



# Settlement Agents NEWS

SETTLEMENT AGENTS SUPERVISORY BOARD

No.54 Autumn 2011

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## Changes to the Joint Form of General Conditions for the Sale of Land

**REIWA has advised that the 'Joint Form of General Conditions for the Sale of Land' (the General Conditions), produced by The Law Society and REIWA, will be amended to cater for recent amendments to the transfer duty lodgement and payment arrangements that are expected to commence in early March 2011.**

The changes came about as the result of the Office of State Revenue (OSR) enhancing its Revenue Online System (ROL) to allow for the payment of duty at settlement, where an approved transaction is self-assessed and endorsed by a Responsible Party using ROL.

These changes are designed to assist buyers of property who in the past needed to borrow the funds to pay the duty as part of their loan, but could not get the loan advanced until settlement.

According to REIWA, the General Conditions will provide for the existing payment system and the new payment alternative. The new payment alternative will only be available to buyers using the services of a settlement agent who is registered to use ROL.

REIWA is working together with the OSR with the expectation both the new payment system and new General Conditions will come into effect in early March 2011.

Settlement agents who are interested in registering for ROL are encouraged to contact the OSR on 9262 1113 or by emailing [onlineduties@dtf.wa.gov.au](mailto:onlineduties@dtf.wa.gov.au) for assistance.

The Board strongly recommends agents read an article submitted to the Board by the OSR, which details the enhancement of ROL and how it will affect settlement agents.

To view the article, visit the 'Latest news' page under 'For Agents' on the Board's website, [www.sasb.wa.gov.au](http://www.sasb.wa.gov.au).

**Real Estate and Settlement Advice Line: 1300 30 40 64**  
(Cost of a local call state-wide 8.30am – 5.00pm weekdays)



## Proposed business settlement course

The Settlement Agents Supervisory Board (the Board) has recently met with the Australian Institute of Conveyancers WA Division Inc (AICWA) and TAFE to discuss the possibility of conducting a once-off business settlement course to be held later this year.

In order for the event to proceed, the Board would like gauge the interest in attending the course of those people with practical experience in dealing with business settlement transactions who also hold the Diploma of Financial Services (Conveyancing).

If you are interested in attending such a course, please confirm your interest by emailing [contactus@sasb.wa.gov.au](mailto:contactus@sasb.wa.gov.au).



## Lodging dutiable transactions

The Board would like to remind agents of the recommended practice for lodging dutiable transactions with the Office of State Revenue for assessment of transfer duty with specific regard to Section 37 of the *Duties Act 2008* (the *Duties Act*).

Section 37 of the Duties Act is an anti-avoidance measure designed to counter the practice known as “agreement splitting” whereby a single arrangement is effected or evidenced by separate transaction records, in order to take advantage of the lower rates of transfer duty applying to lower valued transactions.

Section 37(1) provides that dutiable transactions relating to separate items of dutiable property that together form, evidence, give effect to or arise from what is substantially one arrangement are to be aggregated and treated as a single dutiable transaction.

Without limiting section 37(1), section 37(2) provides that, unless the Commissioner of State Revenue is satisfied to the contrary, dutiable transaction will be deemed to comprise substantially one arrangement if:

- the transactions have taken place within 12 months; and
- in respect of each of the transactions, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different person).

Section 37 may even apply where one of the transactions is one that would not otherwise be a dutiable transaction.

For example an agreement for the purchase of chattels will only be aggregated with an agreement to purchase land where it is determined that both transactions arise from substantially one agreement.

Transaction records for dutiable transactions which may be aggregated in accordance with section 37 must either:

- be lodged with the Commissioner of State Revenue using a single Duties Document Lodgement and Assessment Form to record all transaction records; or
- if the transaction records are lodged separately, then a covering letter must refer the Commissioner of State Revenue to all transaction records and indicate that section 37 of the Duties Act may apply.

If it is found that transaction records for dutiable transactions potentially subject to section 37 have been lodged separately and without advising the Commissioner of State Revenue of the related transaction records, then upon any determination that section 37 applies, prosecution will be considered.

