on the premises a pet bond of up to $260 can be sought; and
- where the weekly rent of the premises exceeds $1200 per week an unlimited amount of bond (including an unlimited pet bond) can apply.

Tenancy agreements signed prior to 1 June 2011

The following rules apply to Pet Bonds:

- an increased pet bond can be sought from a tenant, when the rent is being increased in accordance with the *Residential Tenancies Act 1987* (the Act) and provided that there has not been an increase in the bond for at least 12 months, or 12 months has elapsed from the commencement of the tenancy;
- the tenant must be provided with at least 60 days notice of the proposed increase in the bond. Section 31 of the Act sets out the requirements for increasing the bond; and
- if a tenant is permitted to have a pet dog or cat part way through an existing tenancy, a pet bond up to a maximum of $260 can be sought.

The following rules apply when negotiating a new agreement with a tenant that has paid a bond based on a weekly rent that exceeded the previous threshold of $500 but under the new changes, is below the new $1200 limit,

- The bond for the new agreement will need to comply with the new regulations.
- The Bond Administrator can assist you to transfer existing bond monies to the new agreement and refund any excess monies to the tenant.

The Department would like to make it clear that bonds can **only** be increased upon the signing of a new lease agreement or if rent has been increased where notice has been given to the tenant. It is not permissible for a bond to be 'topped up' during a current agreement. If the Bond Administrator holds the bond, a Form 9 Notice of Variation of Security Bond must be filled out – listing whatever changes have taken place – and given to the bond holder. This form can be located at the Tenancy section of the Department website listed below. If a financial institution holds the bond, they may have their own version of this form.

Further information

Tenants, owners or agents that may have questions about bonds, should contact Consumer Protection on **1300 30 40 54** or by email to: **consumer@commerce.wa.gov.au**. More information on tenancy issues is also available at: **www.commerce.wa.gov.au/tenancy**

Australian Consumer Law/Advertising Guidelines

The *Competition and Consumer Act 2010* (the Act) is the piece of legislation that dictates how businesses must undertake dealings both between themselves, and also with consumers. The Australian Consumer Law (ACL) is a schedule to the Act and creates a single, national consumer law that applies nationally. The *Fair Trading Act 2010* also references and applies the ACL as WA law.

Two key components of the ACL that are particularly relevant to the real estate industry are its provisions that cover misleading and deceptive conduct, and false and misleading representations. It is important to note that **it is a business' actions and statements that matter, not its intentions. A business can be found to have misled or deceived through the actions of a person, even if it did not intend to do so.** It is therefore imperative that all agents are especially prudent in all fact-checking of their day-to-day sales and advertising.

Misleading and deceptive conduct

It is unlawful for a person to make statements that are misleading or deceptive, or would be likely to mislead or deceive. 'Conduct' can include, but is not limited to, actions or statements including advertisements and promotions, quotations, or any statements or representations made by a person.

Silence

Failing to disclose relevant information can also be misleading or deceptive, should the information be deemed as being relevant to the transaction. Silence can also be misleading or deceptive if important details a person should know are not conveyed to them, or a change in circumstance means information provided previously was incorrect.

For example, if an agent does not tell a potential buyer a piece of information that is very likely to affect their purchase decision, this could be determined to be misleading or deceptive.

Predictions and opinions

In selling real estate, an agent or sales representative may often make predictions or share opinions about the future prospects of a property or area. A statement about the future that does not turn out to be true is not necessarily misleading or deceptive, but the agent or sales representative needs to exercise caution when predicting the future.

A promise, opinion or prediction can be classed as misleading or deceptive if the person making the statement:

- knew it was untrue or incorrect; or
- did not care whether it was true or not; or
- had no reasonable grounds for making it.

It is imperative that you are able to appropriately and accurately attribute your predictions to a reliable source, and it is prudent to keep records of any information you have gathered (i.e. council minutes discussing the planned upgrade of recreational facilities in the area).

False and misleading representations

It is unlawful for a business to make false or misleading representations about goods or services when supplying, offering to supply, or promoting those goods or services. It is also unlawful to make a false or misleading statement in connection with the sale of land. Making a false or misleading representation is an offence and the maximum fine is $220,000 for an individual and $1.1 million for a body corporate.

