



Settlement Agents NEWS

SETTLEMENT AGENTS SUPERVISORY BOARD

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Season's greetings from the Board

With the New Year just around the corner it's fitting to look back on 2009 and reflect on the year that was.

The enigmatic nature over the past 12 months of the State's property market has brought with it associated challenges and pressures that many industry members have not encountered for a number of years. Taking this challenging environment into account the Board is generally pleased with the level of industry performance and compliance, with there being no real increase in consumer complaints, and no situations arising that involved the need to appoint supervisors to businesses. From the Board's perspective, the industry has met the demands of this difficult market through hard work and diligence and applauds its overall integrity.

To remain an effective regulatory body the Board realises that it must have legislation that keeps pace with changes in industry practices, technological advances and consumer requirements. To that end the Board continued its review of the *Settlement Agents Act 1981*, and its subsidiary legislation, with a working group put together in March 2009 to ensure any recommended reforms

to legislation are relevant and effective. The Board believes any updated legislation should reflect and cater for any significant new developments in the industry, such as the Council of Australian Government's (COAG) new national trade licensing scheme and the anticipated moves towards electronic conveyancing and a national system.

In July a survey was distributed to all settlement agents in order to gauge opinion about potential amendments to legislation. The results of this survey, as well as feedback from peak settlement industry bodies, affected stakeholder groups and consumers, will be considered in the Board's future recommendations on changes to the existing legislation.

The Board continues to be encouraged by the positive response received from the participants of the Compulsory Professional Development (CPD) program. It is confident that the main aims of this initiative — to improve the professionalism of

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industry members while increasing consumer confidence in the overall industry — are being, and will continue to be, met.

Among the improvements made to the Board's website during the year was the addition of new content dedicated to auditors and the CPD program as well as the use of icons and images to facilitate navigation throughout the website. The Board also commenced the online publication of relevant Board policy statements relating to its statutory functions and activities. A completely redeveloped website will soon be launched incorporating a modern format and superior search function.

The Board continued to issue the *SASB e-Bulletin* throughout the year. The e-Bulletins take advantage of the instant distribution and accessibility that email communication allows. They also provide an educative resource to industry members that can be

quickly and easily digested. The Board has resolved to maintain the distribution of e-Bulletins in conjunction with the quarterly newsletter to build awareness of the compliance requirements and legislative obligations for settlement agents through the publication of articles dealing with industry practice issues and case studies, legislative amendments, disciplinary hearings and CPD updates.

The Board is once again looking forward to the challenges of the coming year and the continuing professionalism of the settlement industry. On behalf of the Board members and staff, I wish everyone in the industry a safe and prosperous 2010.



Mirina Muir
SASB Chair

Update: New process for lodging renewal applications

From 1 December 2009, all renewal or licence on hold applications will only be accepted by lodgement at Australia Post.

Australia Post will only accept lodgement of **complete** applications. Therefore, applicants must ensure that their application contains all the required attachments and information to enable their application to be assessed. An incomplete application will be rejected at the Australia Post counter.

Board licensing staff have had a number of enquiries about the two or three page 'Application Summary' document that prints once the form details have been completed and the 'Validate and Print' button is clicked.

It is correct that only a two or three page summary of your application will print. The information typed into the form is stored in the two-dimensional barcode on the second or third page of the Application Summary print out.

This Application Summary must be lodged at Australia Post together with the mandatory attachments listed under the 'Application Instructions' heading on the Application Summary.

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Staff at Australia Post will only be performing a verification function to ensure that the appropriate information is supplied to deem an application 'complete'. Australia Post will not in any way be responsible for assessing the content of such information. The complete application will be forwarded to the Board for assessment and processing.

The Board is aware that some agents are concerned about the security of their personal information. Australia Post is bound by the *Privacy Act 1988* to ensure that strict privacy safeguards are observed in the collection, storage and use of information. Agents can be assured that staff at Australia Post will deal with their applications in the strictest confidence.

The revised renewal forms can be downloaded from www.eletter.com.au/apply/sasb or by clicking on the relevant link in the 'Licensing' section of the Board's website, www.sasb.wa.gov.au.

Further details about the revised process, including a FAQs information sheet, are available from the Board's website. Agents will also be advised of the new process in their renewal reminder notice. If you have any questions about the process for lodgement at Australia Post, contact the Board's licensing staff on 9282 0844, or through the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide 8.30am – 5.00pm weekdays.

CPD in 2009 and beyond

As we approach the end of 2009, it is pertinent to reflect on what has been another successful CPD cycle. Following on from the strong foundations laid in its initial year, the CPD program continued to develop throughout 2009 as the awareness of the program and its requirements grew throughout the settlement industry.

