



Government of **Western Australia**
Department of **Commerce**

You and your **property manager**



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.

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

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Scope of this publication

This publication provides general information and explains the law in simple language. It is no substitute for the legislation. You should get expert or legal advice about your particular situation.

Introduction

As a property owner you may decide to place the responsibility of managing your rental property in the hands of a registered property manager working for a licensed real estate agency. Doing so will allow you to avoid the day-to-day worries of property management.

So what can you expect from your property manager, and what can you do if something goes wrong?

Property managers

Property managers who offer their services for a fee must be registered real estate sales representatives working for a licensed real estate agent. It is the real estate agent who is in charge of the agency. The licensing of real estate agents and registration of sales representatives is performed by the Consumer Protection division of the Department of Commerce.

A property manager must satisfy Consumer Protection that they have completed recognised course work, and are of good character and repute in order to obtain a certificate of registration.

Property managers, like other sales representatives and real estate agents, are governed by the Real

Estate and Business Agents Act 1978 and the Code of Conduct for Agents and Sales Representatives.

Property managers must also be familiar with the rights of landlords and tenants as set out in the *Residential Tenancies Act 1987*.

You can check if a property manager is properly registered by calling Consumer Protection on 1300 30 40 54.

Strata managers

A strata manager performs a different role to that of a property manager. A strata manager is a person who collects periodic levies, arranges repairs, common property insurance and other matters on behalf of people who own strata properties in the same strata complex.

Strata managers are not required to be licensed in their own right. If a strata manager is also licensed as a real estate agent through the same business then the clients of that strata manager have a greater degree of protection because of the education, conduct and trust account requirements placed on real estate agents. However, strata issues do not fall within the *Real Estate and Business Agents Act 1978*.



Issues relating to strata titles (but not strata managers) are dealt with by Landgate. Landgate can be contacted on 9273 7044.

Role of the property manager

The main roles of a property manager are usually to market your rental property, select a tenant and manage your property.

Depending on your needs, you can appoint a real estate agency to do one or more of these tasks. The services the agency provides will depend on the written management agreement, usually known as a Written Authority, an Authority to Act or an Appointment to Act, that you have agreed upon with the agency. For more information on written authorities see the Consumer Protection publication *Real estate fees – negotiating with an agent*.

Some of the specific tasks that may be carried out by your property manager include:

- negotiating a rent appropriate for the property, the area and the current market conditions;
- advertising for and locating potential tenants;
- selecting a tenant and collecting the rent;
- preparing a periodic or fixed-term residential tenancy agreement;
- lodging and applying for the release of security bonds;
- carrying out the agreed upon inspections of your property;
- reporting and arranging for repairs and maintenance if necessary, and to the extent authorised;
- providing relevant notices and financial statements to you;
- attending meetings, such as strata company meetings;
- paying local council rates and strata levies etc; and

- issuing breach/termination notices to the tenant, or arranging for court proceedings when appropriate.

Code of Conduct

The Code of Conduct for Agents and Sales Representatives sets out standards of practice for all agents and their sales representatives, including property managers in Western Australia. These requirements protect you by promoting and enforcing appropriate standards of conduct in the marketplace.

A number of these standards refer to the Written Authority, which is a legally binding contract between you (the principal) and the licensed real estate agency. The Written Authority authorises a registered property manager to manage your property for you.

The responsibilities of agents and property managers under the Code of Conduct include requirements to:

- act in your best interests, except where it would be unreasonable or improper to do so;
- follow your instructions, except where it would be unreasonable or improper to do so;
- act fairly and honestly;
- exercise skill, care and diligence;

- disclose in writing if any supplier of goods or services (such as cleaners, carpenters etc) recommended to you has a 'significant relationship, connection or affinity' with the agency;
- promptly provide information to you about expenses paid on your behalf, such as copies of invoices;
- not knowingly mislead or deceive any parties in negotiations or a transaction;
- not engage in harsh or unconscionable conduct;
- not use or disclose any confidential information obtained while acting for you unless permitted to do so by law;
- not advertise or offer for lease a property for an amount, or terms, different from that authorised by you;
- not seek payment to others on your behalf for fees that exceed the amount agreed in the Written Authority, or is not initialled in the Written Authority; and
- not seek any payment of a fee that is unjust in light of the Written Authority and other circumstances.

The Code of Conduct requires that property managers and their unregistered assistants be supervised by the licensed real estate agent in charge of the agency

at all times. If you are having problems with the property manager, your first step should be to speak to the supervising agent about it.

Choosing a property manager

The level of fees charged can vary substantially from agency to agency and is fully negotiable, so it is wise to shop around for the best deal. Remember though that the 'best deal' is not always the cheapest. Your choice of agency should also be based on whether the appointed property manager will successfully reduce your workload and stress, in addition to protecting your investment.

