



# Licensing of real estate and business agents and registration of sales representatives

***This fact sheet outlines the licensing and registration requirements for the real estate and business broking industries.***

In Western Australia, individuals, partnerships and companies wanting to operate as real estate and business agents are required, by law, to be **licensed**. Similarly, individuals wanting to work in Western Australia as real estate and/or business sales representatives (including property managers) must, by law, be **registered**. To obtain a licence or to become registered, applicants must satisfy a number of legislative requirements.

The Real Estate and Business Agents Supervisory Board (REBA) administers the Western Australian real estate licensing and regulatory systems. REBA is a statutory authority administering the *Real Estate and Business Agents Act 1978* (the Act), the Code of Conduct for Agents and Sales Representatives (the Code of Conduct), and the Real Estate and Business Agents (General) Regulations 1979 (the Regulations).

A key objective of REBA is to ensure that all licensed and registered people in the real estate and business broking industries have the appropriate set of skills, knowledge, experience, and for agents, adequate financial resources, to carry out their functions effectively.

REBA meets monthly to consider applications for real estate and business agent licences that have been reviewed by the Registrar. The Deputy Registrar of REBA is responsible for examining applications from people seeking registration as sales representatives before being considered by the Registrar.

## Real estate and business agent licences

On behalf of clients, a licensed real estate agent can lease, buy and sell private or commercial property and a business agent can buy and sell businesses. An agent can be licensed as a real estate agent and a business agent at the same time.

The holder of a licence must also hold a current triennial certificate in order to carry on business in the industry. REBA issues applicants with a triennial certificate at the time a licence is granted. The triennial certificate is then subject to renewal every three years.

There are three licence types in the real estate and business broking industries:

- a licence for a 'natural' (individual) person;
- a licence for a firm (partnership); and
- a licence for a body corporate (company).

Individual licences are granted to people who want to operate as sole traders or act as the person in *bona fide* control of a firm or body corporate. Licences can be granted to groups of people who want to form a firm. The directors of companies, incorporated under Australian Corporations Law, may apply for a body corporate licence. Regardless of the type of licence, the trading name of the agency needs to be registered if it is different to the name of the licence holder.

### Requirements for individuals

The Act stipulates that for applicants to be granted a licence they must be 'a person of good character and repute and a fit and proper person'. REBA examines applications from individuals seeking a licence to ensure they are suitably qualified and experienced to enter the industry as an agent.

Before being considered for a licence individuals must:

- be at least 18 years old;
- show they have passed the prescribed examinations (listed on the website below);
- provide an original National Police Certificate, not more than three months old (these can be obtained from participating Australia Post outlets);
- supply no less than two written references attesting to the applicant's good character, reputation and fitness to hold a licence;
- have sufficient material and financial resources available to enable them to comply with the requirements of the Act;
- have sufficient practical experience negotiating transactions; and
- fully understand the duties and obligations imposed upon agents by the Act.

Application forms can be obtained by phoning 9282 0843 or downloaded from REBA's website, [www.reba.wa.gov.au](http://www.reba.wa.gov.au).

Real estate and business agents are required to participate in the Compulsory Professional Development program to satisfy the educational requirements that need to be met at each three-year renewal of their certificate (see the section on Compulsory Professional Development in this fact sheet.)

### Requirements for firms (or partnerships)

To obtain a licence, all individuals and all directors of bodies corporate constituting the firm, and all individuals involved in the management of the firm must satisfy REBA that:

- they are of good character and repute;
- they are fit to be directors of, or in the management of, an agent's business; and
- they have sufficient material and financial resources to enable them to comply with the requirements of the Act.

Where a partnership applying for a licence is constituted by **no more than three partners** then **at least one partner** must be a licensed agent. However, if the partnership is constituted by **more than three partners** then **at least two** of the partners must be licensed.

The person in *bona fide* control of the business operated under the licence must be a licensed agent.

A partnership holding a licence must notify REBA of any changes to the partners of the business, its ownership and management structure. Such changes may affect its licensing basis.

### Requirements for bodies corporate (or companies)

Under the Act, a body corporate may hold a real estate and business agent licence.

