



GOVERNMENT OF  
WESTERN AUSTRALIA

# Managing residential property

A guide for property managers



**Disclaimer**

This booklet 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 and the Department of Commerce.

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

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# About this guide

Registered residential property managers have a diverse and often complex role in the real estate industry. Whether you are experienced, or new to property management, this guide will help you develop a 'best practice' approach to property management.

It will guide you to manage property in an ethical, reasonable and fair way, producing better results for owners, principals, tenants and yourself. In this publication the term 'principal(s)' refers to the person(s) paying for the property management services.

If you are thinking about becoming a property manager, this guide will not replace the information provided at property management training courses but will give you an overview on:

- becoming a property manager and how to register;
- the skills and personal qualities required to help you do the job;
- the paperwork and laws that affect your job;
- choosing good tenants;
- building a good relationship with the tenants and owners;
- dealing with the main property management issues such as rent arrears, disputes and property repairs; and
- contacts for support.



# Property management

## The role of property managers

As a property manager, you are the link between the tenant and owner. You are contracted to act for the owner only; however, you are also legally required to demonstrate a 'duty of care' towards the tenant.

The property owner signs a 'management agreement' or 'appointment to act' with a real estate agency for property management services. The management agreement allows the agency to claim payment from the owner for any associated fees and/or costs. The contracted management services can be limited or wide ranging.

The following are typical duties of a property manager:

- collecting rent on the owner's behalf;
- providing advice to owners on matters such as rental values, rent reviews, special risk insurance and property insurance;
- arranging for repairs and maintenance work for rental properties;
- advertising rental properties and assisting in the selection of tenants;
- collecting and lodging bond money in accordance with the *Residential Tenancies Act 1987*;
- using best endeavours to ensure rent is paid on the due date;
- preparing and checking the inventories of rental properties;
- preparing the initial property condition report;
- conducting regular property inspections and providing reports to the owner;
- paying accounts on behalf of owners, such as water service charges and council rates;
- providing owners with regular financial statements;

- representing owners at strata company meetings;
- resolving any disputes that may arise through mediation and conciliation;
- issuing breach or termination notices to tenants, or arranging for court proceedings when tenants default on rental agreements; and
- attending court on the behalf of owners who are in dispute with tenants.

Strata property managers perform different functions to that of a residential property manager. There are however, registered property managers who manage both strata and non strata property.

The duties of a strata manager include:

- chairing strata company meetings;
- raising invoices for levies;
- collecting levies;
- managing repairs, insurance and strata company transactions;
- preparing the strata company's accounts and keeping records of meetings;
- enforcing the by-laws of the strata company; and
- maintaining a register of lot owners.

## Becoming a registered property manager

Property managers working in Western Australia must be a licensed real estate agent, registered sales representative or a sales representative registered strictly to property management activities. Sales representatives performing property management duties must be supervised by a licensed agent and their registration must be renewed every three years.

The only exemptions for registration are people who manage short term holiday accommodation and those who are employed by strata companies to manage their property.

To become registered as a property manager you must meet the following requirements:

- be aged 18 years or over.
- be of good character and repute and a fit and proper person to hold a certificate of registration; and
- have completed training by a registered training provider to demonstrate a full understanding of the duties and obligations of the *Real Estate and Business Agents Act 1978* (the Act) for people involved in negotiating real estate transactions.

Registration of property managers in Western Australia is administered by the Real Estate and Business Agents Supervisory Board (REBA). REBA aims to ensure that registered property managers have the knowledge and experience to carry out the functions of their role effectively.

For registration application forms and more information on registration, contact REBA on 9282 0843 or visit [www.reba.wa.gov.au](http://www.reba.wa.gov.au).

## Personal skills of a property manager

Flexibility and the ability to get along well with people are essential to being a successful property manager. You will be working with a wide range of people with various social and cultural backgrounds and will be required to deal with an even wider range of issues and situations.

Successful property managers have a mix of good technical and personal skills. Being courteous and having a businesslike attitude in managing the ethical and legislative requirements are just some of the capabilities expected from today's professional property managers.

Other key skills, abilities and knowledge include:

- The ability to negotiate and resolve conflicts and disputes. Delayed rent payments and unsatisfactory property maintenance are examples of potential disputes that will require skills such as patience, attentiveness and the ability to function under pressure.
- Knowledge and understanding of the state legislation covering tenants/residents and property owners and other laws. As the link between residents and owners, being familiar with the various Acts and the Code of Conduct will help you make legal, ethical and effective decisions and provide solutions to protect everyone's interests.
- Managing your time effectively. Being able to 'juggle' a number of tasks and priorities effectively while regularly following up on issues will create the confidence and trust of residents and owners, allowing you to deal with issues quickly and effectively.

As well as having the right skills, taking every opportunity to learn new skills and knowledge will help you achieve best practice in property management.

The social and economic environment and the laws that govern the community change regularly and often rapidly. By being aware and committed to understanding changes in regulations; the current trends and topics and expectations in the property industry; you will be able to make informed decisions and apply the most efficient and lawful methods when doing your job.

## The law and property managers

The Western Australian laws most relevant to registered property managers are:

- the *Real Estate and Business Agents Act 1978* (the Act) and its subsidiary legislation, particularly the Code of Conduct for Agents and Sales Representatives (the Code of Conduct); and
- the *Residential Tenancies Act 1987* (the RTA). In property management the acronym 'RTA' can often refer to the 'Residential Tenancy Agreement'. In this publication the RTA refers to the *Residential Tenancies Act 1987*.

These laws and others that affect property management are outlined in more detail later in this guide; see the section 'Key regulation.'

Copies of legislation mentioned in this guide can be obtained from the State Law Publisher. Alternatively, electronic versions can be downloaded from its website, [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

### Code of Conduct

The Code of Conduct for Agents and Sales Representatives (the Code of Conduct) is part of the Act and applies to registered property managers, registered sales representatives and licensed real estate agents.

The Code of Conduct sets out conditions or actions that are considered to demonstrate good behaviour or conduct by a property manager such as; not advertising or offering for lease a property for an amount, or terms, different from that authorised by the principal; promptly providing information to the principal about expenses paid on their behalf; and not seeking any payment of a fee that is unjust in light of a management agreement and other circumstances.

Special mention needs to be made of articles 2 and 7 of the Code of Conduct. Article 2 requires property managers to act in the best interests of the principal except where it would be unreasonable or improper to do so, while article 7 requires property managers to exercise skill, care and diligence.

The Code of Conduct is a valuable document for all registered property managers and this guide will refer to specific articles within it. The Code of Conduct can be viewed at [www.reba.wa.gov.au](http://www.reba.wa.gov.au).

# Your client

## Case study - Code of Conduct

Rudy and his family are new to Western Australia and are proving troublesome for Kira the property manager. He is chronically late in paying the rent and is two weeks in arrears. Rudy's family has also caused minor damage to the dwelling, removing some internal doors and damaging a shower screen.

The owner instructed Kira to evict the family and find another tenant. She refused, explaining that Rudy had certain rights against summary eviction. The owner said '...these people wouldn't know any of that' and ordered her to have the house vacated as soon as possible. Kira said she would not order the tenants to vacate immediately, but instead would commence the eviction process by issuing a *Notice of termination for non-payment of rent* and a *Breach notice for damage*.

Kira acted in accordance with article 4(2) of the Code of Conduct as clearly the principal's instructions were in conflict with the RTA (section 62) and therefore it was unreasonable and improper to follow these instructions.

## Choose your client

Not all business is good business. Be selective about the people you choose to enter into a property management agreement to minimise the risk of future disputes and problems.