A key provision that is thought prudent to remind agents of, is section 152 of the ACL regarding false or misleading representations in the sale of land. That section states that a person cannot make false or misleading representations about the:

- nature of the interest in the land; or
- price, location, characteristics or use that can be made of the land; or
- availability of facilities associated with the land.

Section 152(1)(d) further deals with false and misleading representations concerning the location of the land, and in light of some recent confusion regarding the advertising of locations, the Department in conjunction with REIWA recently put out '*Guidelines for Appropriate Advertising of the Location of Properties*'.

Location is a key factor in the sale of real estate and has a significant impact on the value of the property. Incorrectly advertising a property's location is not only a breach of the ACL, but also section 7(1) and 7(2) of the Code of Conduct for Agents and Sales Representatives that require an agent to act fairly and honestly; and not knowingly mislead or deceive parties in respect to a transaction . As such, it is imperative that agents oversee and check all advertisements before they are distributed.

Agents should ensure that they check a reliable source of information each time a property is advertised in order to ascertain the correct locality (suburb), and should not rely purely on the advice of the seller. While there are currently no electronic maps available, the Landgate publications "Streetsmart – Perth Street Directory" and "StreetSmart – Travellers Atlas of Western Australia" both show the locality (suburb) names and boundaries.

It is important to note that while the existing certificate of title will state the locality, any changes to locality boundaries will not be reflected on the title until it is amended upon the transfer of ownership. The most reliable source of information is the tenure data provided to REIWA by Landgate. This information is available through the REIWA Pricefinder Service.

It will occasionally be desirable for agents to highlight that a property for sale is located in a particular housing development within a suburb. The mention of this housing development should not be used as the primary locality advertised, and should only be provided as additional information (ie 'Clarkson – this property is in the Somerly Estate development'). This can also be used in regional areas to attract buyers to a regional area they may not be aware or have knowledge of (i.e. Bunbury – Carey Park).

Proof of transaction/ itemised bills

There are new clauses that are particularly relevant to property managers who may, from time to time, engage contractors, such as plumbers or electricians to conduct work on a rental property.

Within the ACL is the statutory requirement for suppliers to provide proof of transaction for goods and services valued at $75.00 or more. Where the transaction is less than $75.00 the consumer, being the tenant or property owner, can ask for a receipt, and it must be provided by the supplier within seven days of the request.

Additionally, the tenant or property owner can ask for an itemised bill (within 30 days of the service being supplied or when they receive the bill) which shows:

- how the price was calculated;
- the number of labour hours and the hourly rate; and
- a list of the materials used and the amount charged.

National Occupational Licensing

In April 2009 the Council of Australian Governments agreed to establish a national occupational licensing system for specified occupations, including the property industry, in order to streamline regulation across states. The proposed system is intended to result in a number of benefits, including improved business efficiency, productivity, and consumer confidence, while also improving labour mobility.

National occupational licensing for real estate agents, sales representatives, real estate auctioneers and strata managers was originally set to commence on 1 July 2012, with national licensing for conveyancers (settlement agents) and land valuers to follow after 1 July 2013.

The national regulations for the first wave occupations were scheduled to be published in draft form in July of this year for a six week period of public comment. They have been delayed and the latest likely date for their release is now December 2011, with consultation being extended through to mid-March 2012.

Because of the need to ensure affected stakeholders can see the detail of what the national occupational licensing scheme will look like, the WA Government has decided to defer any further debate on the national occupational licensing legislation for the time being.

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National Occupational Licensing (continued from page 7)

Instead, the Government will wait until the consultation on the draft national regulations has been completed.

Once it is clear what the final regulations will look like, and what the views of Western Australian stakeholders are, the Government will determine its final position in relation to how to proceed with national occupational licensing in Western Australia.

WA does not currently licence strata managers and there is no obligation under national occupational licensing to introduce licensing for this occupation. The WA Government is, however, undertaking public consultation on the matter. A consultation regulatory impact statement and discussion paper on strata manager licensing has been released for public comment and can be downloaded from www.commerce.wa.gov.au/consumerprotection (see *Consultations* under the *Resources* tab) or collected from Consumer Protection reception at the Forrest Centre, Level 7, 219 St Georges Terrace, Perth.