To obtain a licence, a body corporate must satisfy REBA that:

- all of its directors and those concerned in the management or conduct of the body corporate are of good character and repute, as well as fit to be directors of, or in the management of, an agent's business; and

- the body corporate has access to sufficient material and financial resources to enable it to comply with the requirements of the Act.

In a situation where a company has no more than three directors then at least one of them must be a licensed agent. However, where there are more than three directors of the company then at least two of them must be licensed.

The person in *bona fide* control of the business operated under the licence must be a licensed agent.

A body corporate holding a licence must notify REBA of any changes to the company directors, shareholders and management structure as it may affect its licensing basis.

### Meetings and formal hearings

At least 14 days prior to a licensing meeting the names of people seeking a licence are published in the Saturday edition of *The West Australian*. Anyone who has objections to an applicant receiving a licence has up to 14 days after the date of publication to lodge a written objection with REBA.

In situations where there is an objection, or doubt that an applicant for a licence meets all the requirements of the Act, REBA may hold a formal hearing to consider the application. At a formal hearing, an applicant can choose to be represented by a lawyer. Any person aggrieved by a licensing decision of REBA may apply to the State Administrative Tribunal for a review of that decision.

### Supervision

Some of the supervisory responsibilities of the licensee or person in *bona fide* control of an agency are outlined in section 132 of the Act and article 6 of the Code of Conduct. Supervisory responsibilities include the need to:

- constantly supervise and control the work of all unlicensed individuals who contribute to the conduct of the business;
- give substantial time and attention to the business;
- ensure the manager of each branch office of the business gives substantial time and attention to the business of their branch office; and
- ensure that sales representatives and other employees of the agency business comply with legislation applicable to them.

The Act specifies that every firm and body corporate must have a licensed person in *bona fide* control of the agency. The partners of firms and the directors of bodies corporate must ensure that the person in *bona fide* control gives substantial time and attention to the business and ensure that the managers of any branch offices of the business give substantial time and attention to the business of their branch offices.

REBA considers the supervisory responsibility of a licensed real estate agent and business agent to be an essential component in reducing the risk of error in transactions, and ensuring compliance with the Act, the Regulations and the Code of Conduct. Mistakes made by sales representatives or other employees are less likely to occur when a licensed person closely monitors their work and the administrative side of the agency.

### Trust accounting procedures

Every agent who holds a triennial certificate is required to maintain one or more trust accounts. All trust money must be held in a trust account in the agent's name with a prescribed financial institution such as a bank, building society or credit union.

The Act requires strict maintenance of a formal set of accounting records that show, at all times, the state of an agency's trust account(s).

Whenever a trust account is opened, closed or amended, an agent must advise REBA in writing as soon as is practicable. Also, whenever a trust account is overdrawn, an agent must advise REBA in writing as soon as is practicable, of the name and number of the trust account and the amount by which the trust account is overdrawn. All licensed agents are required to lodge either an audit report or a statutory declaration (as appropriate) within three months of the end of each calendar year.

REBA conducts a Proactive Compliance program, whereby REBA officers visit agencies and advise on maintaining trust accounts and other best practices.

The proper maintenance of trust accounts by agents is essential if the industry is to maintain public confidence. REBA closely monitors the compliance of agents in respect to their trust accounting obligations, and will take firm action whenever any irregularity is detected.

More information about trust account requirements is available in the REBA publication *Real estate trust accounting - A reference manual* which can be obtained by contacting REBA on 9282 0843 or viewed on REBA's website, [www.reba.wa.gov.au](http://www.reba.wa.gov.au).

### Auditor independence

Under the Act, all agents must appoint an auditor to audit their trust accounts. REBA recognises that an agent's performance in the management of a trust account is a prime indicator of an agent's compliance practices generally. Hence, REBA places significant reliance on the audit report in monitoring the compliance of agents. The credibility of the audit report is impacted by both the actual and perceived independence of the auditor.

Under the Act, auditors must immediately inform REBA of any close relationship through blood, marriage or a de facto partner. Auditors must also inform REBA of any business dealings they have or have had, with any agent whose trust accounts they have been appointed to audit.