Unreasonable owners can lead to unhappy tenants, increasing the chances of complaints and litigation against an agency. This can be costly and may damage an agency's reputation.

On a personal level, signing a management agreement with a difficult owner could unreasonably increase your workload and stress levels and reduce job satisfaction.

Before signing a management agreement, consider the following warning signs:

- The physical state of the property. Clean and tidy properties have a greater chance of attracting good tenants. A warning sign is when a landlord has owned a property for a length of time and has not kept it in good repair. It is likely to cause maintenance issues for you and future tenants.
- Whether the owner is willing and prepared to resolve any safety and health issues you may raise.
- How the owner has dealt with conflicts with tenants and property managers in the past. This can show how the owner will expect you to deal with future disputes with tenants.
- The level of control exercised by the owner. Should an owner insist that the management agreement include many detailed conditions not usually found in such contracts, it is likely the owner wants to exercise excessive control over how the property will be managed. This could lead to you being involved in future disputes with the owner over control issues.
- Unreasonable expectations of the owner. This can be a problem for property managers especially if the owner is renting out the family home. For example, the issue of what is reasonable 'wear and tear' can present problems if the owner is planning to move back into the property at a later date. The owner may have an unrealistic expectation that the property will, on moving back in, be in the same condition as when they vacated.

- Any outstanding issues the owner or tenant may have with the strata company.

Many of these issues can be resolved through the management agreement. Clarify and detail the roles and expectations in the contract including limitations and/or advise the owner to accept their expectations could be unrealistic but every reasonable effort will be made to ensure the property is well maintained and managed.

### The management agreement

To avoid potential disputes, make sure everything agreed between the agency and the owner is included in the management agreement and the owner receives and signs a true copy. This is important as the management agreement will become a legally binding contract when signed and dated by the parties.

Along with information regarding the property, a management agreement should detail:

- the duties of the property manager;
- the fee structure and costs of services provided;
- the period of time for which the services will be delivered; and
- any specific instructions to the property manager such as the owner is to be contacted prior to having repairs made, or that the owner be given copies of all inspection reports.

If the owner provides you with further instructions after signing the management agreement, the agreement needs to be amended to incorporate the changes, with each party given a copy of the updated version. If the owner gives an instruction that conflicts with what is in the signed management agreement, then either that document must be amended or the instruction cannot be followed and you need to inform the owner.

### Tip

Be aware that you are required to act in accordance with the instructions of your principal, except where it would be unreasonable or improper to do so. It is in your interests to follow to the letter the conditions and instructions detailed in the management agreement.

When a property manager believes an owner's instruction may be unreasonable or improper they should speak to the person in bona fide control of the agency to seek advice and instruction.

The management agreement is binding on the parties for the duration of the agreed period. Should the owner engage the services of another agency while the existing management agreement is still in place, then they can be required to pay fees to the current property manager.

### REIWA standard management agreement

At the time of publication, the industry standard management agreement is the document produced by the Real Estate Institute of Western Australia (REIWA). Some agencies prefer to use their own version of a management agreement.

If the standard REIWA management agreement is used, the owner has the option of allowing the appointment to continue indefinitely after the end of the fixed termination date. If this option is chosen, the appointment will only be terminated if either the agency or the owner gives the other 28 days written notice that the appointment is to cease.

If the standard REIWA management agreement is ended before its expiry date,

Requirement of section 60 (2)(c) of the REBA Act

the owner may be required to pay 50 per cent of the management fee for the unexpired part of the contract. However, check the management agreement, as it may be necessary to obtain the owner's agreement before the fee is paid from the owner's revenue held in the agent's trust account.

Like any other clause in the standard REIWA management agreement, this clause can be amended or waived by agreement of both parties. Any amendment made to an existing management agreement should be signed and dated by the parties. As best practice, amendments should form a schedule/ attachment to the original agreement or a replacement agreement can be drafted incorporating the new requirements.

The fees charged under the standard REIWA management agreement cover more than routine activities. The agreement includes costs of services such as making detailed inventories, inspections of the property, repair and maintenance work, secretarial duties, or attending court on behalf of the owner.

### Tip

According to article 15 of the Code of Conduct:

- 15 (2) (b) requires that the agreement specifies a maximum amount and
- 15(2) (c) requires that this maximum amount be initialed on that agreement.
- 'At cost' and '\$65 per hour' are not agreed maximum amounts.

Where a rent roll is sold from one agency to another, the agency that has purchased the rent roll should ensure that they have the proper authority to manage the properties on the purchased rent roll.

## Honest and open communication

A key part of best practice is good communication. This means being honest with an owner who is considering signing into an agreement with you. Even if an owner does not ask all the relevant questions, you have an obligation as their property manager to provide the owners with all the information they need to know. At the very least, you as a property manager should provide owners with the following information:

- the meaning of the clauses making up the management agreement;
- a detailed account of the types of services available;
- the agency's property management fee structure;
- an overview of the rental market in the locality;
- the amount of rent that can be realistically levied and reasons for that amount;
- how the property should be advertised;
- what forms of insurance cover the owner may need to consider;
- what type of tenancy (fixed, periodic) should suit the property and the owner;
- the length of tenancy desired;
- the process for obtaining and vetting tenants (does the owner want to be part of the selection process?);
- the amount of the security bond and pet bond if applicable;
- information on a suggested inspection regime, its cost, what is involved and if the owner wishes to receive a copy of the inspection report;
- the owner's and tenant's legal obligations to the other;
- what happens if a tenancy is terminated at the wish of the owner or tenant;

- the types of problems that can be encountered with tenants along with their solutions; and
- when the owner needs to be informed about issues such as:
  - the tenant is behind with the rent; or
  - there is maintenance or repairs required to the property.

## Inspecting the property with the owner

When taking over the management of a property, arrange to inspect the property with the owner or a representative if the owner cannot attend, and complete a written Property Condition Report.

A Property Condition Report should detail, on a room by room basis, the exact contents and condition of the property at the beginning of the tenancy. It should note what items are and are not working (such as air conditioners and light switches) and anything that may be already in poor condition, like torn flyscreens.

A Property Condition Report form template can be downloaded from the Consumer Protection website, [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au).

In addition to the Property Condition Report, photographing or videoing the property during the inspection gives a visual record of the state of the dwelling, fixtures, chattels and surroundings before placing tenants in the property.

These images could prove valuable particularly when trying to establish what is, and what is not normal 'wear and tear' should a dispute arise.

A good tip is to write up the Property Condition Report soon after the inspection, while the memory of the visit is still current.

A signed copy of the inspection report must be given to the owner and tenant.

## Check legal requirements

Owners will rely on you to understand the legal requirements for managing the property and to offer advice on meeting these obligations. Be aware of current and proposed changes to laws that could affect residential owners as there may be consequences for the owner if the property does not comply, or may cease to comply in the near future.

Fire, electrical and product safety issues in particular need close attention.

For the latest updates regarding current and proposed electrical and fire safety legislation visit the websites of the Fire and Emergency Services Authority of Western Australia (FESA) - [www.fesa.wa.gov.au](http://www.fesa.wa.gov.au) and EnergySafety - [www.energysafety.wa.gov.au](http://www.energysafety.wa.gov.au)

Product safety orders are issued under consumer protection legislation. For example there is an order relating to the fitting of curtain blind cords under the *Consumer Affairs Act 1971*. This was due to the risk of strangulation or other injury to small children through some curtain and blind cord fittings. This product safety order has particular relevance to property managers, as blinds in rental properties may have been installed before the order was made.

From August 2009, two RCDs (Residual Current Devices) must be fitted to protect all power points and lighting circuits in all homes before they are sold or leased, regardless of the age of the property.