Information regarding progress with the implementation of national licensing, including the establishment of the proposed new National Occupational Licensing Authority (NOLA) and the release of draft regulations and accompanying regulation impact statement will be available on the NOLA website (www.nola.gov.au), however Consumer Protection will ensure you are kept informed of all updates through future editions of the Real Estate and Settlement e-Bulletins and newsletters.

End of year *bona fide* control requirements

Those licensees who have a triennial certificate subject to the RA6 condition, and who have not already done so, are reminded of the requirement to provide Consumer Protection with proof that they have paid their agency's person in *bona fide* control at least $50,000 in the preceding financial year. The condition is one of several policies introduced by REBA that Consumer Protection has adopted since 1 July 2011.

The RA6 condition states:

> *By 31 August in each year, the licensee shall satisfy the Board that during the preceding financial year the person in bona fide control of the licensee's business has been paid a salary, which in the opinion of the Board, is consistent with salaries payable to persons giving substantial time and attention to an agent's business.*

As of July 1 reference to the Board in this condition should be read as a reference to the Commissioner for Consumer Protection.

This condition excludes persons in *bona fide* control who have a substantial shareholding (at least 50%) in the company or partnership. While no amount is specified in the triennial certificate condition, the policy, since November 2008, requires the licensee in *bona fide* control to be paid not less than $50,000 per annum (exclusive of commissions). This applies whether the service agreement is for a person in *bona fide* control of a partnership, or company. This will apply to all firm and body corporate agencies subject to these arrangements seeking the grant of a licence and triennial certificate or whose triennial certificate expires on or after 1 November 2008

Agencies can satisfy this condition by forwarding a copy of the PAYG Payment Summary of the person in *bona fide* control to:

> The Department of Commerce
> Licensing Branch, Locked Bag 14
> Cloisters Square, Perth WA 6850

Alternatively, the agency's accountant can certify in writing that they have sighted a copy of the payment summary verifying the amount paid to the person in *bona fide* control. Failure to comply with this condition could result in disciplinary action being taken against the agency for a breach of section 34(3) of the *Real Estate Agents and Business Agents Act 1978*.

If there has been a change to the shareholding or partnership structure, and the person in *bona fide* control becomes a substantial shareholder, then compliance with the condition may not be required. If you have any queries regarding this matter, please contact Consumer Protection's Licensing Section on 9282 0839.

CPD Reminder – Less than two months left to obtain your required points!

Compulsory Professional Development (CPD) is part of the licensing framework for licensed real estate agents and business brokers, and for registered sales representatives and property managers. The CPD program is prescribed by law. As such, all licensees with current triennial certificates, and all sales representatives and property managers with a current registration, are required to complete CPD activities.

Failure to complete your CPD requirements could result in your licence or registration not being renewed. Alternatively, a condition may be placed on your licence or registration requiring you to bring your CPD obligations up-to-date within a short period of time. Failure to comply with a condition places your licence or registration at risk.

The CPD program operates on a calendar year from 1 January to 31 December. During each calendar year participants must accrue a minimum of ten CPD points. Of these ten points, three must be accrued by attending prescribed mandatory activities and the remaining seven from elective CPD activities that have been approved by Consumer Protection.

Compliance with compulsory professional development obligations is monitored throughout the year.

A recent review has shown that a substantial number of licensees and registrants have not yet accrued the required number of points. Compliance amongst those registered as sales representatives and property managers is particularly poor.

Do not wait until the final weeks of 2011 to attend CPD activities. CPD courses being full at the end of the year will not be accepted as a valid reason for non-compliance. Consumer Protection is encouraging participants to secure their places in the available courses without delay.

A comprehensive list of the mandatory and elective activities approved by Consumer Protection can be located on the Consumer Protection website www.commerce.wa.gov.au/ConsumerProtection.

Under the Code of Conduct, agents are responsible for ensuring that their employees comply with the legislation, including the requirement to meet their CPD obligations.