When choosing an agency to manage your property, it is a good idea to seek recommendations from friends and family.

Although you may negotiate fees and charges with an agent, ask to meet the specific property manager who will deal with your tenants and property. If you speak personally to several property managers at their place of business, you can assess their manner and professionalism while also gaining some understanding of their business standards and experience.

Useful questions to ask during these visits are:

- What evidence and/or assurances can you provide me regarding the quality of property management service your clients receive?
- Can you provide me with a copy of the statement you send landlords and if necessary explain it to me?
- What type of tenancy will suit my particular needs?
- Could you please show me your standard Written Authority and explain to me the different fees and total fee you propose to charge me?
- How will your agency advertise for tenants?
- What do you charge for advertising, and where will my property be advertised?
- What sort of checks do you do to assess the suitability of prospective tenants?
- How much do you think the property should be leased for? Why?
- How much will the security bond be? (In most circumstances it should be four weeks' rent.)
- Do you maintain a Bond Trust Account or use the Department of Commerce Bond Administrator?
- What will happen to the security bond at the end of the tenancy?

- Could you show me your standard lease agreement with a tenant?
- What type of property inspection reports will be provided to me? How often will they be provided and what will this cost?
- What arrangement do you suggest for the apportionment of water costs?
- Do you charge for postage and petty expenses? If so how much are they and how are they calculated?
- How thoroughly will you check my property after the tenant leaves? Could you show me a copy of your standard Property Condition Report, and can photos/videos be included? How much will this cost?
- If the tenant fails to pay rent, will the notice of breach for late rent be issued automatically and promptly?
- Do you have any experience representing property owners in the Magistrates Court?
- What are the penalties if I terminate the Written Authority before the agreed period expires? Note, any penalties (often referred to as 'liquidated damages') can be negotiated, and under new provisions in the Australian Consumer Law (ACL), contracts with 'unfair terms' can be disputed in court and declared void.

- What happens if my circumstances change and I want to live in my property?

Insurance cover

It is a good idea to discuss with your property manager the different types and amounts of insurance that you may need.

In addition to house (or building) insurance, you should discuss the option of landlord protection insurance with your property manager. This type of insurance can protect you if the tenant maliciously or deliberately damages your property or if you experience a loss of rental income whilst repairs are being undertaken.

It is wise to find out exactly what the insurance policy will cover you for. For example, some landlord protection policies will cover you for damage deliberately caused by tenants but not accidental damage.

Bear in mind that some landlord protection underwriters will only deal with real estate agencies, not directly with owners.

You may also wish to ensure that you have adequate public liability insurance in case someone comes to harm on your property.

Negotiate, then get it in writing!

As with any business transaction, it is important that you are clear in your own mind what exactly you require concerning the management of your rental property.

Some questions you should ask yourself about the management of the property include:

- How promptly do you wish to be told if your tenant is behind with the rent?
- Do you want to be consulted before any repairs or maintenance are carried out, no matter how small? Or would you prefer to be contacted only when the amount exceeds a set limit?
- How often do you want property inspections carried out on your property?
- For how long do you wish to engage the real estate agency, known as the period of agency?
- Do you wish to be involved each time a tenant is selected?

Any provisions, like the ones detailed above, need to be agreed in writing preferably in the Written Authority.

The Written Authority that you sign to authorise a real estate agency to manage your property for you is a legally binding contract. This means that both you and the real estate agency are obliged to fulfil the requirements of the Written Authority.

The Written Authority can vary between agencies, so it is important that you read the contract carefully.

For example, REIWA's form titled Exclusive Management Authority for Residential Premises allows you to specify the rental details for the premises, the period of agency, the payments the agent is required to make on your behalf using the rental money collected, and the manner your rental proceeds should be paid to you. The agreement also requires you to specify whether or not you agree to pay separate marketing and advertising costs, (with a maximum amount payable) each time the property is vacated. An agreed letting fee and management fee must also be specified. If you would like your property manager to organise improvements to your property (such as painting or the installation of air-conditioning) then the fee for this service should also be specified, whether as a fixed amount or a percentage of the total cost of the project.

An agent may claim expenses from you that are related to their duties, such as photocopying and faxing costs, or reimbursement for repairs paid on your behalf. You should discuss these expenses with the agent before signing the Written Authority. It is important to specify in the Written Authority the nature of these expenses, and clearly set out the method by which they will be

calculated and the maximum amount payable.

To avoid misunderstandings or problems later on, it is important to include in the Written Authority all agreements between you and your agent. You and the agent should sign and date any special requirements that are added to the standard contract.