### Tip

At the initial property inspection, check whether smoke detectors and electrical safety devices such as RCDs operate and are fitted according to the law.

## Disputes with the property owner

Disputes can happen even after a conscientious effort on your part. To protect you, the tenants and the owner's interests, any dispute arising between you and the owner should be detailed in writing to the owner and copied to the person in *bona fide* control (licensee) of the agency. The letter should explain the circumstances of the dispute and include information on the nature and cost of the services being provided.

If the dispute centres on the quality of your service and the claims can be substantiated, then this could mean the management agreement has been breached. The owner has the option of taking legal action in an attempt to have the appointment terminated. If the dispute involves the way you do business or your conduct, the owner could lodge a written complaint with REBA.

Rather than respond in a defensive way towards the owner or tenants, treat the complaint as an opportunity to review the agency practices or areas of concern and rebuild a solid relationship with the owner.

### Complaints handling procedure

An internal complaint handling procedure is an effective and consistent process for dealing with any complaints received and ensures complainants are dealt with in a fair and courteous manner. All complaints and the solutions or outcomes must be recorded in a secure and confidential system.

Dealing with complaints internally will:

- enhance the customer/agency relationship;
- recognise, promote and protect customers' rights, including the right to comment and complain;

- provide an efficient, fair and accessible mechanism for resolving complaints without losing customers;
- provide information to complainants on the complaints handling process of the agency;
- facilitate the monitoring of complaints to improve the quality of service;
- enable the agency to maintain confidence in the quality of its service;
- provide agents with the confidence to cope with complaints and angry customers; and
- promote consistency in handling complaints.

A complaints handling system should be fair. Fairness includes the right of customers to:

- have their complaint heard;
- provide and request all relevant information to support their complaint;
- be informed of the agency's response;
- be informed of the agency's decision and the reasons for that decision; and
- have their complaint dealt with confidentially or on a 'without prejudice' basis if requested.

Some of the possible solutions and outcomes include:

- providing information to the complainant;
- apologising to the complainant;
- offering a goodwill gift or token;
- providing compensation to the complainant; and
- referring the complainant to appropriate government or non-government agencies.

For advice regarding the effective handling of complaints, refer to the joint publication *Complaint handling guidelines for the settlement and real estate industries*, available at [www.reba.wa.gov.au](http://www.reba.wa.gov.au).



## Choosing the tenant

Selecting good tenants is important as you are obligated to act in the best interests of your principal. It is best if the owner makes the final decision on the tenant but it is expected that you will be required to select the best applicants.

A good tenant will not only pay their rent and any other financial obligations on time, but will also care for the property, maintaining its value for the owner.

Tenants should be assessed on the quality of information provided on the application form and the quality of their references. Employment details, landlord and/or personal references and other relevant information should be filed for future reference.

You can request any information on an application form, however, if you use the information to discriminate against a tenant you would be contravening the *Equal Opportunity Act 1984* (see page 31).

Arranging individual appointments for prospective tenants to view the property allows you to observe an applicant's behaviour and character and discuss the information in their written application. It also gives the potential tenant an opportunity to view the property in its current state and ask you questions.

As is the case with selecting the owner, there are warning signs and actions to help you avoid a potentially difficult tenant:

- Check that any photo identification supplied matches the face of the person filling in the application form.
- If the contact address on the photo identification is different from that on the application form, ask for confirmation of the address.
- If the applicant has not provided enough information, ask for more details.
- If the person hesitates to fill in all of the blank spaces on the application form then you should consider this a warning sign.
- Make sure references are from individuals of good standing in the community as they tend to be more reliable as an indicator of the applicant's character.
- Meet every adult who will be living at the property to make sure they are all of good character. Potential tenants with poor tenancy histories may use another person to rent the property on their behalf.

For your own protection, keep detailed notes on the prospective tenant's application.

The notes should record the time and date an applicant was interviewed and what information was given. The notes will be valuable if you are required to make the final decision on the successful applicant and are then questioned by a dissatisfied owner to explain how a tenant qualified for the rental property.

## Information provided to potential tenants

Being honest and up-front with potential tenants about the positive and negative aspects of the property will reduce the risk of any future misunderstandings once the tenancy agreement is signed.

At the very least the tenant should be informed, preferably in writing, what services, amenities or appliances in the property are, or are not available or functioning.

For example, tenants appreciate being told if the property is not connected to scheme water. They will need to know its availability and quality so that they can make an informed decision on whether to take up the tenancy.

For new properties, it is good practice to find out from the owners if they are willing to contribute towards the initial cost of installing a telephone line and letting the potential tenants know.

In the case of strata properties, potential tenants should be informed of any special conditions, or by-law amendments, which may affect their potential enjoyment of the property. In particular, conditions relating to the use of common property areas, availability of parking and whether or not pets are permitted.

### Tip

To help potential tenants get the most out of a property inspection, you could consider making available items the tenants could find useful such as writing materials, a tape measure, a compass for finding a property's orientation and copies of floor plans. You may also like to provide an information kit containing details of local shopping centres, public transport, medical centres and schools.

### Lending property keys

A common practice in property management is to lend property keys to a potential tenant allowing them to view the property unaccompanied.

This practice puts the property at risk from damage or theft and as such could be seen as a potential breach of article 2 of the Code of Conduct. There is also the possibility that someone viewing the property alone may get the keys cut to return to the property later unaccompanied. Lending keys for unaccompanied visits could also adversely affect an agent's professional indemnity insurance.

### Use of tenancy databases

It is common for property managers to use tenancy databases to carry out checks on the rental history of applicants. The use of tenancy databases can have serious implications for agencies if misused, particularly in relation to the privacy of the individuals being checked.

The *Privacy Act 1988* grants people the right to obtain information from database organisations on any data relevant to them and the right to correct that data if it is incorrect.

Residential tenancy databases can be useful for identifying potential 'high risk' tenants, but you need to be aware of the impact they have on people's lives if incorrectly used. Many people may not even be aware they are listed on residential tenancy databases.

If a person experiences discrimination, injury or financial loss as a result of the information accessed on the database, this person has the right to take civil action against the owner of the database and the party accessing the information.

If you use a database, avoid making generic comments such as; 'refer to agent'. This comment says little about the tenant other than the agent invites contact from interested parties.

To avoid inaccuracies, update the information regularly and in a short time frame, keep detailed agency records on tenants designed to be used for future reference and avoid emotional or personal comments that can be biased.

### Case study

A young adult along with others rents a property. There are problems with the tenancy involving one of the tenants. An entry is made on a database listing all of the names on the tenancy agreement. This is unfair on the tenants who did not contribute to the problem and as a result, they may find obtaining rental accommodation difficult for a number of years. Any information that is listed on the database that is more than three years old should be carefully considered before that information is used to exclude an applicant for consideration as a prospective tenant. A fairer approach is to enter information on a database only if there is a formal breach of the tenancy agreement and advising a tenant of the nature of an entry is more than a matter of courtesy it protects their rights related to privacy and personal information.

## The tenancy agreement

The details of a tenancy agreement will determine the relationship between the property manager, the owner and the tenant. An agreement that uses difficult language, or does not explain clearly the responsibilities of the parties, is likely to lead to confusion and disputes.

At the time of the signing of the tenancy agreement you will need to give the tenant a copy of *Schedule 2 (Information for tenant)* as required under the Residential Tenancies Regulations 1989. An agreement should contain wording signed by the tenant that they have received a copy of the schedule.

In the case of a strata property, provide tenants with a copy of the standard strata by-laws together with any special body corporate rules and regulations dealing with behaviour and the obligations of tenants. It should be noted under the conditions of the lease that the tenant has been provided with any such special documentation. A copy should also be attached to the lease.