*The information in this article was provided by the Office of State Revenue.*

# → Australian Consumer Law

**On 1 January 2011, the new nationally uniform Australian Consumer Law (ACL) came into effect, bringing into line consumer laws across Australia, and replacing Commonwealth, State and Territory consumer protection legislation**

The ACL applies nationally and in all States and Territories, and to all Australian businesses. For transactions that occurred up to 31 December 2010, the previous national, State and Territory consumer laws will continue to apply.

In Western Australia the *Fair Trading Act 2010 (WA)* (the FTA) also came into effect, and will implement the ACL in Western Australia.

The FTA provides that the ACL as set out in Schedule 2 of the Commonwealth's *Competition and Consumer Act 2010* (formally the *Trade Practices Act 1974*) as in force when the FTA commenced as a law of Western Australia, and will be known as the ACL (WA).

The new fair trading act will replace the *Fair Trading Act 1987 (WA)*, *Consumer Affairs Act 1971 (WA)* and the *Door to Door Trading Act 1987 (WA)*.

Some of the key changes that may affect the conveyancing industry under the new law are:

## **Ability to void unfair contract terms**

Unfair contract terms are outlawed, affecting 'take-it-or-leave-it' standard form contracts used during the sale of many types of goods or services, such as mobile phones. 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 to be relied on. Unfair contract conditions, even if signed or agreed to, can be disputed in court and declared void.

## **Consumer guarantees**

Where goods or services are supplied to a consumer there are a number of 'consumer guarantees' that apply regardless

of any other warranty offered.

They include that goods must be of acceptable quality, fit for purpose and match descriptions, samples or demonstration models. Should goods fail to meet one of these guarantees, the customer is entitled to a remedy such as refund, repair or replacement from the retailer. Services must be carried out with due care and skill and completed in a reasonable time.

## **Stronger penalties and powers**

Greater penalties and enforcement powers will back up the ACL, allowing State and Federal agencies a wider scope to take action for breaches of consumer laws. There are also more options for consumer and business compensation for unlawful conduct.

Further information can be found at <http://www.consumerlaw.gov.au/>



## → Ensure your details are up to date

The Board would like to remind all licensees and triennial certificate-holders to make sure the Board Registrar has your most recent residential address and employment details. All persons holding a licence and triennial certificate are to provide details for the register maintained by the Registrar.

The Board records need to remain up to date with business details of agents so all licensees can be kept informed of current issues and triennial certificate renewal and/or licensing and audit notifications can be sent to the correct address. Persons who currently have their licence on hold should ensure they have provided the Board with an up to date postal address.

Under Section 110 (2) of the *Settlement Agents Act 1981* (the Act), settlement agents need to advise the Registrar of these changes or risk facing a fine of up to \$1000.

The Registrar has a responsibility to record the information outlined in Section 7 of the Settlement Agents Regulations 1982 (the Regulations), including the name and address of all agents who hold a triennial certificate.

Settlement agents should inform the Registrar in writing of any change of business name or change of address or other details.

It is also recommended that agents inform the Registrar of any changes to contact phone numbers and email addresses. This will ensure more timely and accurate correspondence via telephone and email.



For more details, refer to the Act and the Regulations, available at [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

## → The future of the Board – an update

The Acts Amendment (Fair Trading) Bill 2010 (the Bill) was passed in November 2010 and will result in the abolishment of four State Government licensing boards, including the Settlement Agents Supervisory Board and the Real Estate and Business Agents Supervisory Board.

The Bill transfers responsibility for the regulation of several occupations from the Boards to the Director General of the Department of Commerce (the Director General) and the Commissioner for Consumer Protection (the Commissioner).

One of the objectives of the Bill is to reduce the number of independent licensing and advisory boards, and to move from a regulatory board structure to a departmental structure.

The amendments vest the Board's licensing and regulatory functions in the Commissioner, while the

Board's employing authority and financial responsibilities, including administration of the fidelity guarantee accounts will be assumed by the Director General.

It is anticipated that licensees will see little immediate change in the operation of licensing, including renewals, or regulation. The Authority for the operation of the Act will devolve from the Minister to the Department of Commerce, under the Director General and the Commissioner, rather than the authority currently vested in the Settlement Agents Supervisory Board.