Consumer Protection encourages agents to check with current employees, and any new employees, that their CPD compliance is up-to-date. For privacy reasons, Consumer Protection is unable to provide employee CPD records to agents.

If you have specific queries relating to your CPD obligations please contact Consumer Protection on 08 9282 0584 or 08 9282 0544, or contact the Consumer Protection Advice Line on 1300 30 40 54.

The three approved training providers who offer mandatory activities are listed below and are to be contacted directly for CPD bookings – **do not contact Consumer Protection to make bookings:**

Kaplan Professional
ph: 1300 662 203
(www.kaplanprofessional.edu.au)

REIWA Learning
ph: 08 9388 8155
(www.reiwalearning.com.au)

West Coast Property Training
ph: 08 9300 0000
(www.wcpt.com.au)

Real estate scam and property fraud prevention

Following on from the recent property fraud scams regarding the sale of properties without the knowledge of their owners, Consumer Protection, Landgate, REIWA and AICWA have been working together to define additional practices that need to be introduced in the industry to minimise the likelihood of property fraud in the future.

Many of these practices have now been introduced. One pivotal part of the approach to help industry expose these scams at an early stage and prevent this type of scam reoccurring has been the amendment of the Code of Conduct for Agents and Sales Representatives (the Code).

Guidance Notes explaining the above changes to the Code in further detail were recently sent to all licensed agents. The Guidance Notes have been reproduced in part below. The full version of the Guidance Notes can be viewed at **www.commerce.wa.gov.au/ConsumerProtection/RealEstateGuidanceNotes** and the amended version of the Code can be viewed at **www.commerce.wa.gov.au/ConsumerProtection/Real_Estate_Legislation**. Should you have any queries regarding the amendments please contact the Consume Protection Contact Centre on 1300 30 40 54.

How the fraud commenced

In both cases:

- the properties were tenanted and being managed by a real estate agent on behalf of the registered proprietor, prior to a fraudulent request being made to sell the property;
- contact with the agent by the fraudsters was made by telephone in addition to other forms of contact; and
- the person masquerading as the owner notified the agent of new contact details which formed the basis of future contacts.

In the most recent case, one form of identification was also provided to the real estate agent.

These events highlight how easily a fraud can commence and emphasise that in exercising due care and diligence, agents need to be on high alert for potential fraudulent real estate transactions.

The need to remain vigilant in other circumstances

It is not necessarily the case that any future property fraud attempts will occur along the same lines as the two recent cases.

For example, it may not always be the case that a fraudster is out of the state, but instead approaches an agent in person requesting the sale of a property. It may even be that the property to be sold is currently tenanted by a person who masquerades as the owner, or alternatively the property for sale is vacant land.

A further possibility is that the person wanting to sell the property is a party to either a family/business dispute or fraud and has inside knowledge of the parties.

For all of these reasons it is imperative that:

1. When selling a property an agent confirms he/she is dealing with the true owner, or the person legally entitled to sell the property.
2. At all times when dealing with a client, a real estate agent is vigilant to ensure they are dealing (and continue to deal) only with the true owner or the person legally entitled to sell the property.
3. Documented procedures are in place and are consistently applied to ensure verification of identities for all sales.
4. Appropriate arrangements are in place to ensure security of documents and privacy of clients' information.

What is being done to minimise the risk of property fraud?

Action is being taken on several fronts.

1. Amendments have been made to the Codes of Conduct for real estate agents (and settlement agents) to require client identity verification to be undertaken.
2. Changes have been implemented by Landgate to improve identity security through new witnessing and client identification requirements for sellers in the execution of transfer of land documents. A new form of caveat to prevent improper dealings has also been introduced.

3. All lenders have also been alerted to ensure careful scrutiny before releasing mortgages over Certificates of Title.
4. In 2012, client identity verification and other procedures to manage fraud risks will be included as part of mandatory Compulsory Professional Development (CPD) training.

Amended Code of Conduct

To minimise the risk of successful property fraud, the Code of Conduct for Agents and Sales and Representatives (the Code) has been amended effective from 1 November 2011.

The Code has been reprinted in its entirety to improve the set out of the document and bring it into line with other similar regulations.