In addition to the information in Schedule 2, you and the owner can draft a list of personalised expectations and promises to the tenant as an appendix to the agreement even if some of the items are already contained in Schedule 2. For example:

- We expect that you will take care of this property and contact us as soon as you find any damage or deterioration.
- We need you to pay your rent on time as late payment of rent will cost us money.
- You and your visitors are not to possess or use any illegal drugs on the property.
- Please obtain our permission first if you want to keep a pet on the property. Having a pet without our permission could lead to you being asked to leave.

- Frequently playing loud music or making loud noises that upsets the neighbours could result in you breaching the agreement.
- You will need to have our permission if you want a guest to stay at the property for longer than three weeks.

As a sign of good faith the owner should also outline obligations to the tenant. The following are examples:

- I/We will ensure that the property will be clean and in good repair at the beginning of your tenancy.
- I/We will do whatever is reasonably possible to carry out repairs and maintenance of the property.
- I/We respect your need to have a quiet, clean and safe personal space in which to live.
- At the end of the tenancy, I/we will supply an accurate rental reference and honestly highlight the positive aspects of your tenancy.
- I/We will abide by the terms of the *Residential Tenancies Act 1987*.
- I/We welcome any reasonable suggestion that will make the property a better place to live.
- I/We value you as our tenant and will treat you with respect, courtesy, and fairness at all times.

If REIWA's standard tenancy agreement is being used and there are additional terms or conditions, it is best to list them as a separate attachment to the tenancy agreement, clearly marked 'Additional terms and conditions'. The attachment should be signed by the tenant acknowledging their acceptance of the additional terms and conditions.

Make sure the tenant has read and understands the contract before signing and has a clear understanding of the meaning of the terms and conditions, including any additional terms or conditions, and how they will affect the tenancy.

The results of a survey on literacy conducted by the Australian Bureau of Statistics in 2006 showed that almost half of Australians aged between 15-74 years have 'poor' or 'very poor' literacy skills. About 35 per cent of people could be expected to cope with many of the demands of daily life, but not always at a high level of proficiency.

Adult Literacy and life skills, Australia 2006 (Cat. no. 4228.0)

If the tenant raises any queries or uncertainties that are covered in the terms and conditions of the lease, then consider writing additional conditions to the lease, which should then be initialed by all parties.

Examples of additional conditions could include:

- maintenance or cleaning to be done prior to occupancy commencing;
- fixtures and fittings to be installed; and
- chattels to be provided.

Any condition placed on the lease needs to clearly specify what is to be done, who it is to be done by (and at whose expense), when it is to be done by, and what the consequences are if it is not done.

The RTA allows the owner up to 21 days to provide the tenant with a signed copy of the tenancy agreement, but the preferred practice is to provide the tenant with a copy at the time of signing.

## Bonds

The mishandling of bond money can result in serious legal problems for property managers and their agents.

When a tenancy bond is received, agencies are required to lodge it as soon as possible into a REBA tenancy bond trust account held with an authorised financial institution or into an individual tenancy bond account held by the Department of Commerce's Bond Administrator.

Schedule 1 clause 2(2) of the RTA states that when a bond is received by a property manager it be paid as soon as practicable after the agent's receipt into an authorised bond account.

If the agency holds their own tenancy bond trust account, this account should be reconciled by the agent and balanced at the end of each month, making sure the bond amount recorded on the lease and bond lodgement form is the same as that received and receipted by the agent. The agency should make sure the sum of all those bonds taken is the same as that in the agency's tenancy bond trust account or deposited by the agency with the Bond Administrator, and is reflected in their trust account records.

Sometimes the parties to a lease will sign the contract prior to the lease commencing and the new tenants do not pay all of the monies owing until the lease is due to commence. When this occurs, it is a matter of good business practice not to provide the keys to the property to the tenant until they have fully paid any amount still owing. This is limited by the RTA to two weeks' rent in advance plus the equivalent of four weeks' rent as bond (exceptions apply).

Do not sign the bond lodgement form until the bond has actually been received by the agent.

A common error made by property managers and/or agents has been the incorrect recording of a payment combining a bond and rent as just rent alone. Sometimes a tenant submits money to cover both rent and an outstanding invoice, such as for water use. When issuing a receipt, you need to be aware of the current state of the tenant's account, of what rent is due along with any other legitimate charges.

### Note

Correctly apportioning or accounting for money received is a requirement of the *Real Estate and Business Agents Act 1978*. If property managers notice a receipting error, they must rectify it immediately and inform the person in *bona fide* control of the real estate office that the error has been made. Written records need to be kept for the agent's auditor, to show how the error occurred and how it was rectified.

### Variations in bonds

If a bond has been lodged with the Bond Administrator and there is a change of owner, tenant or property manager, a *Notice of variation of security bond* (Form 9) must be completed and submitted to the Bond Administrator as soon as possible.

In situations where joint tenants are named on the lease agreement and one or more decide to leave or is replaced (with the consent of the owner/agent) by new joint tenants, all parties can elect to change the lease agreement and have the bond paid out, then replaced by a new bond. Alternatively, Form 9 can be used to notify the bondholder of the change of tenants, so that at the end of the tenancy the bond can be paid out to the current tenants. The incoming tenant can pay the departing tenant their share of the bond.

### Disposal of the bond

Once a tenancy has come to an end, make an agreement with the vacating tenants on any deductions to be made and all sign the bond disposal form.

If no agreement can be reached, you can make an application to the Magistrates Court for bond disposal using a Form 6. Original records of all documentation should be kept and taken to court along with copies for the registrar or magistrate who hears the case.

#### Note

Bond forms and other residential tenancy forms can be downloaded from the Consumer Protection website at [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au). These will be of great use to you in your role as a property manager.

#### Tip

If six months have elapsed since a tenancy has ended and a bond is still held by the agent (or the Bond Administrator), the property manager should write to the former tenant, inviting them to apply for disposal of the security bond and notifying them that if the bond is still held by the agent (or the Bond Administrator) in 60 days then it will be paid into the Unclaimed Security Bond Account held by the Bond Administrator.



## Relationship with tenants

If you have made the effort to select the right tenants for the property it should make it easier for you to maintain a good working relationship with the tenants and between the tenants and owners.

Responding to issues and problems raised by the tenants, creates goodwill and trust with the tenants. You do not need to agree to all requests made by tenants, but show that you are prepared to listen and willing to do the best for the tenant.

Being reliable and consistent are also important. This means being on time for property inspections and arranging with tradespeople to cover agreed times and dates when contracted to work on a property.

Make sure all of the obligations in the tenancy agreement are met. A good example is the agreed arrangement for rent payments. If a tenant does not pay the rent within the specified period, a breach notice should be issued as soon as possible. While this may seem harsh, especially if a tenant does not have a history of late payments, allowing a tenant to get behind in rent can lead to further financial problems for the owner and the tenant.

Good agencies have well established systems and processes to deal with difficult tenants. For example, if a tenant/property manager relationship breaks down due to communication difficulties a 'go between' may help resolve any issues. If a tenant is from a particular cultural or ethnic group, an authoritative person from that group could make an ideal 'go between'.

Owners could give consideration to rewarding good and reliable tenants. Suggestions for rewards include improvements made to the property without increasing the rent, vouchers for decoration or garden care, subsidised equipment hire, or payment of water bills if the gardens are maintained.

## Rent increases

Approach rent increases with care as they can affect the quality of the relationship with tenants. Any increase in rent should be explained to the tenant. Keeping rent increases to a minimum, or even slightly below market rates, will encourage good tenants to stay.