For instance, if you have concerns about the deterioration in the condition of the property, you should ensure that the Written Authority includes a requirement that copies of all inspection reports and breach notices for damage are sent to you. In this way you can keep track of the condition of the property.

You may also wish to include a requirement that you are present at all or certain property inspections carried out by the agency.

Agency fees

A management fee and inspection fee are likely to be included in the Written Authority with the agent. As with any other service, these fees may be negotiated with the real estate agency, and you can shop around for better deals.

A management fee is a fee that covers the routine or day to day business of managing your property. The Written Authority used by REIWA members allows for a management fee that is either a percentage of the gross collections

for the tenancy period, or a fixed fee per month/year. The term 'gross collections' refers to the total value of all money collected from all sources, including rent, water charges, electricity and gas charges. GST is payable on the management fee and other fees charged by the agent.

The Written Authority will mention other fees and costs, such as charges for preparing the property condition and final inspection reports, periodic inspections, postage and other minor costs (including banking transaction fees), attendance at meetings (including court appearances), marketing and advertising costs.

Tenant paid letting fees have been abolished under changes to the *Residential Tenancies Act 1987* and *Real Estate and Business Agents Act 1978*. Effective since 5 April 2007, real estate agents now CANNOT include a letting fee (for finding a tenant) as part of a Residential Tenancy agreement to be charged to the tenant, however they can still charge these fees to owners or landlords if agreed upon in the Written Authority.

Additionally, the Written Authority used by REIWA members allows the agency to charge the owner, if agreed, a leasing fee for each new tenancy that is either a percentage of the gross collections for the tenancy period, or a fixed fee per month/year.

Expenses

In most cases, landlords want their property manager to arrange repairs, newspaper or internet advertising or other maintenance work on their behalf.

Property managers cannot pay expenses on your behalf unless you have given them permission to do so in the Written Authority.

It is recommended that before you sign the Written Authority you think carefully about whether you want the property manager to arrange these matters for you. If you do, it is wise to confirm the details in writing in the Written Authority then sign and date these with your agent.

For example, you could require that all payments above a certain amount are discussed with you before they are made. This type of condition can prevent misunderstandings and unexpected bills later on.

If a property manager incurs a cost on your behalf, he/she is required to include with a claim for expenses some documentation or other evidence in support of the expense. In addition, you are entitled under the Code of Conduct to ask for further information that you may 'reasonably require' in order to be satisfied about the amount of the expense and that the expense was paid appropriately.

In relation to advertising, some

additional requirements are also in place. A property manager may not seek payment of an expense for advertising, signboards, printed material and promotions from you unless:

- you have agreed in writing to pay the expense;
- the Written Authority specifies a maximum amount for advertising; and
- the maximum amount stated on the Written Authority has been initialled by you.

Initial property inspection and beyond

Once you have chosen an agent, you should walk through the property together to reach an agreement about the actual state of your rental property. You may choose to photograph/video the property as proof of its condition at that time. The agent will then write up a Property Condition Report that explains the state of the property. The Property Condition Report will be used as the basis for comparison if the tenant leaves the property in a poor condition not attributable to normal wear and tear.

It is recommended that you make sure any particular areas of concern you have are included in the Written Authority and the lease agreement with the tenant. For instance, you may decide that you want the agent to inspect your driveway for oil

stains during property inspections, and for the tenant to remove any oil stains they have made before vacating the property.

Other contentious issues that are best dealt with at this initial stage are whether pets or smoking are allowed, and who bears the responsibility for water consumption and the maintenance of gardens, lawns and pools.

If you intend to leave any furniture or other items on the property then you may wish to make an inventory of the furniture detailing each item and its condition. Photographs can again be helpful by providing visual evidence of the initial condition of the furniture for future reference.

Once agreement has been reached between you and the agent about the items and their condition, the inventory can then be attached to the lease agreement with the tenant to confirm their responsibilities. An agent will generally charge more for looking after a furnished property because of the extra work involved as well as charging for an inventory to be conducted at the completion of each tenancy.

You should note that as this is considered an investment, furniture will depreciate over time. For example a \$5,000 television may be depreciated over five years, so if it is broken after four, it may only be valued at \$1000.

Tenant selection

During the tenant selection process, you should bear in mind that The *Equal Opportunity Act 1984* does not permit discrimination on the basis of a person's age, family responsibility, sex, sexual orientation, gender history, disability, marital status, pregnancy, beliefs, race or spent convictions.

The Residential Tenancies Act 1987 does not allow a landlord (or the landlord's agent) to refuse to let a property to someone because they will have children living with them, except in limited circumstances, such as when a person's own home is being let or where the owner or the agent of the owner lives in the premises next door.