The publication and subsequent distribution of *A guide to the Compulsory Professional Development program* to all settlement agents at the beginning of 2009 was a key element in building this awareness and ensured the CPD program progressed smoothly throughout the year.

The feedback received indicated that the CPD activities were of great benefit to settlement agents and the aims of the program were being recognised. Additionally, the professional conduct of West Coast Property Training (WCPT) and the wealth of information its trainers possessed were also highly commended.

On this note, the Board would like to inform the settlement industry that it has elected to continue with WCPT as the sole provider of prescribed core CPD activities in 2010. However, there will be an important change to the elective component of CPD and, more specifically, which training organisations will be able to offer the activities.

While WCPT will still be funded to provide prescribed elective activities therefore relieving attendants of any cost, the Board will allow other

training organisations to apply to have activities approved. It is important to note that such activities will not be funded by the Board, meaning attendees will pay the relevant fee. The elective CPD points awarded to those activities will be able to be counted towards the requirements for the year.

It will still be compulsory for all settlement agents to acquire six CPD points per calendar year of which at least four of them must be core CPD points.

The easiest way to reserve a place at CPD courses that are currently available is to book online at www.wcpt.com.au. If you have any direct booking enquiries, please contact WCPT by email on cpd@wcpt.com.au or phone 9300 0000.

To keep abreast of any developments in the CPD program, please ensure you regularly visit the 'CPD' section of the Board's website, www.sasb.wa.gov.au. For further information contact the Board on 9282 0854 or 9282 0642, or through the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide 8.30am – 5.00pm weekdays.



Mains powered smoke alarms now mandatory in pre-1997 properties

Since 1 October 2009 mains powered smoke alarms have had to be fitted in all existing residential buildings prior to sale. These requirements are mandatory under the Building Amendment Regulations 2009.

Since 1997 it has been law, under the Building Code of Australia, to install mains powered smoke alarms in new properties and any existing properties that have undergone significant renovations. This means action will not be required by the settlement agent in such buildings.

Where mains powered smoke alarms cannot be fitted, due to the construction of the dwelling not permitting space to conceal the wiring, or where no mains power is available, alarms with a 10 year battery life are permitted. Smoke alarms (not just the battery) must be changed every ten years as well.

Local government authorities will have the capacity to inspect the property, issue rectification notices, infringement notices or prosecute for any breaches with a fine of up to \$5,000 for non compliance.

Mains powered smoke alarms must also be installed by an electrical contractor before a property is sold or a new rental lease has been signed. Where there are no changes to the tenancy rental properties have until 1 October 2011 to comply.

A fact sheet which contains relevant installation diagrams and summarises where and how many smoke alarms should be installed for specific buildings can be downloaded from www.fesa.wa.gov.au.

Further information is available from the Fire & Emergency Services

Authority of Western Australia (FESA) by calling 9323 9816 or by visiting the website above.

The relevant regulations can be viewed by visiting www.slp.wa.gov.au/gazette/gazette.nsf and scrolling down to page 3017 of issue 2009/142. A direct link is available in Issue 10 of the SASB e-Bulletin.

Settlement agents need to be aware that the Joint Form of General Conditions does not specifically contain provisions regarding the installation of smoke alarms. Generally, buyers may not be in a position to delay settlement pending installation of smoke alarms by the seller unless there is a special condition in the contract relating to smoke alarms.

Acting for buyers

Settlement agents acting for a buyer should advise their client of the new requirements when they receive instructions to act.

The responsibility for having smoke alarms fitted to the property rests with the seller. However, buyers should be advised to check they are installed or they could be forced to foot the bill if they are not fitted before settlement.

Where smoke alarms are required but are not or will not be in place prior to settlement, the settlement agent acting for the buyer needs to advise the buyer of this fact in writing at the earliest possible time.

The buyer should also be advised to seek independent legal advice before settlement.

If the buyer wishes to proceed to settlement where the smoke alarms are not in place settlement agents should protect themselves by obtaining a written instruction and acknowledgment from their client stating that settlement is to proceed despite the smoke alarms not being installed at the premises.

Acting for sellers

Settlement agents acting for a seller should advise their client of the new requirements when they receive instructions to act.

Where smoke alarms are required but are not installed the settlement agent acting for the seller needs to advise the seller of the requirement of the Regulations and the penalties. The seller should be advised to seek independent legal advice before settlement.