When considering a rent increase owners should be encouraged to take into account the cost of finding a replacement such as advertising and loss of income while the property is vacant, if the existing tenant leaves as a result of the rent increase. There is also the possibility of replacing a good tenant with someone less suitable that could result in more costs and issues to resolve.

Different rules apply to rent increases depending on the type of tenancy agreement being used.

Under a periodic tenancy, increases in rent cannot be made within the first six months of the tenancy or within six months of the previous increase.

Under a fixed-term tenancy, increases can only be made if specified in the lease agreement and only when six months have passed since the last increase.

## Property inspections

Property inspections are part of good property management however, most tenants would be anxious to allow a stranger to enter their home, particularly if the person has authority over their occupancy.

Consumer Protection receives many complaints about unplanned visits by property managers and they do not help to build a good tenant/property manager relationship based on mutual respect.

### Frequency of inspections

How often you conduct property inspections depends on what is contained in the tenancy agreement and how closely you need to monitor the tenant.

While the RTA allows rental inspections to be carried out as frequently as every four weeks during rent collections, few tenants would be prepared to accept this. Tenants have a right to quiet enjoyment of the property.

For a long term tenant who has shown consistently good behaviour, fewer routine inspections could be carried out over the tenancy period, reducing the costs to the owner. Tenants who have yet to show their capacity to observe all aspects of the tenancy agreement would require more frequent inspections.

### Notification

The RTA requires that tenants are notified of your intention to enter the property and conduct an inspection. Every effort should be made to negotiate a time that is convenient for you and the tenant.

If the tenant does not advise you that the time is inconvenient then, and if the tenancy agreement allows, you may still enter the property however, take into account the tenant's circumstances. With the increase in

non-standard working arrangements such as working from home, shift work and fly-in-fly-out, a tenant may not be available during standard business hours.

Whatever time and date is agreed on, you are obliged to be on time for inspections. Consumer Protection frequently receives complaints from tenants that their property manager either does not turn up for the inspection, or arrives late without notifying the tenant of any delays.

### Length of inspection

The length of the inspection will depend on the size of the property and where in the tenancy period the inspection is made.

Short inspection times help to keep good relations between the tenant and the owner. Excessively long inspections may need to be explained should the tenant complain or if the owner is expected to pay.

### Inspection photographs

Make sure the tenant agrees before taking photographs during an inspection.

Ideally, photographs should be taken to record areas of concern and to show to the owner if necessary. Avoid showing the tenant's personal belongings. Tenants may not appreciate their personal belongings appearing in photographs which could be viewed by others. This is especially true if the agent may consider using the photographs to market the property for lease or sale. If an agent is intending to use the photographs for marketing purposes ask for the tenant's permission and avoid showing personal belongs.

Provide tenants with CDs, printed or electronic copies of any photographs taken during the inspection.

## Fair wear and tear and state of cleanliness

Deciding what is 'fair wear and tear' and 'state of cleanliness' is an ongoing issue for tenants, owners and property managers.

The RTA does not provide guidance on either issue, but it does require tenants to keep the property in a reasonable state of cleanliness and not cause or permit damage to the property.

The standard tenancy agreement also does not give definitions, but refers to 'fair wear and tear' in relation to maintenance of chattels and fixtures and 'state of cleanliness' in terms of the property being free of vermin and dirt.

Owners should expect wear and tear will be different depending on the nature and number of tenants. For example, owners need to accept there will be different levels of wear and tear for tenants who do, or do not smoke, have young children or own pets.

A suggested definition of 'fair wear and tear' would be the 'deterioration or depreciation in the value of the item by ordinary use, or changes that occur with ageing'. Defining a state of 'reasonable cleanliness' is also personal, in other words, what someone considers 'clean' may not be an acceptable standard by others.

You can help tenants by providing a checklist of items that should be clean at the end of a tenancy.

A checklist could include:

- cooking appliances to be cleaned of food stains, oil and grease;
- refrigerator to be defrosted and clean;
- floors to be washed;
- ventilation fans and vents to be cleaned;
- bathrooms, showers, toilets, laundry to be scrubbed;
- cupboards to be emptied and cleaned inside and out;
- curtains washed (or dry-cleaned) and rehung. Vertical blinds to be wiped;
- windows and flyscreens to be cleaned;
- carpets and floor rugs to be professionally cleaned;
- walls and skirting boards to be cleaned of marks;
- driveways, garage to be cleaned of oil and grease stains; and
- lawns cut and edges trimmed, garden beds weeded.

A detailed property inspection during and at the end of the tenancy can greatly help to avoid disputes. This could include noting in detail and photographing those parts of a property that are susceptible to damage, deterioration or wear and tear. Getting an expert assessment from a suitably qualified independent person is recommended if disputes are likely to occur.

### Case study

Sarah manages a renovated property rented by a young couple. During a recent inspection Sarah noticed scratch marks on the bench tops in the kitchen. The tenants claimed the bench tops were too soft and marked easily and they had to use mats under plates and cooking ware. Sarah was surprised how easily the benchtop could be marked when she tested a small area inside a cupboard. She told the tenants that the damage would need to be reported to the owner.

The owner would not accept the quality of the benchtop as being the problem when told of the damage. Sarah suggested that the owner visit the property to see for himself, which he agreed to do. She showed the owner how easily the bench tops could be marked. The owner agreed that the quality of the bench tops were sub-standard and they would be replaced at the end of the tenancy without affecting the tenant's bond.



### Payment of rent

Show consideration to the tenant by being flexible and giving them several options for paying rent, allowing them to choose the most convenient one.

Cash payments can be a security risk both to the employees of the agent and to the tenant and may affect the agent's insurance. It makes good sense to suggest the tenant use an alternative to cash as a method of payment. This could include EFTPOS, bank deposits, salary deductions or even a rent card issued by the agency.

If personal cheques are accepted, particularly for an initial payment of bond and rent, it is best to insist on the funds being cleared before the keys to the property are handed over to the tenant.

If rent is paid electronically, the tenant should receive regular statements, ideally with the same information found on standard rent receipts. As well as providing a record of rent payments, these records are valuable to tenants as reference when seeking future tenancies.

To make sure rent is paid on time, the owner should consider any reasonable requests from tenants to change the method of paying rent. Enquire about the reason for the request before you advise the owner. It is fair that tenants bear any costs in making the change. In the case of the owner requesting a change in payment method, the owner should pay the costs.

## Centrepay

Centrelink offers a service known as Centrepay through which various businesses, including real estate businesses, can arrange a direct payment scheme between recipients of Centrelink payments and the business. For real estate agencies the scheme allows tenants to have rent paid directly to the agency from their Centrelink payment.

The standard agreement between Centrelink and a business using Centrepay provides for a service fee to be charged to the business – currently set at 99 cents per transaction. The agreement expressly states that this fee cannot be passed onto the customer.

Centrelink, as allowed under the agreement, can terminate a Centrepay arrangement if an agent passes on the 99 cent fee to the tenant.

## Utility fees and service charges

The tenant needs to have a clear understanding of utility related payment arrangements contained in the tenancy agreement.

It is a straightforward requirement for the tenant to pay for household consumption that is metered. Where a service is not metered, the owner and the tenant should agree on an alternative method of calculation.

If an owner passes on a service cost to a tenant, full account details should be given including (where appropriate) meter readings, supply charges, common charges and GST.

## Repairs to the property

Hiring licensed, skilled and qualified tradespeople for property repairs will reassure you that the tradesperson is competent, has insurance cover and, should a problem arise, complaints can be lodged with the appropriate regulatory body. If an unlicensed tradesperson is used, the owner may not be able to make a claim against their insurance policy should the need arise.