The term 'business dealings' includes any dealings auditors (or any employees, partners, etc, of their firms) have or have had with their agents. This includes, but is not limited to, general accountancy, financial advisory and taxation work for the agency. Business dealings also include any financial interests shared with the agent, as well as the use by the auditor of any services provided by the agent. When in doubt as to whether any business relationship constitutes a business dealing, auditors should disclose the relationship to REBA for consideration.

REBA will consider each disclosure on a case-by-case basis. Where it is found that an agent-auditor relationship is significant enough to warrant the disqualification of the auditor, REBA will consider a written submission from the auditor as to why they should be retained. Special consideration will be given to instances where disqualification will create hardship or difficulty for the agent, such as would be the case in some regional areas where it may be difficult to engage a completely independent auditor.

## Registration as a sales representative

Individuals wanting to operate in Western Australia as a real estate and/or business sales representative (including those who wish only to be property managers) are required by law to be registered with REBA. They must work under the supervision of a licensed real estate and business agent or a developer.

Before being considered for a certificate applicants must:

- be at least 18 years old;
- meet prescribed qualifications (listed on the website below);
- provide an original National Police Certificate no more than three months old (these can be obtained from a participating Australia Post outlet);
- be a person of good character and repute and a fit and proper person; and
- have a full understanding of the duties and obligations imposed by the Act on individuals negotiating real estate and business transactions.

Application forms are available from REBA on 9282 0843 or from REBA's website, [www.reba.wa.gov.au](http://www.reba.wa.gov.au).

Sales representatives (are required to participate in the CPD program to satisfy the educational requirements that need to be met at each three-year renewal of their certificate (see the section on Compulsory Professional Development in this fact sheet.)

The Act requires that all registered sales representatives notify the Registrar in writing within 14 days of ceasing or commencing employment with a licensed real estate and business agent or with a developer.

### Formal hearings

REBA may hold a formal hearing if there is doubt that an applicant seeking registration meets all of the legislative requirements. Applicants can choose to be represented by a lawyer at the hearing.

## For both agents and sales representatives

### Compulsory Professional Development (CPD)

All individuals with a licence and current triennial certificate in Western Australia, and all sales representatives and property managers with a current certificate of registration in Western Australia must accumulate 10 points of CPD activity in each calendar year (CPD cycle).

Individuals who are granted a new triennial certificate or certificate of registration at any point during the CPD cycle are required to participate in the CPD program from 1 January the following year.

The CPD program has been designed to enable participants to update their knowledge and skills in the areas of industry developments, legislative change and work practices. The aims of the CPD program are to:

- increase levels of consumer protection and public confidence;
- promote professionalism across the real estate and business broking industries; and
- improve the knowledge and skills of agents and sales representatives.

Participants accumulate the required 10 CPD points by completing a mix of approved mandatory and elective CPD activities each year.

At the time of renewing their triennial certificate or certificate of registration, applicants will need to demonstrate they have met all of the CPD requirements.

Further information on the CPD program is available from REBA's website, [www.reba.wa.gov.au](http://www.reba.wa.gov.au).

### **Mutual recognition**

Individuals who are licensed as real estate and/or business agents, or registered as sales representatives in New Zealand or other Australian states and territories must lodge a *Notice for Registration of Equivalent Occupation* before commencing work in Western Australia. This is in accordance with the *Mutual Recognition (Western Australia) Act 2001*. Applicants may be required to attend a REBA formal hearing before a licence is issued.

For further information please visit REBA's website or contact REBA on 9282 0843.

### **Cost of a licence or certificate of registration**

Fees for all licensing applications (grant or renewal) are subject to change on a regular basis, so before applying, please confirm the current fees by referring to REBA's website or contacting a licensing officer on 9282 0843.

A payment of \$150 for all licence applications and \$45 for all certificate of registration applications is made to the Fidelity Guarantee Account. This account was established to reimburse consumers who have lost money or property because of defalcation (as defined in the Act) by a licensee with a current triennial certificate in the course of their business.

### **Obtaining further information**

The website, [www.reba.wa.gov.au](http://www.reba.wa.gov.au), should always be the first point of call for inquiries regarding REBA. People with general queries about real estate matters can phone 1300 30 40 64 for the cost of a local call statewide 8.30am – 5.00pm weekdays. Inquiries about particular real estate licensing matters can be handled directly by REBA staff on 9282 0843.