To meet standard conventions for regulations, two new articles have been added at the beginning for citation and date of commencement. These have the effect of altering the numbering of previous articles.

Article 9 (previously Article 7) of the Code has been slightly amended to require agents to exercise due skill, care and diligence. The insertion of 'due' brings the Code more into line with the Australian Consumer Law.

As a general practice, given recent events agents should exercise due skill, care and diligence in taking measures to reduce the risks of identity fraud, to ensure documents are carefully evaluated and procedures are in place and applied to safeguard transactions.

Article 10 (3) has been amended to include that agents refer to the Certificate of Title that is obtained for the names of the registered proprietor of the property.

Additionally, Article 8 (4) (previously 6(4)), has been deleted from the Code following legal advice that this provision may overreach the scope of the *Real Estate and Business Agents Act 1978* (the Act). This removes the onus of proof of bona fide control, from the agent.

A new article has also been included in the Code. Under the new article 10 (4), as soon as practicable after receiving instructions to act in the sale of a property and prior to executing a sale contract, an agent must ascertain the names of the owner(s) of the property and make all reasonable efforts to: verify the identity of the owner(s); the identity of the person issuing the instructions; and their authority to dispose of the property.

Inheritance Scam

One of the most common scams reported to the Department that affects the real estate industry is an advance fee fraud known as an inheritance or beneficiary scam. The Department has received a number of reports of a potential purchaser contacting vendors and agents and advising them they are set to inherit a significant sum of money from an overseas relative and they wish to use the proceeds to purchase a listed property. The purchaser will advise the vendor/agent that in order for the transfer of the inheritance to progress, a fee, often in the vicinity of several thousand dollars, must be paid in order to cover an assortment of costs and/or taxes. Real estate agents need to be aware of the potential for this scam when dealing with buyers who advise that they are purchasing a home with the proceeds of an inheritance, especially if they require assistance in raising a release fee.

The Department would also like to remind agents to be cautious of any potential buyers that claim to be overseas investors. Whilst initial contact may be difficult to distinguish from that of a genuine purchaser, scammers may attempt to initiate the trademark transfer of monies via a third party in follow up contact, and will often make mention of a 'financial professional' or 'lawyer' to add credibility to their claims. As per all overseas transactions, agents should ensure they have completed their due diligence, as spotting the difference between a scam and a genuine prospective buyer can sometimes be extremely difficult.

Mandatory CPD dates – December 2011

Please note that the following dates are subject to change and it is advisable to check the providers' websites to confirm details.

If you have specific queries relating to your CPD obligations please contact the CPD team on 08 9282 0584.

West Coast Property Training

Date	Time	Category	Location
Fri 2 Dec 2011	9.00am to 12.15pm	Sales Reps	Joondalup
Fri 9 Dec 2011	9.00am to 12.15pm	Property Managers	Joondalup

For more information contact West Coast Property Training on 08 9300 0000 or email cpd@wcpt.com.au or information can be found on their website at www.wcpt.com.au.

REIWA

Date	Time	Category	Location
Fri 2 Dec 2011	9:00am to 12:30pm	Sales Representatives	Caversham
Fri 2 Dec 2011	1:30pm to 5:00pm	Sales Representatives	Caversham
Thu 8 Dec 2011	8:30am to 12:00pm	Property Managers	Hillarys
Thu 8 Dec 2011	9:00am to 12:30pm	Licensed Agents	Mt Claremont
Thu 8 Dec 2011	1:30pm to 5:00pm	Property Managers	Mt Claremont
Fri 9 Dec 2011	9:00am to 12:30pm	Sales Representatives	Victoria Park

For more information contact REIWA on 08 9388 8155 or email learning@reiwa.com.au or information can be found on their website at www.reiwalearning.com.au.

Kaplan Professional

Kaplan Professional do not currently have any CPD Mandatory activity dates scheduled for November or December 2011.

For further information regarding CPD mandatory activities being conducted by Kaplan call 1300 798 006, email realestate@kaplan.edu.au or visit their website at www.kaplanprofessional.edu.au.

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 Commissioner for Consumer Protection, 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.

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