A 'hold-harmless' clause in the management agreement regarding damage/repairs to a property will protect you from being asked to pay for damages to the owner's property arising from acts, defaults and negligence of people engaged to perform maintenance. However, you will still be held responsible if you knowingly hired a person who has a history of poor, substandard or dangerous work.

Regulated licensed trades include: painters, plumbers, electricians, gasfitters, builders and pest controllers.

Further information about the registration of these trades can be obtained from:

- Painters' Registration Board  
Ph: (08) 9476 1212  
[www.painters.wa.gov.au](http://www.painters.wa.gov.au)
- Plumbers Licensing Board  
Ph: (08) 9476 1377  
[www.plumbers.wa.gov.au](http://www.plumbers.wa.gov.au)
- Electricians and gas fitters  
Ph: (08) 9422 5200  
[www.commerce.wa.gov.au/EnergySafety/](http://www.commerce.wa.gov.au/EnergySafety/)
- Builders' Registration Board  
Ph: 08) 9476 1200  
[www.builders.wa.gov.au](http://www.builders.wa.gov.au)
- Pesticide Safety  
Ph: (08) 9383 4244  
[www.health.wa.gov.au/envirohealth/home/](http://www.health.wa.gov.au/envirohealth/home/)

The owner has obligations under the RTA to maintain the property in a reasonable state of repair however, differences of opinion may sometimes arise as to how necessary a repair may be.

In situations where an owner is unwilling to authorise a repair, or uncooperative about having it done within a reasonable amount of time, you can consider referring the tenant to the Consumer Protection Division of the Department of Commerce who will seek to conciliate an outcome for the tenant. You can also suggest the tenant serves a *Notice of breach of agreement - by owner* (Form 20A), claiming the owner may be in breach of the lease. The owner then has the option of remedying the breach, or allowing the matter to proceed to court, where a magistrate can make a binding decision.

### Cost ceiling

When owners agree to authorise tenants to arrange urgent repairs if necessary, you should ensure that the tenancy agreement contains a cost ceiling for those repairs.

At or below that cost ceiling the owner will compensate the tenant for the cost of the repairs if they have been carried out by an appropriate person. The person carrying out the repairs should report to the owner through the property manager as to its cause. The dollar amount authorised by the owner for urgent repairs would need to take into account the locality of the property. The cost of repairs is likely to be higher in regional and remote areas of the state than in the major centres and the metropolitan area.

### Urgent repairs

Repairs are urgent if they are likely to cause injury, property damage or affect their quality of living if they are not done.

Schedule 2 of the Residential Tenancies Regulations 1989 provides the following examples of what can constitute a situation requiring urgent repairs:

- a burst water service;
- a broken hot water service;
- a sewerage blockage;
- a broken sewerage fitting;
- a serious roof leak;
- a gas leak;
- an electrical fault likely to cause damage to property or to endanger human life;
- flooding;
- a fault in a lift in the rented premises;
- substantial damage caused by flooding, storm or fire; or
- a broken refrigerator or washing machine where these are included in the tenancy.

As part of your duty of care, give tenants a 24 hour phone number for urgent repairs and act quickly. While it is appreciated that to secure the services of a tradesperson can sometimes be difficult it is assumed that you, as the property manager, will do your best to organise urgent repairs.



## Ending a tenancy

When ending a tenancy property managers are required to abide by the provisions and process set out in the RTA and its regulations. This guide does not explain the processes that must be followed but rather look at certain aspects of it in terms of best practice.

### Ending a fixed-term tenancy

Property managers, property owners and tenants should advise each other of their intentions when the fixed term comes to an end.

If a tenant wishes to break a standard fixed-term tenancy agreement, they are required to pay all rent up to the date the property is re-let. The tenant is also required to reimburse the owner for advertising and other costs incurred in finding a new tenant.

Make sure financial losses by the owner and the tenant are kept to a reasonable minimum by acting immediately to advertise the property after being told of a tenant's intentions to break the fixed-term tenancy agreement.

Consumer Protection has dealt with cases of fixed-term tenancy agreements that require the tenant to provide written notice before the end of the lease. There is no need for such clauses as the agreement will end at a set date. Consumer Protection's current policy on this issue is to investigate complaints from tenants who are penalised by a property manager for not providing written notice towards the end of a fixed-term tenancy.

### Providing references to tenants

It is not uncommon for tenants to ask for written references and testimonials from property managers regarding their tenancy of a property.

Litigation is a possibility if an owner or agency makes a decision based on your reference and later finds that the actions and/or behaviour of the tenant is different.

Make sure all facts and information are true, especially where problems or difficulties have been experienced with the tenant. Personal opinions and hearsay are not appropriate in a tenant's reference. Avoid references to personal details such as marital status, religion and nationality and the use of emotional or highly descriptive language.

The reference should commence with a brief introduction explaining in what capacity the person is known, followed by the recommendation and conclude with an invitation to follow-up by phone or email if further information is required.

#### Tip

A certificate of excellence recognising the tenants' excellent record in meeting all of the conditions in the tenancy agreement can be used as a form of written reference in future tenancy applications.

## Abandoned goods and belongings

While section 79 of the RTA specifies what should be done when dealing with abandoned goods of a former tenant such as perishable food stuffs or low valued goods, it is not clear on dealing with personal documents, including photographs left behind by the tenant.

Make sure any abandoned personal documents or photos are stored in a secure place for at least 60 days in which time reasonable steps should be taken to contact the tenant. If the tenant cannot be contacted within 60 days, then the items should be treated as any other non perishable items as set out by the RTA.

In the case of leased or hired goods left behind by former tenants, the RTA considers them the same as owned goods and it is not your responsibility to establish the ownership of any property left behind by tenants.

### Tip

Property managers are protected against legal action from owners of abandoned hired goods if they dispose of the goods in accordance with the RTA by obtaining an Indemnity Certificate from Consumer Protection. The certificate will protect you from any compensation claims arising out of the disposal of hired goods.

## Home openings during a tenancy

If an owner decides to sell the property, advise the tenant in writing well before a 'for sale' sign is erected.

Informing the tenant after the sign is erected is inconsiderate and likely to discourage cooperation during inspections and home opens.

It is important to understand the stress and financial burden on the tenant that may be incurred when a property is put up for sale. It is not surprising if you are faced with a disgruntled tenant who needs to be persuaded into working with the selling agent. This is especially so if the selling agent is not from the same rental agency and disregards the tenant's rights.

A good strategy to foster goodwill is to offer the tenant a reduction in rent, with the owner's permission, to compensate for any inconvenience and encourage them to keep the property clean and tidy for the duration of the selling period.

## New tenants

When showing new potential tenants through a property it must be within 21 days of the end of a tenancy agreement and the existing tenant must be given reasonable notice to negotiate an agreed day and time for the visit. If a tenant refuses a reasonable request for a home open, you or the owner can seek an order from the Magistrates Court.

## Unauthorised residents

During an inspection you may find evidence of adults living on the property who are not listed on the tenancy agreement.

Unauthorised residents may be sub-tenants, friends or relatives of the tenants. It is unrealistic to ban tenants from allowing friends or family to stay for a period of time but you can control the risk of long term problems.

Standard tenancy agreements usually contain a 'non assignment' clause that prohibits the tenant from sub-letting part or whole of the property. Unauthorised residents are a problem for property managers and owners as they have not been through the tenancy application/approval process.

Proving a person on the property is an unauthorised resident or just a visitor can be difficult. Make sure the tenancy agreement expressly states that only the signatories to the agreement have the right to reside at the property. The agreement could also state that written permission must be obtained from the owner if guests stay longer than a set period of time such as two weeks.