If the seller wishes to proceed to settlement where the smoke alarms are not in place settlement agents should protect themselves by obtaining a written instruction and acknowledgment from their client stating that settlement is to proceed despite the smoke alarms not being installed at the premises.

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Acting for both parties

A settlement agent acting for both the buyer and seller also needs to be aware of their obligations under rule 7 of the Settlement Agents' Code of Conduct 1982. If a seller refuses to install smoke alarms prior to settlement, such a position may give rise to a conflict of interest where the agent may have to cease to act for both parties and recommend that the parties seek legal advice.

Rule 7 states:

"Subject to section 46 of the Act and to rule 5 a licensee may sometimes act for both parties. The test to apply is to consider whether in the interest of one he should withhold some information or advice from the other. If he should, then he should inform both clients that he is embarrassed and, subject to the following, should cease to act for both. He may continue to act for one of them in the same matter, however, unless he has received some confidential information from the other which it would be improper to use against him yet which should be used in the interest of the selected client."

You don't know what you don't know – Landgate's *Interest Dictionary* helping industry

Are you aware that there are many other interests in land which are not recorded on the Certificate of Title? Have you ever received a request from a client to assist in due diligence enquiries and not known what else is available?

Landgate have created an *Interest Dictionary* that can assist you and your clients to understand what questions you should be asking and who or where you can go to for information.

What is the *Interest Dictionary*?

Landgate has been working with agencies to understand more about interests in land. This knowledge is now available to you from Landgate's *My Landgate* website, accessible through www.landgate.wa.gov.au.

The *Interest Dictionary* provides a list of interests (and their definitions) currently known to Landgate that may affect the use and enjoyment of land in Western Australia.

Although not a definitive list (being a work in progress), with in excess of 50 interests listed it can provide assistance in highlighting areas with which you may be unfamiliar.

You can use the *Interest Dictionary* to:

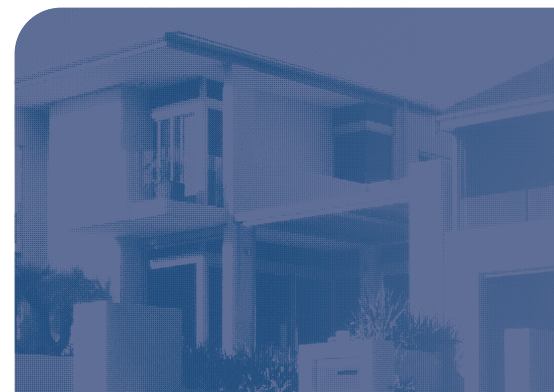
- gain a better understanding of the extent interests can impact land in WA;
- obtain a basic understanding of each interest affecting land in WA; and
- find out who you should talk to in government for additional information.

Can't find an interest to fit your situation? Contact Landgate on interests@landgate.wa.gov.au to update the *Interest Dictionary* and ensure a complete picture of the impacts in land is made available. Alternatively, discuss with the Business Manager of the Interest Enquiry Team, Keith Anthonisz, on 9273 0710.

Accessing interests online – use *Interest Enquiry*

Landgate is working with government agencies to make as many of the 50+ interests listed in the *Interest Dictionary* accessible for online assessment. Currently 12 interests are available for online assessment. Visit *Interest Enquiry* through the *My Landgate* website to determine if a property is affected by one of these interests.

Further information about *Interest Enquiry* can be found on the website www2.landgate.wa.gov.au/slip/portal/focus/roi.html.



First Home Owner Grant (FHOG) Unique Identification Number (UIN) and Status Enquiry Facility

The Office of State Revenue (OSR) has recently launched the FHOG UIN and Status Enquiry Facility. The facility provides up-to-date information on the status of FHOG applications and their UIN, which is required when applying for the First Home Owner Rate of transfer duty.

The quick and simple nature of the facility enables agents and applicants to quickly check for and obtain the UIN from OSR without the need to phone or email the FHOG branch.

The FHOG UIN and Status Enquiry Facility is accessible via www.osr.wa.gov.au or OSR's Revenue Online (ROL) facility for registered duties clients.

This new facility is part of OSR's Revenue Systems Modernisation Project which was commissioned to:

- extend the lifespan of existing revenue systems;
- provide new web based systems to improve the delivery of services and to facilitate new business initiatives; and
- minimise ongoing support and maintenance costs.

For more information visit the OSR website at www.osr.wa.gov.au.

Revised publications

The Board currently produces eight publications targeted at both consumers and industry members with the aim of providing important information on a broad range of topics concerning the settlement industry in Western Australia. These publications are continually reviewed to ensure their contents remain accurate and up-to-date in this constantly evolving industry.