Subsequent instructions

If you give any subsequent instructions to your agent after signing the Written Authority, make sure your instructions are in writing and that you keep a copy. This will help you and your property manager to keep track of your requirements.

If a new instruction arises that is in conflict with the Written Authority that you signed then the Written Authority will need to be amended to reflect the new instruction. The agent may or may not agree to these changes. Any amendment should be signed and dated by the agent and you.

Your legal obligations to the tenant

Even if you have a property manager acting for you, all landlords have legal obligations to tenants and these are set out in *The Residential Tenancies Act 1987*.

Real estate agents and the property managers they employ must comply with the Written Authority, but they and the landlords must also comply with other relevant laws like the Residential Tenancies Act.

The Residential Tenancies Act covers matters dealing with the rights and obligations of tenants and landlords. Some of the matters the Residential Tenancies Act deals with relate to security bonds, property maintenance/repairs, locks and security. You may wish to discuss these matters further with your agent or property manager.

It is now a legal requirement to have professionally installed, hard-wired smoke alarms and safety switches (RCDs) in premises before any new tenancy agreement commences. Furthermore, RCDs are required to have been installed in all leased premises even for preexisting agreements since August 2011 and hard-wired smoke alarms will need to be installed by no later than October 2011.

For more detailed information about your rights and obligations to your tenant, you can contact the Consumer Protection Advice Line on

1300 30 40 54. Consumer Protection provides advice and assistance to tenants and landlords on residential tenancy issues. Tenancy information is also available on Consumer Protection's website www.commerce.wa.gov.au/consumerprotection.

Terminating the authority to act with the agency

If you wish to end your agreement with the real estate agency, you should first check your Written Authority or consider obtaining legal advice.

If you cease paying property management fees, and have not cancelled your agreement as set out in your Written Authority, then an agency could decide to take you to court for being in breach of the contract.

Therefore, it is important to cancel your agreement in writing and give the proper notice required by the Written Authority. In most written authorities, if there has been a fundamental breach by either party, you or the agent can cancel your agreement by giving 28 days notice in writing to the other party.

Most written authorities usually allow for 'liquidated damages' to be paid to the agent at the current rate of 50 per cent of the management fee that the agent would be expected to receive for the unexpired period of agency. If you

do not agree with this clause you may negotiate another rate with the agent or strike out this clause completely before you sign the Written Authority.

However, if the agency you are contracted with is sold to another agent or closes down then any existing written authorities are automatically terminated. Another contract will need to be established with another agent (whether the one buying the agency or another agent) if you can agree to the terms.

Under the new Australia Consumer Law introduced in January 2011, there are provisions that relate specifically to unfair contract terms in consumer contracts. A term is unfair if it causes a significant imbalance in the parties' rights and obligations, is not reasonably necessary to protect the legitimate interest of the supplier and would cause detriment if it were applied or relied on. Unfair contract terms, even if signed or agreed to, may be disputed in court and certain consumer contracts that are standard form contracts may be declared void.

We can assist

You can phone Consumer Protection on 1300 30 40 54 to obtain information about the duties of a property manager.

You can also obtain information from Consumer Protection if the agency has not fulfilled its side of the agreement.

If you wish to lodge a complaint with Consumer Protection, copies of our complaint form are available from the Real Estate and Settlement Advice Line on 1300 30 40 54, or on the Consumer Protection website at www.commerce.wa.gov.au/consumerprotection

Alternatively, you may put your complaint in writing. If you do so, please attach copies of relevant contracts and correspondence then mail to:

Consumer Protection
Locked Bag 14
Cloisters Square WA 6850

Your complaint may be referred to an investigator if a potential breach of the legislation is identified, or to a conciliator who will try to negotiate a settlement of the dispute.

If you would like more information about these proceedings, please refer to the publication *A guide to investigations and disciplinary proceedings under the Real Estate and Business Agents Act 1978*.



Department of Commerce

Consumer Protection Division

Advice Line 1300 30 40 54

(for the cost of a local call from anywhere in the State)
8.30am - 5.00pm weekdays

Forrest Centre
219 St Georges Terrace
Perth Western Australia 6000

Locked Bag 14 Cloisters Square Western Australia 6850
Administration: (08) 9282 0777 Facsimile: (08) 9282 0850
National Relay Service: 13 36 77

Website: www.commerce.wa.gov.au/consumerprotection
Email: consumer@commerce.wa.gov.au

Great Southern	(08) 9842 8366
South-West	(08) 9722 2888
Mid-West	(08) 9964 5644
Goldfields	(08) 9026 3250
North-West	(08) 9185 0900
Kimberley	(08) 9191 8400