Limiting the number of visitors over a period of time such as 12 months will help make sure stays of unauthorised residents are not a series of rolling visits. This allows for long visits from relatives and also allows tenants to have guests visit for a few days.

## Expense payments

Obtain the owner's authorisation if money is to be allocated and held each month for future and anticipated expenses such as council rates, water rates, or for a planned major maintenance project.

Before making expense payments on a property, make sure sufficient funds are held against the property to avoid overdrawing the owner's ledger account.

It is good financial practice to have one person write out the cheque for an expense payment, and another person to sign the cheque, as it reduces opportunities for errors or misappropriation of money.

### Tip

Record dates and details of all conversations with owners, tenants and other parties of interest and keep them on file. If problems occur that require you to attend court to resolve a dispute, detailed file notes are more convincing than relying on memory.

## Transfer of management

When the management of a property is transferred, advise the tenant in writing, and follow up with a phone call to confirm the tenant is aware of any changes in how they will have to pay the rent. The letter to the tenant should include confirmation of how much bond is being held on the tenant's behalf, the date the rent is paid up to, if there are any outstanding invoices and the date of the last inspection.

The new managing agent should receive the original lease and other related documentation. The former agency should retain copies of all documents. The new agency should notify the Water Corporation

and local council that they are now responsible for managing the property.

The new agent should receive the following when a transfer of management occurs:

### Checklist

- Original lease to tenant
- (Copy of) original bond lodgement form
- (Copy of) tenant's application to lease form
- Bond variation form signed by former agent
- Keys to the property
- Photocopy of keys and security devices held by tenant
- Alarm codes
- Instruction books and warranties for fixtures and fittings and chattels in the property
- Property Condition Report and inventory if applicable
- Copies of photos of the property from the Property Condition Report and/or inspections
- Copies of any certificates of insurance and insurance policies
- Copies of inspection reports conducted during the course of the tenancy
- List of any outstanding maintenance
- List of any ongoing maintenance or service arrangements (such as pool cleaning, lawn mowing, garden bags, insurance) and contact details for these service providers so that they may be advised
- Any outstanding accounts due for payment by owner and or tenant
- Copy of tenant ledger card showing rent payments and 'paid to' date
- Copies of any current breach or termination notices served on tenant

To ensure that all the above information is obtained by the new property manager the owner of the property could be asked to contact the former managing agent requesting that it be provided to the new managing agent.

### Case study

Janet paid a bond to a property manager, but when the rent roll was sold the bond details were not passed across to the new agency. The new property manager failed to check to ensure that all bond monies held on behalf of existing tenants were passed across.

When Janet's lease expired, she requested the new agency to return her bond. The property manager advised that as no details could be found regarding her bond she would have to follow up the issue with the former agency. That advice was wrong.

The agency purchasing the rent roll is responsible for re-distribution of bonds to vacating tenants. As the purchasing agency was responsible, it was obliged to bear the cost of repaying Janet's bond money from its own finances.



## Disclosure of interest

Article 16 of the Code of Conduct requires that if there is a significant relationship between you and a particular supplier you will need to make a disclosure statement. The written statement should include an explanation of the nature of the potential conflict of interest. It needs to be contained in a separate document and signed by you and the owner before the supplier of the goods or services is appointed.

While the Code of Conduct does not define what is meant by 'significant relationship', it can mean blood relationship, a relationship by marriage, or a business relationship between two or more individuals.

## Pets and rental properties

It is not an offence to discriminate against potential tenants on the basis of pet ownership, but owners should be aware that over two thirds of households in Australia have pets. This means insisting on a 'no pet policy' would be excluding themselves from a significant portion of the tenant market.

Pets can be a sensitive issue for owners and tenants. Based on past experience, owners may have had pest infestations, damage to property and noise problems caused by the pets of tenants. For tenants, pets can often provide a number of benefits such as increased safety and companionship.

### Note

Under section 9 of the *Disability Discrimination Act 1992* (Cwlth), it is an offence to discriminate against a disabled person who uses a guide dog. For owners and property managers this means that a tenant's application cannot be rejected on the basis that the applicant is accompanied by a guide dog.

You may have to enforce the no-pet policies of the owner despite claims by tenants that they are unnecessarily strict. A breach notice can be served on a tenant who acquires a pet without the owner's permission when the tenancy agreement contains a 'no pet clause'.

Where pet ownership is allowed, 'pet guidelines' should be set at the start of a tenancy. These guidelines need to be reasonable in case they are challenged in a court of law.

The guidelines could include:

- what type of pet is permitted or prohibited;
- limits on the size and number of pets;
- sanitary issues - cleaning up of animal droppings, exterminating fleas and other vermin;
- policy on non tenants bringing pets onto the property;
- tenant's responsibility for the behaviour of the pet;
- the pet is not to adversely affect the lawful rights of others - noise, hygiene, physical assault etc;
- if the pet is to be neutered; or
- whether the pet will be kept inside or outside the dwelling.

If a tenancy agreement allows a tenant to have a pet, a breach notice can be served if the pet disturbs other tenants, is causing damage to the property or interferes with the safety or rights of the owner or other tenants.

Property managers managing a strata lot should determine whether there are any special by-laws that restrict pets.

## Pet bonds

The RTA currently limits pet bonds taken from tenants having cats or dogs to \$100, for the purpose of fumigation at the end of a tenancy.

The one-off bond payment of \$100 is regardless of the number of agreed pets, for example two cats and one dog = one x \$100 pet bond.

The *Dog Act 1976* restricts some breeds of dog in Western Australia. The following breeds are prohibited: dogo Argentino, fila Brasileiro, Japanese tosa, American pit bull terrier, or pit bull terrier. Dogs of mixed breed which visibly contain the restricted breeds are also controlled by the legislation.

## Rental properties and crime

Schedule 2 clause 5 of the Residential Tenancies Regulations 1989 prohibits tenants from using rental premises for illegal purposes. However, it is not uncommon for the media to report on criminal activities carried out in rental properties.

### Note

Police advise that there are three types of criminal activity that warrant particular attention with rental properties: storage of stolen goods, motor vehicle related crime and the selling and production of illegal drugs.

Should a property manager be suspicious about the legality of particular goods, motor vehicles or motor vehicle related parts in the tenant's possession, or of what could be illegal drug activity, police advise that they should call Crime Stoppers on 1800 333 000.

# Key regulation

## *The Real Estate and Business Agents Act 1978*

Many of the sections of the *Real Estate and Business Agents Act 1978* (the Act) are related either directly or indirectly to property management.

The following sections of the Act are of key significance for property managers:

- s.60(1)(b) and s.60(2): ensure the agent has obtained a valid appointment to act on the property to be managed;
- s.61A: never demand or receive from the tenant of a residential property any letting fee or a lease renewal fee nor ask for 'key money' (s.66);
- s.63: make sure documents are signed where required by all relevant parties and true copies are provided;
- s.64: ensure if the property is to be rented to an employee of the agent, full disclosure is made to the owner of all relevant details and their specific written consent obtained prior to entering into the contract;
- s.69: provide receipts and keep records of money received, making sure full and accurate records are kept, with receipts correctly entered into the appropriate ledger within one business day of money being received (s.68(6));
- s.68(4) and (5): make sure that when moneys are to be paid out of the trust account, authorisation is obtained from the person on whose behalf the moneys are held as to the purpose to which the moneys are to be put; and
- s.51(1): inform REBA whenever the property manager changes the agent they are currently working for.

Property managers should comply with all of these sections of the Act.

## *The Residential Tenancies Act 1987*

Where the Code of Conduct deals primarily with the behaviour of licensed and registered people working in the real estate industry, the *Residential Tenancies Act 1987* (RTA) specifies processes to be undertaken by owners, tenants and registered property managers.