Normal operation of the Act will continue, including CPD in the 2011 calendar year.

A Property Industry Advisory Committee, comprising industry representatives, will be established to ensure that the industries affected are able to discuss issues and raise any concerns with either the Commissioner or Minister for Commerce.

The amendments are scheduled to come into operation on 1 July 2011.

# Compulsory Professional Development Requirements for 2011

Each year, the Board reviews the needs of the industry and prescribes what subjects are to be the core and elective CPD subjects.

For 2011 the Board has prescribed the following **core** training subjects:

- Risk management – professional indemnity insurance claims;
- Business management practices;
- Legislation regulating the carrying on of business as a settlement agent in Western Australia; and
- Understanding real estate and settlement documents.

For 2011 the Board has prescribed the following **elective** training subjects:

- Reconciliation of trust accounts;
- Customer service skills; and
- Legislative change affecting the conveyancing profession.

The Board has extended its contract with West Coast Property Training (WCPT) for the delivery of the above prescribed CPD activities in 2011.

Other training providers will also be allowed to apply to the Board to deliver elective CPD activities in 2011 (aside from the above prescribed subjects), which will not be funded by the Board but can be awarded points towards the prescribed CPD requirements.

If the Board approves activities delivered by other training providers, details will be made available on the CPD section of its website.

Please refer to the timetable below for the CPD sessions scheduled in the near future.

| Date                      | Time   | Description   | Location          |
|---------------------------|--|---|-------------------|
| Wednesday 23rd March 2011 | 9.30am to 11.30am  | SASB Business Management Practices<br>2 CORE CPD points                 | Ibis Hotel, Perth |
| Wednesday 23rd March 2011 | 12.15pm to 2.15pm  | SASB Customer service skills<br>2 ELECTIVE CPD points                   | Ibis Hotel, Perth |
| Wednesday 23rd March 2011 | 2.30pm to 4.30pm   | Understanding real estate and Settlement documents<br>2 CORE CPD points | Ibis Hotel, Perth |
| Tuesday 5th April 2011    | 9.30am to 11.30am<br>12.15pm to 2.15pm<br>2.45pm to 4.45pm | SASB Risk Management presented by JLT<br>2 CORE CPD points              | Ibis Hotel, Perth |
| Monday 11th April 2011    | 9.30am to 11.30am  | Reconciliation of Trust Accounts  | Joondalup         |

You can book your CPD courses online at [www.wcpt.com.au](http://www.wcpt.com.au). If you have any direct booking enquiries, please contact West Coast Property Training by email at [cpd@wcpt.com.au](mailto:cpd@wcpt.com.au) or phone 9300 0000.



# Settlement Agents Supervisory Board Meeting Dates 2011

SASB meeting dates for the first half of 2011 are provided below – any changes will be published in future editions of *Settlement Agents News* and at [www.sasb.wa.gov.au](http://www.sasb.wa.gov.au).

| SETTLEMENT AGENTS SUPERVISORY BOARD MEETING<br>(commencing at 1.00pm) | CLOSING DATE FOR APPLICANTS<br>(Friday) | LAST DATE FOR PUBLISHING ADVERTISEMENTS<br>(Saturday) | DEADLINE FOR AGENDA ITEMS<br>(Wednesday) |
|---|---|---|--|
| <b>22 MARCH</b><br>(4th Tuesday)                                      | 4 MARCH                                 | 5 MARCH   | 16 MARCH                                 |
| <b>19 APRIL</b><br>(3rd Tuesday)                                      | 1 APRIL                                 | 2 APRIL   | 13 APRIL                                 |
| <b>24 MAY</b><br>(4th Tuesday)  | 6 MAY                                   | 7 MAY   | 18 MAY                                   |
| <b>28 JUNE</b><br>(4th Tuesday)                                       | 10 JUNE                                 | 11 JUNE   | 22 JUNE                                  |



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THIS PUBLICATION WAS ISSUED BY THE SETTLEMENT AGENTS SUPERVISORY BOARD.

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