So far this year four publications have benefited from such a review.

The booklet *A guide to investigations and disciplinary proceedings* and the online fact sheet *Licensing of settlement agents* have enjoyed a noticeable facelift and the popular consumer fact sheets *Choosing a settlement agent* and *Property settlement* have also had significant changes to their content and appearance.

Buying and selling property can be a very daunting and complex process for many people, present owners as well as first home buyers. The Board encourages industry members to direct their clients to its website www.sasb.wa.gov.au, where the latest versions of all Board publications can be downloaded for free. Industry members benefit when consumers are well informed about the property transaction process and the roles of settlement agents.

In another effort to keep industry members informed of the Board's policies and procedures, the Board has commenced publishing policy statements on its website. There are currently four policy statements published on the 'Board Policies' section of the website, which can be accessed through the 'For Agents' menu tab. The Board will continue to add more policy statements to the website as they are updated.

If you would like a hard copy of any of the publications please contact the Board on 9282 0844, or through the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide 8.30am – 5.00pm weekdays.



What to do when Landgate goes off-line

The Board has been made aware that Landgate systems have intermittently gone 'off-line'. Agents have sought 'best practice' guidelines for this situation when trying to settle a property.

The Board recommends that a settlement agent address this issue by advising their client:

- 1) of the inability of doing a check search;
- 2) of the possible ramifications of proceeding without the check search;
- 3) of the three day period of grace as an option; and
- 4) to obtain independent legal advice.

Detailed notes of the conversation with the client should be recorded on the file.

If the client wishes to proceed to settlement without obtaining legal advice on the ramifications of settling without a check search, the settlement agent should confirm these instructions in writing with the client as soon as possible by fax, email or post. The written communication should state clearly that the settlement agent has advised the client of the risk; that the client has chosen not to seek legal advice on the ramifications and wishes the settlement agent to proceed to settlement on this basis.

It is the buyer and/or their bank that makes the final decision to take the risk of proceeding to settlement without a check search.



Still not receiving e-Bulletin updates?

Industry members who have submitted their email addresses to the e-Bulletin mailing list receive the latest updates ahead of the quarterly newsletter.

Subscribers will recall this edition's article about smoke alarms from the e-Bulletin issued in September. Agents on the list were also able to complete the recent industry survey without so much as having to pick up a pen. Hyperlinks throughout the e-Bulletins mean more information is just a mouse-click away.

To receive e-Bulletins in the future all you have to do is send a blank email to enewssasb@commerce.wa.gov.au with the word ADD in the title, or fill out the form below and post it to Locked Bag14, Cloisters Square, WA 6850.

Name:

Email address:



Board meeting schedule for 2010

The table below provides the schedule of Settlement Agents Supervisory Board meetings for 2010.

The Board meets monthly to consider applications for real estate and business settlement agent licences.

Regulation 5 of the Settlement Agents Regulations 1982 requires that the notice of application for the grant of a licence be advertised, in the prescribed format, in *The West Australian* not less than 14 days before the Board meets to consider licence applications. Anyone who has objections to an applicant receiving a licence has up to 14 days after the date of publication to lodge a written objection to the Board.

Licence applicants should note the following dates for receipt of applications for each meeting during 2010.

Settlement Agents Supervisory Board Meeting (commencing at 1.00pm)	Closing date for applicants (Friday)	Last date for publishing advertisements (Saturday)	Deadline for agenda items (Wednesday)
19 January (3rd Tuesday)	31 December	2 January	13 January
16 February (3rd Tuesday)	29 January	30 January	10 February
16 March (3rd Tuesday)	26 February	27 February	10 March
13 April (2nd Tuesday)	26 March	27 March	7 April
18 May (3rd Tuesday)	30 April	1 May	12 May
15 June (3rd Tuesday)	28 May	29 May	9 June
20 July (3rd Tuesday)	2 July	3 July	14 July
17 August (3rd Tuesday)	6 August	7 August	11 August
14 September (2nd Tuesday)	27 August	28 August	8 September
19 October (3rd Tuesday)	1 October	2 October	13 October
16 November (3rd Tuesday)	29 October	30 October	10 November
7 December (1st Tuesday)	19 November	20 November	1 December

This newsletter contains general information that was current at the time of publication. If you have specific enquiries arising from any material in this publication, you should write to the Registrar of the Settlement Agents Supervisory Board, or seek independent professional advice. The producers of this publication expressly disclaim any liability arising out of a reader's reliance on information in this publication.

THIS PUBLICATION WAS ISSUED BY THE SETTLEMENT AGENTS SUPERVISORY BOARD.

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