The RTA and associated regulations deal with a diverse range of issues such as:

- rights and obligations of owners and tenants;
- dispute resolution;
- payment and refund of security bonds;
- property inspections;
- rent payment and rental increases;
- repairs and maintenance; and
- tenancy agreements and their termination.

The RTA applies to most tenancy arrangements. However, it does not apply to residences in a residential park, motels, hotels, nursing homes, clubs, educational institutions, short term holiday accommodation, boarders and lodgers or premises used for commercial purposes. The RTA also does not apply where a tenant is a party to buying the property or where a tenancy agreement arises from a mortgage.

The RTA allows owners and tenants to modify some sections of the contract dealing with their rights and obligations. The following requirements can be contracted out of if both parties agree:

- tenant's conduct and responsibility for damages and cleanliness;
- vacant possession of a property;
- legal impediments to occupation of a property;
- owner's responsibility for cleanliness and repairs;
- compensation where tenant arranges repairs;
- providing and maintaining locks;
- owner's right of entry;
- right of tenant to affix and remove fixtures;
- owner to bear certain costs;
- right of tenant to assign or sub-let;
- vicarious liability of tenant for actions of other persons lawful on the property;
- cost of the management agreement to be borne by the owner; or
- discrimination against tenants with children.

### Tip

It is not recommended that an owner or tenant contracts out of any section of the RTA unless there is a very good reason to do so, as it can have unintended consequences on the contractual relationship. Specific advice on appropriate wording should be sought if it is intended to modify the tenancy agreement.



## Occupational safety and health in property management

The *Occupational Safety and Health Act 1984* (the OSH Act) requires employers to provide and maintain a safe working environment for employees as far as it is practicable. Regulation 3.1 of the Occupational Safety and Health Regulations 1996 requires employers and persons in control of a workplace to identify hazards in the workplace, assess, and reduce the risk of injury or harm arising from those hazards.

Employees also have a duty of care to ensure their own safety and health and avoid affecting the safety or health of any other person in the workplace. Employees must comply with employer's instructions if they relate to safety and health within the workplace.

### **Regulation/legislation**

Regulation 3.3 of the Occupational Safety and Health Regulations 1996 holds particular relevance to property management. Property managers will often find themselves, because of the nature, location and times they are asked to work, in situations where they are isolated from other people.

Regulation 3.3 makes it mandatory for employers to provide employees working alone a means of communication to call for help in the event of an emergency.

It also requires a procedure to be established that ensures regular contact between an employer and their employee is maintained and that the employee be trained in the procedure.

The WorkSafe Western Australia Commission has produced a guidance note titled *Working Alone* which provides useful information for agencies wishing to design safe systems of work for persons working alone, such as property managers, when performing inspections in the absence of tenants. The guidance note can be obtained by contacting the WorkSafe Information Centre (1300 307 877) or by downloading it from the WorkSafe website, [www.worksafe.wa.gov.au](http://www.worksafe.wa.gov.au).

The following are good OSH policies:

- Providing training for staff to enable them to develop skills in recognising potentially hazardous situations and how to deal with aggressive people.
- In the course of their job property managers should not place their personal information in the public domain (such as details of home addresses or home phone numbers).

- Requiring staff not to leave the office without advising the address of their destination and an estimated time of return
- Requiring staff not to leave the office without a fully charged mobile phone. The phone should be programmed with the office phone number and numbers of emergency services, which would satisfy regulation 3.3 of the Occupational Safety and Health Regulations 1996.
- Ensuring that when out of the office, staff call the agency periodically. If a call is not received, the agency should phone the property manager.
- Using a pre-arranged distress code when out of the office to indicate if a second person's presence is required or police assistance is warranted.

### **Be aware**

While physical assault is a key concern, property managers can also be exposed to other health and safety hazards such as:

- aggressive dogs;
- trip and fall hazards caused by unsound flooring;
- unsafe structures; and
- exposed wiring.

The property manager should identify and record these hazards and take action to have them removed or controlled to prevent other people from being similarly exposed.

## Equal opportunity in property management

The *Equal Opportunity Act 1984* (the EO Act) is particularly relevant in the selection of tenants. The Act prohibits people being discriminated against on the basis of:

- age;
- family responsibility or family status;
- gender history;
- impairment;
- marital status;
- political conviction (includes a lack or absence of political conviction);
- pregnancy;
- race;
- sex;
- sexual orientation; and
- religious conviction (includes a lack or absence of religious conviction).

The EO Act does not cover discrimination issues such as whether a person has a poor credit history, criminal convictions, poor tenancy references, is a smoker or a pet owner.

A rental property cannot be advertised in a way that discriminates against applicants in any of the ten areas covered by it. Every potential tenant should be offered an application form and advised that their application will be considered on its merit. Under no circumstances should you indicate a preference for a certain type of applicant as this may constitute a breach of equal opportunity legislation.

An example of discrimination is when properties are advertised as being suitable for a couple, a single person or a family.

The five Commonwealth laws that deal with discrimination are the *Age Discrimination Act 2004*, the *Sex Discrimination Act 1984*, the *Racial Discrimination Act 1975*, the *Disability Discrimination Act 1992* and the *Australian Human Rights Commission Act 1986*. The Commission's website is [www.hreoc.gov.au](http://www.hreoc.gov.au).



# Glossary

## **Annexure**

A document that is added to the main document (such as a management agreement) that may list extra terms and conditions of the appointment.

## **Bond**

Money paid by the tenant and held in trust by a third party as security against damage to the premises.

## **Chattels**

Articles of personal property such as household goods, furnishings and fixtures that are not permanently affixed to the property.

## **Fair wear and tear**

General terms for anything that occurs through ordinary use. Wilful and intentional damage, or negligence, is not fair wear and tear.

## **Fixed-term tenancy**

A tenancy that specifies a specific end/renewal date.

## **Management agreement**

An appointment to act for an agency to perform property management services on behalf of an owner.

## **Owner**

The person who owns the property and who is entitled to collect the rent.

## **Periodic tenancy**

A tenancy that doesn't specify a fixed end date.

## **Person in *bona fide* control**

A licensed real estate agent who is the person in charge of an agency.

## **Premises**

A general term for a property. Can mean a house, duplex, unit, flat, apartment etc and can include the land on which the premises are situated.

## **Property Condition Report**

A report identifying the contents and condition of a property at the beginning, during, and at the end of a tenancy.

## **Rent**

Payment made periodically by a tenant to the property owner or property manager for the use of the property.

## **Rent roll**

A group of rental properties managed by a real estate agent.

## **Trust account**

A bank account where money that is received or held by an agent or any member of an agent's staff on behalf of another person in relation to a real estate or business sales transaction or property management transaction is held. Deposits on sales, tenancy bonds, rents and pre-paid advertising are all examples of trust money.



**Real Estate and Business Agents Supervisory Board**

The Forrest Centre, Level 6, 219 St Georges Terrace  
Perth, Western Australia 6000 (weekdays 8.30am - 5.00pm)

**Real Estate and Settlement Advice Line: 1300 30 40 64**

(for the cost of a local call statewide)

Post: Locked Bag 14, Cloisters Square WA 6850

Admin: 08 9282 0843 Facsimile: 08 9282 0869

Email: [contactus@reba.wa.gov.au](mailto:contactus@reba.wa.gov.au)

Website: [www.reba.wa.gov.au](http://www.reba.wa.gov.au)

**National Relay Service 13 36 77**

**Quality of service feedback line: 1800 30 40 59**

**Translating and Interpreting Service: 13 14 50**

(ask for a connection to 1300 30 40 64)

